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FREEDOM AND NORMATIVE NEUTRALITY:
ASSESSING ROBERT NOZICK'S LIBERTARIANISM

BY

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Introduction

The true end of Man...is the highest and most harmonious development of his powers to a complete and consistent whole. Freedom is the first and indispensable condition that the possibility of such a development presupposes.

— Wilhelm von Humboldt (*The Limits of State Action*, 1792)¹

Freedom is not all that we value, but we need it in order to pursue whatever else we might consider valuable. Because of its near universal appeal, the idea of freedom has occupied a central place in political debate since the Enlightenment. However, for a concept that has inspired such fervent devotion, its precise meaning has often remained elusive. My purpose in this thesis is to clarify our discussion of freedom in two ways.

First, I argue for a particular conception of freedom. In doing so, I show that if we truly care about freedom as such, we should approach it as a descriptive concept, rather than building our normative assumptions into its very definition. To stow our normative content in the concept itself is to contradict many basic linguistic intuitions about when we are free and pull a curtain of obfuscation around our theories. When the term “freedom” means

¹ von Humboldt, Wilhelm. *The Limits of State Action*. 1792. Reprinted 1969. London: Cambridge University Press, 1969. Edited by J.W. Burrow. "Chapter II: Of the Individual Man, and the Highest Ends of His Existence."

essentially whatever we want it to mean, we place the possibility of a substantive discourse out of reach and lose sight of why we value freedom to begin with.

Second, I argue that despite positioning themselves as the lone principled defenders of freedom, adherents to the dominant strain of libertarianism manipulate the concept in just this way. When evaluated through the lens of the neutral conception of freedom that I defend, it becomes clear that their theory is deficient as a defense of freedom. If the purposes of this thesis are achieved, we will have a secure grounding from which to construct or evaluate theories of justice that attend to freedom.

Because my argument remains essentially silent on normative questions, it is reasonable to ask why freedom is worth examining to begin with. Before commencing my argument, I make some cursory remarks to provide my answer to that question. A variety of plausible answers can be given, and it is helpful to distinguish between those that see freedom as specifically valuable from those that understand it as non-specifically valuable.² When the term “freedom” is divorced from the context of its utterance, it is not always clear whether we are referring to a specific freedom (e.g. the freedom to play baseball) or freedom *as such*. I follow many Enlightenment thinkers in considering freedom valuable as such.

² Ian Carter articulates clearly the various ways in which freedom might be considered valuable in “The Value of Freedom.” *A Measure of Freedom*. Oxford: Oxford University Press. 1999. Pgs. 31-67. He ultimately argues that freedom is non-specifically valuable.

This claim does not entail that freedom is necessarily intrinsically valuable.³ Rather, it says that freedom is non-specifically valuable, which can be defined as follows: “A phenomenon, *x*, has non-specific value (is valuable as such) if, and only if, the value of *x* cannot be described wholly in terms of a good brought about or contributed to by a specific instance of *x* or set of specific instances of *x*.”⁴ If the value of freedom were merely derived from the value of doing this particular thing or that, then we would never have any interest in comparing degrees of overall freedom; it would not matter if one person were freer than another or if one person’s overall freedom had been reduced. But such considerations do matter, and freedom is therefore non-specifically valuable.

I consider freedom valuable in the same sense as many Enlightenment thinkers. Expressing a view common in this tradition, Mill states,

Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according the tendency of the inward forces that make it a living thing.⁵

³ Carter explains, “The reason lies in our ignorance about the nature of the ultimate good being realized, so that this ultimate good is not characterizable in terms of the instrumental values of specific freedoms. The easiest way to grasp this point is by means of an analogy with the value we attach to money. Most of us do not see money as intrinsically valuable; most of us see it only as a means to certain ends. However, when asked to specify those ends, we often find that we are unable to do so...We do not value money only as a means to buying the latest recording of Mozart’s symphonies or as a means to eating a bar of chocolate, but also as a means to satisfying *whatever* our future desires may turn out to be” (36, italics added).

⁴ Carter, 34

⁵ Mill, John Stuart. *On Liberty*. 1947. Wheeling: Harlan Davidson. p. 59.

He observes that we are complex creatures whose full, authentic growth cannot be mapped out according to a blueprint. Instead, we develop our innate capacities when are given the freedom to pursue our ends, to experiment with ways of living, to make mistakes and learn from them. Throughout this process we have the opportunity to constantly arrive at and revise our ends, according to our evolving aspirations and understanding of ourselves. As von Humboldt suggests in the epigraph to this chapter, freedom may not be a sufficient condition for this development, but it is certainly a necessary condition.

This Enlightenment understanding of the value of freedom is not especially controversial. In fact, proponents of the libertarianism that this thesis calls into question often claim that their view has roots in the Enlightenment view of the value of freedom. Though the purpose of this thesis is neither an inquiry into the value of freedom nor an exegetical analysis of Enlightenment thought, my argument undermines this claim significantly.⁶

My brief remarks here regarding my view of the value of freedom are a mere sketch, but they provide a rough background on why I believe the concept of freedom is one worth analyzing. However, the success of

⁶ For a historical rejection of the claim that the dominant strain of libertarianism is the inheritor of Enlightenment or classical liberal ideals, see: Freeman, Samuel. "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View." *Philosophy & Public Affairs*. Volume 30, Issue 2. April 2001. p. 105-151.

the argument in this thesis does not depend upon the validity of my particular view why freedom is valuable. This thesis examines the concept of freedom and its uses, not the reasons we should consider it valuable. This stance of normative neutrality helps clarify our discussion of freedom by forcing us to reflect on what we mean by “freedom.” The better we understand its meaning, the better equipped we will be to evaluate theories of justice and thoughtfully arrive at our own views of why freedom is valuable.

Chapter I

The Nature of Freedom

1.1 A Conceptual Framework

In this chapter I enter the debate about the nature of freedom. In doing so, I also build a foundation for my subsequent assessment of Robert Nozick's libertarian view in *Anarchy, State and Utopia*.⁷ I evaluate competing views of the nature of freedom using normatively neutral criteria: conceptual clarity and their congruence with our linguistic intuitions. Using this approach, I endorse a particular understanding of freedom and give reasons for rejecting rival views. This conception of freedom grounds my criticism of Nozick's view.

With the goal of situating my argument within an appropriate conceptual framework, I first discuss the distinction between positive versus negative freedom. Though I argue that this dichotomy is misleading, a discussion of it is inescapable because it has long pervaded philosophical discussions of freedom. The negative/positive model sets the stage for the improved conceptual framework that I endorse. Rather than conceiving of freedom in a negative or positive sense, I follow Gerald MacCallum in understanding freedom as a triadic relation among an agent, a constraint, and a given end.⁸ This framework supplies

⁷ I will use the terms freedom and liberty interchangeably because the choice of one term over the other is essentially stylistic. I follow most writers in using these terms as synonymous.

In addition, this thesis concerns social, political and economic freedom, not the metaphysical or scientific question of free will. Though there may be important connections between the two concepts, if this thesis touches on those connections, it does so only incidentally.

⁸ MacCallum Jr., Gerald. "Negative and Positive Freedom." *The Philosophical Review*, Volume 76, Issue 3 (Jul., 1967). pp. 312-334.

the sturdy conceptual foundation needed to construct and advance my argument.

1.2 The Negative/Positive Model

The distinction between negative and positive freedom was articulated most famously in Isaiah Berlin's 1958 essay, "Two Concepts of Liberty."⁹ According to Berlin, negative freedom is the absence of interference by others with one's pursuits. When the individual is not obstructed, she enjoys a sphere of activity in which she may do as she wishes. Questions regarding whether an individual is free in this negative sense may only be answered by examining factors external to the agent. On the other side of the dichotomy that Berlin sets out, positive freedom obtains when the individual is the sovereign over herself and her affairs. Though the language of positive freedom is notoriously vague, the concept can be best described as the presence of active self-direction or control: "It derives from the wish on the part of the individual to be a subject, not an object."¹⁰

The debate over negative versus positive freedom has often been plagued by ambiguity and mutual misunderstandings. For example, when each view

⁹ Berlin, Isaiah. "Two Concepts of Liberty." *Four Essays on Liberty*. 1969. Reprint. New York: Oxford University Press, 1970. 118-172. "Two Concepts of Liberty was given as the Inaugural Lecture at the University of Oxford on October 31st, 1958. It was published by Clarendon Press that year and then later included as a chapter in *Four Essays on Liberty*.

¹⁰ Berlin, 131

claims that freedom consists of something like self-determination, the debate devolves into semantics over the meaning of certain adjectives or analogies. However, this fog has recently begun to clear, thanks in large part to the conceptual framework that Gerald MacCallum offers as a replacement for the negative/positive model. While Berlin argues that there are two rival definitions of freedom, MacCallum rejects this view and identifies a single definition.

1.3 The Triadic Model

The negative and positive views of freedom are not identical, but MacCallum's triadic model shows that they disagree not about the *concept* of freedom, but over different *conceptions* of it. While a concept refers to a general, abstract idea, a conception lowers the level of abstraction by specifying the content of that idea.¹¹ In other words, a concept presents a problem that the conception seeks to solve.¹² MacCallum argues that the negative and positive views are two particular conceptions of the concept of freedom. He holds that the single concept, or definition, can be understood as follows:

Whenever the freedom of some agent or agents is in question, it is always freedom from some constraint or restriction on, interference with, or barrier to doing, not doing, becoming, or not becoming

¹¹ John Rawls famously employs this distinction in distinguishing between the concept of justice, which appeals to general features like non-arbitrariness and the proper arrangements of persons in society, and his particular conception of it. See: Rawls, John. *A Theory of Justice*. MA: Belknap Press of Harvard University Press, 1971. p. 10.

¹² Korsgaard, Christine. *The Sources of Normativity*. Cambridge: Cambridge University Press. 1996. p. 114.

something. Such freedom is thus always *of* something (an agent or agents), *from* something, *to* do, not do, become, or not become something; it is a triadic relation. Taking the format “*x* is (is not) free from *y* to do (not do, become, not become) *z*,” *x* ranges over agents, *y* ranges over such “preventing conditions” as constraints, restrictions, interferences, and barriers, and *z* ranges over actions or conditions of character or circumstance. When reference to one of these three terms is missing in such a discussion of freedom, it should be only because the reference is thought to be understood from the context of the discussion.¹³

Under MacCallum’s analysis, a reference to the above three variables is necessary and sufficient to offer an account of when someone is free or unfree. The description of freedom as a triadic relation is meta-theoretical in the sense that it analyzes what, precisely, the debate between negative and positive theorists had actually been about.

What, then, is the debate about, if not the concept of freedom? The exchange between proponents of negative versus those of positive freedom concerns the proper interpretation of the range of the three variables contained in the concept of freedom. In other words, each side gave a particular interpretation of the three variables, which together constitute a conception of freedom. However, the substantive differences between proponents of the negative and positive views illustrate that MacCallum’s analysis does not put to rest discussions about how to understand the proper range of the triadic variables (or to what particular circumstances the term freedom applies). Instead, the triadic model puts to rest obfuscatory arguments over “kinds” of freedom, and supplies

¹³ MacCallum, 314

the correct conceptual framework required for a productive discussion in which each side is not speaking past the other.

I build upon the triadic model by offering a conception of freedom, by fastening down and giving content to each of the three variables. In this chapter, I articulate and defend a particular understanding of the agent (x) and goal (z) variables. Though I will largely leave the question of the proper range of the constraint (y) variable open, I reject one interpretation of it. The interpretation that I reject smuggles normative content into the definition, and I explain why this is problematic. At the end of this chapter, the skeleton of the triadic definition will be largely fleshed out, ready to employ in the second chapter. In the third chapter I defend a particular interpretation of the constraint variable, thus supplying a complete conception of freedom.

In giving content to the agent and end variables, it is helpful to explore the negative/positive debate using the conceptual tools furnished by the triadic model of freedom. Though the triadic model demonstrates that both sides in the negative/positive debate at least coalesce on the same definition of freedom, there remains a chasm between the two sides. Each side of the negative/positive debate represents a different interpretation of the proper range of the three

variables. Examining this debate is especially useful in expositing the competing views of the range of the x variable, the nature of the agent.¹⁴

1.4 The Agent Variable

In assessing the range of the agent variable, it is most useful to begin with the negative view of freedom. The reason for this starting point is that this view has historically been clearer, more internally consistent, and subject to less misrepresentation. Proponents of the negative view argue that the (free or unfree) agent should be understood as the empirical self. The agent is the physical person to whom we could point and say: "He is free" or "He is not free," with respect to a particular action and its constraint or lack of constraint. This agent is seen as consisting in exactly one, irreducible person. No greater or less than one person, construed in the commonsense way, is eligible to be described as an agent.

¹⁴ I take Berlin's description at 131-154 of the tenets of the negative and positive views as an accurate account, and my discussion of these views draws significantly from his account. Using the triadic model, I defend a variant of what Berlin would call negative freedom. Proponents of positive freedom in the modern period include Thomas Hill Green. *The Works of Thomas Green Hill*, ed. R.L. Nettleship, vol. 3, (London: Longmans, Green & Co., 1888), pp. 370-376. Charles Taylor offers a more contemporary defense of positive freedom in "What's Wrong With Negative Liberty." *The Idea of Freedom: Essays in Honor of Isaiah Berlin.* Ed. Alan Ryan. Oxford: Oxford University Press. 1979. Pgs. 175-93. Digital excerpt. Contemporary defenses of views resembling negative freedom can be found in Steiner, Hillel, *An Essay on Rights*, Oxford, UK: Blackwell. 1994; and Ian Carter, *A Measure of Freedom*.

Proponents of the positive view have often understood the agent variable differently, and even disagree among themselves about it. They often conceive of the individual as fragmented, emphasizing a higher and a lower self. The positive view relies on normative content, because the notions of higher and lower are value terms. They argue that the higher self should be taken as the true self because it is the rational or virtuous aspect of each individual. From this standpoint, they identify the higher self as the agent (the x variable) that we may rightly describe as free or unfree. It is instructive to observe that these theorists go beyond simply acknowledging that we may identify most with our higher (e.g., rational, virtuous) self. They do not merely observe that we can experience internal discord within ourselves. Rather, they can be interpreted as arguing that the lower self is an entirely separate entity from the “true” agent. Under this conception, constraints on an agent’s freedom include not just other people, but also the alien lower self, which might represent irrationality, immorality or base desire.¹⁵

An agent who could be described as “a slave to his passions” is the paradigm case of someone unfree in this positive sense.¹⁶ Positive theorists who hold this view assert that an individual who finds himself in this condition cannot realize his true nature because his higher self does not drive his actions. The clearest example of unfreedom in this positive sense is the drug addict, who

¹⁵ Berlin, 139. Jean Jacques-Rousseau and Charles Taylor are among the proponents of this view.

¹⁶ Berlin, 132

feels that he is unable to control his irrational, addicted self, which drags him to and fro. If the addiction is strong enough, the lower self may even seem to be a perfect stranger to him (“this isn’t something that *I* would ever do...”). In such cases, the agent lacks freedom in the positive sense.

The view of the agent that many positive theorists articulate contrasts sharply with that defended by the negative theorists. Under the negative view, the agent is taken at face value because the agent is the empirical self. Constraints on an agent’s freedom always feature another person’s external interference because freedom is understood as an inherently interpersonal relation. In a hypothetical world in which there were only one person, this sole inhabitant would necessarily enjoy a condition of pure freedom in the negative sense. In contrast, this same isolated person could be considered very unfree in the positive sense if she were at the mercy of a tempestuous lower self. Unlike the negative view, the existence of other agents is not necessary to render her unfree.

I argue that the interpretation of the x variable as a higher self has problematic implications that the view of the x variable as an empirical person manages to avoid. Most fundamentally, the higher-self view of the x variable strays from a normatively neutral conception of freedom. By building its normative commitments into its account of freedom, this view betrays the reasons that we find freedom valuable. It seems that the problems of the positive view stem from a conflation of two questions: “Who is the agent?” and “What constitutes agency?” When MacCallum uses the term “agent” to refer to the x

variable, all he means by that word is “the entity that is considered to be free or unfree.” A given view of the *x* variable does not necessarily entail a position on agency or the process by which we select and perform actions.¹⁷ Further, positive theorists who view the *x* variable as consisting *only* of the higher self in an internally divided person – and seeing the lower self as completely foreign – make claims that yield absurd consequences and conflict with common uses of the term. By threatening the conceptual integrity of the person, they allow commonsense cases of unfreedom to be described using the language of freedom.

Before attacking views of the agent that depart from the empirical view, it is useful to clarify what is or is not entailed by that position. Endorsing the empirical agent perspective does not preclude acknowledging that we can feel ourselves to be divided or conflicted. This position merely holds that such conflicts and divisions take place *within* the agent, rather than between an internal agent (as a higher self) and some utterly foreign entity (as the lower self). In order to endorse the empirical agent view, we must only say that such dispositional conflicts are contained within us. To put the point another way, this view does not require a conception of human beings as rational automatons. We would want to reject any such view because it contradicts our most immediate

¹⁷ It is helpful here to emphasize that the triadic model refers to freedom in the social and political sense, not the scientific/metaphysical question of free will. It seems that much of the confusion over competing conceptions of the *x* variable stems from the failure to distinguish between the two ways the term “freedom” is used. The triadic model is concerned with the freedom that is synonymous with liberty.

experience of ourselves, especially when we struggle to balance our rational capacity with our passions. The empirical agent position merely requires that we recognize these conflicting aspects of ourselves as our own.

Now that we have dispelled misconceptions about the empirical view of the agent, we can examine how departures from that view allow the concept of freedom to be divorced from our linguistic intuitions about when we are free.¹⁸ Imagine a scenario in which the Chinese government imprisons, enslaves and tortures a Tibetan monk protesting its rule. It would be uncontroversial to describe the monk as very unfree: he is prevented from pursuing innumerable activities (e.g. seeing his family, returning home, eating perhaps). However, he could remain perfectly free in the positive sense despite being a tortured, enslaved captive. Suppose that this monk follows Buddhist spiritual teachings in his cell and sheds all attachment to the trappings of the material world, focusing his attention on attaining nirvana. Under the positive view, he is perfectly free: his higher self is freed from his lower self's misguided desire for the comforts of the external world. But the monk is a tortured captive. Though we might admire his equanimity and grace, the notion that he remains free while shackled conflicts with our basic intuitions about the meaning of the term freedom.

While we often see ourselves as internally divided, the positive view of the agent requires *someone else* to do the splitting. Under the positive view, we

¹⁸ The following example draws on Berlin's notion of a "retreat to the inner citadel" (Berlin, 135-6).

cannot do this dividing ourselves because there is no way to know whether the division is the correct one. If the correct division were whatever we each say it is, then we would still be operating under the empirical view of the individual, which takes the empirical individual's words at face value. In contrast, the positive view allows others to put us on a conceptual chopping block, where we are at the mercy of their conceptual doctrines.

This interpretation of the x variable can play into the hands of those who would restrict freedom (as we commonly understand it) because our stated desires and goals need not be taken at face value. Those who would interfere with our pursuits can simply dismiss our protests as expressions of a parasitic lower self. For example, our calls for civil liberties might be dismissed as deriving from our lower selves, as born out of corruption by Western ideas. Such freedoms (understood in the neutral sense) could be denied by those who claim that we would not be expressing the higher spiritual self that would see the importance of, for example, an Islamic theocracy, even a repressive one. Allowing others to draw a conceptual border within us using a bright line threatens the conceptual integrity of the individual and opens the door to cases of maximal unfreedom.

Even if we endorsed a normatively loaded interpretation of the agent, such a view produces significant epistemological problems. It allows others paint the lines that govern true and untrue aspects of us because it could never be clear to others from which self our words spring. And if we were to object to the way

that they divide us, who is to say that such an objection does not spring from a lower self? This interpretation of the agent variable allows the individual's stated beliefs and desires to be dismissed and the will of others imposed, and that contradicts our basic linguistic intuitions about when we are free.¹⁹ Beyond such linguistic and epistemological problems, the fact remains that the very notion of higher and lower selves depends upon normative judgments. In the search for a conceptually clear, normatively neutral account of the agent that best comports with our linguistic intuitions, we must look beyond the positive theorist's interpretation of the agent variable.

What does the x variable in the triadic relation refer to, if not one aspect of a divided person? An approach in which the free or unfree agent is seen as a single, empirical person best comports with common uses of the term freedom and is the most conceptually lucid. This view provides a natural resting place for the x variable for several reasons. The first is that it is clear whom we are talking about. The empirical approach does not suffer from the problems that the higher self view of the x variable encounters because it does not require us to isolate and assign relative values to the aspects of each multifaceted person. The single individual is the proper inheritor of the x variable in the triadic relation because this view does not allow conditions of severe unfreedom to be defended using the language of freedom.

¹⁹ Berlin, 133

My endorsement of the empirical individual as the x variable in the triadic relation commits me to the view that the drug addict is free. Though this consequence might initially appear problematic, it is minor in comparison to the defects in the positive accounts of the x variable. Furthermore, this concern can be addressed. The empirical view does not commit me to saying that the drug addict enjoys internal harmony, full rationality, properly ordered preferences, or an absence of subjective divisions within him. The empirical approach might recognize that the addict may voluntarily hand over certain freedoms (e.g. by registering for a rehabilitation clinic) in order to rid himself of his addiction, but would deny that he could be forced to do so *in the name of his own freedom*. Finally, lingering concerns might be addressed by observing that while we would say that the drug addict is *unable* to break his addiction, it is not at all obvious why we also need to say that he is *unfree*. Freedom and ability are not synonymous, and convincing reasons would be required to support a description of the addiction example as one of unfreedom, not just inability.

If it makes sense for us to say that when an individual *has* an addiction – i.e., that the addiction is *his* and belongs to *him* – then the agent has been identified as the empirical self. We need not wrestle our way out of this natural conception of the individual in order to acknowledge the feeling that we have of ourselves as internally conflicted. Nor need we abandon the empirical view if we want to avoid the view that free individuals are necessarily morally responsible

for their actions.²⁰ If any concerns with the empirical view remain, they are outweighed by the conceptual problems and counterintuitive implications of the positive view of the agent. Because there is no better option than the empirical self, any lingering concerns are the price that must be paid for a language of freedom that maintains its conceptual clarity and comports with our linguistic intuitions about when we are free. The agent variable refers to us.

We can now express the appropriate range for the first of the triadic variables that MacCallum leaves open to interpretation, using the format that he provides: *X* – the empirical person – “is (is not) free from *Y* to do (not do, become, not become) *Z*.”²¹ Because both the concept of the triadic relation and my interpretation of the first variable are normatively neutral, the format given above can suffice to describe conditions of unfreedom without recourse to normative judgment. In order to continue grounding the triadic model, I now analyze and give content to the *z* variable.

1.5 The End Variable

²⁰ Though the empirical view commits me to saying that the addict is free, it does not entail that the addict is morally responsible for his actions. Moral responsibility may draw upon independent notions of rationality, properly ordered preferences or the absence of certain internal states of mind. For example, a sleepwalker might be free, but would be unlikely to be held morally responsible for his actions. Freedom is not the same thing as responsibility.

²¹ MacCallum, 314

Now that we have a sound interpretation of the x variable, we can ask what the agent is conceptually free or unfree to do or to become – that is, how should we interpret the z variable? For reasons similar to those considered in interpreting x , the most plausible understanding of z also does not set a limit for its range using normative criteria. Accordingly, we can discount the interpretation of z that refers to an agent’s potential “becomings” (e.g. virtue, happiness), which are understood in terms of the agent’s character. This interpretation imports normative content into its conception of freedom by setting a particular value-laden end for the agent. Thus, this interpretation does not allow the agent to determine her own ends and keeps us from using freedom as a purely descriptive concept. Furthermore, this interpretation of z is problematic in the same ways as the higher-self view of the agent: it gives rise to epistemological problems and can contradict our linguistic intuitions about when we are free.

Instead of the becomings interpretation of z , we should understand that variable as referring to an agent’s actions. The actions interpretation of the z variable is normatively neutral, comports with our linguistic intuitions, and does not produce the same epistemological problems as does the character view. Furthermore, this interpretation does not deny our multifaceted and dynamic internal lives. Rather, the empirical person interpretation of x and the actions interpretation of z together form (two-thirds of) a conception of freedom that draws a conceptual perimeter around us and secures a space within which we

can develop in the way Mill describes. The interpretations of x and y that I have defended are compatible with Wilhelm von Humboldt's observation (articulated in the epigraph to the introduction of this thesis) that freedom is a condition in which an individual can develop her innate capacities, not that development itself. In contrast, it appears that the normatively loaded interpretation of the z variable sees freedom as that development itself, and not the preconditions for it.

A commitment to normative neutrality further requires that we refrain from using normative criteria to conceptually limit the actions that the agent is conceptually free or unfree to perform. The question of whether we are in fact free to perform a particular action must be answered by examining whether that action is obstructed. We do not whittle down the universe of conceivable actions according to their rationality, impossibility or morality.

The z variable includes all actions, even those that are thoroughly irrational. For example, removing our seatbelts while driving is a conceptually possible action that we might perform. Indeed, people perform this action every day; it is an action that empirically takes place. If x were physically forced to wear her seatbelt, we would acknowledge she might have wished to remove it and that she has been denied an action. How would we describe the process of removing our seatbelts if not as an action? The z variable includes both rational and irrational actions.

Similarly, the z variable also includes all impossible actions. The question of what constitutes an action that an individual might pursue is entirely separate

from the issue of what counts as a constraint on that pursuit (the latter is the domain of the y variable). For example, x might wish to jump to the moon, and the question of whether he is free or unfree to perform that action must be answered by giving an account of what counts as an obstruction to him doing so.

Finally, the z variable includes all immoral actions. Though we would likely agree that intentionally killing another person is immoral, *ceteris paribus*, we also agree that doing so is an action despite its immorality. The victim is alive one moment and dead the next, and it is the agent's action (e.g. of pulling the trigger) that allows us to place this blame. We do not, and should not, limit the conceptual range of the y variable according to normative criteria, because to do so would contradict our linguistic intuitions, smuggle normative content into our conception of freedom, and sacrifice conceptual clarity.²²

1.6 The Constraint

I have now defended an interpretation of the range of two of the three term variables in freedom's triadic relation. My view thus far can be expressed in the following format: x – *an empirical person* – is free from constraint y to do action z . In order to give a full account of the nature of freedom, I must describe the range of the y variable and answer the question, "What counts as a constraint on a

²² Though this point is clear and requires no elaboration, when we examine interpretations of the constraint (y) variable we see that certain conceptions of freedom warp the language of freedom by limiting that variable in just this way.

person's freedom to perform a certain action?" Though fixing the range for the first and third variables helps to clarify the concept of freedom, competing interpretations of the second variable can lead to divergent views over its precise nature. However, all remaining views agree that freedom is *of* the individual *from* something *to* do some action.

1.7 The Constraint: Normatively Loaded Interpretations

For the remainder of this chapter I will consider and attempt to disqualify interpretations of the constraint variable that contain smuggled-in normative content. Normatively loaded interpretations of the *y* variable come from all areas of the political spectrum: egalitarian, libertarian, religious fundamentalist, etc. I take the position that such normatively loaded interpretations undermine the goal of establishing a minimally clear philosophical discourse. I further argue that such interpretations often weaken the theories to which they are appended by relying on circular reasoning, and I use Robert Nozick's theory of justice as an example. I then reject all normatively loaded interpretations of the constraint-variable not on grounds of morality or justice, but on a commitment to using freedom as a normatively neutral, descriptive concept.

Obviously freedom *is* featured in many normative theories, but understanding the term in a way that is silent on normative questions shifts the focus to the appropriate domain: the substantive differences in values among

competing moral theories. The triadic model offers the conceptual framework needed to have a fruitful discussion about freedom in which each side is at least talking about roughly the same thing. This model allows a purely neutral analysis of the concept itself, not how it should figure in some moral or political philosophy. The reason is that there is no normative baggage contained within the triadic relation itself. Instead, the triadic model forces each view to explicitly stipulate the normative content, if any, it seeks to insert into the concept of freedom.

The use of a neutral language of freedom does not favor any particular political philosophy because any attempt to use freedom to justify a given political theory requires an account of how that freedom ought to be distributed. In giving an account of the concept of freedom, we should not accept an analysis of the range of the constraint variable that features normative content. I have managed to do that for the agent and end variables, and I will do the same for the final variable (the constraint) in the third chapter.

Using normative ideas to interpret the range of the constraint variable can result in absurdities when an attempt is then made to apply the word “freedom” to the real world. For example, we would likely say that if *a* attempts to assault *b* for fun, he is not justified in doing so. But we would also say that if *c* restrains *a* (e.g. by holding him to the ground), that *c* is interfering with *a*. Though we would likely think that *c* is justified in interfering with *a*’s attempt to assault *b*, we would also acknowledge that *c* is limiting *a*’s freedom. In other words,

describing *a* as completely free while he is held forcibly to the ground against his will is a misuse of the term freedom. We should resist this slide into normativity when simply offering an interpretation of the concept of freedom.

In fact, a purely descriptive concept of freedom is a resource if we are interested in constructing a coherent, defensible theory of justice. For instance, we can best make sense of why *a* assaulting *b* is wrong by referring to the fact that *b* lacks freedom while *a* is pummeling him, and then making the normative leap to argue for the *value* of freedom (whether that value is seen as deriving from utilitarian considerations, a Kantian respect for persons, or some other theory.). If there is no mutually agreed-upon understanding of the nature of freedom, then it becomes harder for proponents of conflicting normative theories to engage in substantive, meaningful debate about the content of their disagreement.

1.8 The Constraint: Nozick's Interpretation

Towards my broader purpose of assessing Nozick's right-right libertarian theory of justice, I now focus on the way he and other right-libertarians interpret the constraint variable.²³ I discuss the way in which they stow normative content

²³ All libertarians endorse the principle of self-ownership, but they can be further categorized based on their views of property. This distinction is discussed further in footnote 33. Though I arrived independently at the conclusion that Nozick imports normative content into his conception of freedom, others have also noticed that this fact. They include Hillel Steiner, Ian Carter and G.A. Cohen. However, they largely take note

in their interpretation of the constraint variable and argue that their doing so is problematic. Right-libertarians are not the only theorists guilty of relying on such interpretations, but they are relatively unique in the fact that their theories tend to stress the supreme value of freedom.²⁴

If their theory rests upon a conception of freedom (specifically on the range of the constraint variable) that contains normative content, the justification for their view disintegrates. The plausibility of their entire view would then depend upon the particular moral values that have infiltrated their interpretation of freedom, not the value of freedom itself. But libertarian theorists do not tend to argue for their theories on the basis of any independent moral criteria – their arguments are purportedly based on the value of freedom. Thus, if I am correct, such theorists employ circular reasoning and their theories cannot stand as formulated. My argument does not in itself undermine the final positions they advocate, but it does show that better reasons need to be given for those positions if they are to be taken seriously. If their conceptual foundation has

of this issue in passing, rather than devoting significant attention to it. Other right-libertarians who rely on a loaded conception of freedom include Murray Rothbard, Friedrich Hayek and Jan Narveson.

²⁴ Normatively loaded conceptions of freedom have also come from the egalitarian left. For example, under Ronald Dworkin's egalitarian view, "Prohibitions or constraints are compromises of liberty only if they limit the use of property, or other resources in the hands of their *rightful* owner, not according to the community's own theory of just distribution, whatever it is, but according to the *best* or *soundest* such theory..." [Dworkin's view thus] builds our theory of equality into our interpretation of liberty." Dworkin, Ronald. "Do Liberty and Equality Conflict?" *Living as Equals*. Edited by Paul Barker. 1999. Reprint. Oxford: Oxford University Press, 1996. p. 53.

cracks, then the edifice of their theory will collapse unless they can replace their premise with one that is sounder.²⁵

Robert Nozick's *Anarchy, State and Utopia* is often seen as placing right-libertarianism – a position previously advocated within academia mostly by certain radical economists – in philosophically defensible territory. But his work does no such thing. Nozick himself acknowledges that his work “does not present a precise theory of the moral basis of individual rights [nor] a precise statement of the principles of the tripartite theory of distributive justice it presents.”²⁶ In fact, the problem is not that he fails to provide a *precise* moral justification for the rights featured in his theory; the problem is that he fails to provide any such account at all.²⁷

²⁵ The premise from which libertarians draw their conclusion about the proper structure of society is that freedom is most important. Relying on a normatively loaded account of freedom would entail begging the question about why their view is justified. In the second chapter, I argue their potential response to this problem, that right-libertarianism can stand upon a neutral conception of freedom, collapses upon analysis. Thus, right-libertarians would need to justify their view using an appeal to the independent value of the particular rights that they advocate, rather than invoking freedom as the supreme value.

²⁶ Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books. 1974. p. xiv.

²⁷ To see the truth of this statement for oneself, one merely need read *Anarchy State and Utopia* while asking the question, ‘Where does he argue that people are entitled to these rights?’ He alludes to a Kantian inspiration, but does not directly connect that discussion to the specific property rights for which he later advocates. As Peter Singer observes, “Oddly, while Nozick is aware of the importance of this [narrow] conception of rights to his general position, he provides no argument for it.” Singer, Peter. “Rights and the Market.” *Justice and Economic Distribution*. Ed. Arthur, John, and William H. Shaw. 2nd Edition. Englewood Cliffs, N.J.: Prentice-Hall, 1991. p. 201. For a full discussion of Nozick’s unargued for rights, see Nagel, Thomas. “Review of *Anarchy State and Utopia*.” *The Yale Law Journal*, Vol. 85, No. 1 (Nov., 1975), pp. 136-149.

The first sentence of the first page of *Anarchy, State and Utopia* reads, “Individuals have rights, and there are things no person or group may do to them (without violating their rights).”²⁸ By “individual rights,” he cannot mean here anything but the particular set of individual rights that he favors. Yet he never reaches beyond this bald assertion to give *any* account of the moral basis for the specific rights that he then employs. It would be unreasonable to expect Nozick to defend in the space of this one work the very notion or conceptual possibility of an individual right, but it is quite reasonable to expect him to discuss why the particular set of rights he favors should be preferred over any other set. This expectation is especially strong when the rights that he describes are quite radical – yet the reader never encounters any such discussion. Thus, there is no articulated moral justification undergirding the entirety of his libertarian theory.

In the absence of articulated, let alone convincing, justifications for Nozick’s libertarian view, the reader might reasonably assume that it is freedom that is the treasured value anchoring his theory. After all, the “liber” in *libertarianism* refers to “liberty.” In fact, Nozick does have an implicit view of freedom. However, the view he adopts departs from how we usually use the term. He employs a normatively loaded conception of freedom (of the constraint variable, specifically) in which a restriction on one’s freedom is only possible

²⁸ Nozick, ix

when another individual acts in a way that he did not have a right to.²⁹ Thus, the understanding of freedom Nozick depends upon contains a normative doctrine (as a set of rights) stowed within it, and therefore *presupposes* a certain moral argument for those rights. But as discussed earlier, he gives no such argument. Nozick's libertarianism cannot be justified in terms of the individual rights it contains because he gives no argument for that particular set of rights. Similarly, his theory has not been justified by appealing to the value of freedom, because the view of freedom he uses itself depends upon an unsupported set of rights. Thus, the right-libertarianism described in *Anarchy, State and Utopia* has not been argued for, or has been argued for using circular reasoning. In either case, Nozick does not provide his reader any overarching reason to take his view seriously.

Nozick's interpretation of the constraint variable is laden with value. He asserts – not argues – “Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did.”³⁰ The first sentence is true, but trivial: of course, others' actions place limits on one's available opportunities. The second sentence presents a definition of freedom according to which *a* limits *b*'s freedom only if *b* has violated some normative rule. Nozick's own favored moral rule involves unjustified incursions on individual rights

²⁹ Nozick 160-164, 262

³⁰ Nozick, 262

(which will be described in the next chapter). However, as we will see, there are clear cases in which *b* limits *a*'s freedom even though *b* had a right to act as she did.

Applying Nozick's value-laden interpretation of the constraint variable to an uncontroversial, paradigmatic case of unfreedom illustrates why this interpretation is problematic. When a policeman handcuffs and places a criminal in a jail cell for legitimate reasons (e.g. stealing private property), we would still say that the criminal's freedom has been limited. Though we might say that the police officer is *justified* in imprisoning the criminal, the fact remains that the criminal is not free while he is constrained in his handcuffs in a jail cell. The criminal is in a condition of unfreedom with respect to innumerable activities, which others prevent him from pursuing. Nozick's implausible interpretation of the constraint variable is incompatible with many of our most basic uses of the term "freedom." For this reason and others, his understanding is fundamentally flawed.

1.9 The Constraint: Against Normatively Loaded Interpretations

To further see the absurd implications of a moralized view of freedom, consider the results when we substitute an alternate set of rights for Nozick's favored set. Verse 4:34 in the Qur'an states, "Men are responsible for women... So virtuous women obey [their husbands]... Admonish those [women] on whose

part you apprehend disobedience, and keep them out of your bed, and beat them."³¹ In a moralized conception of freedom featuring the rights favored under the Sharia moral code, when a husband beats his "disobedient" wife he acts within his rights. Thus, under this moralized view of freedom, the husband does not limit his wife's freedom as he restrains and beats her. Surely this implication is incorrect, and we do not need to debate the superiority of other *values* over those articulated in Sharia law to describe *why* she is unfree. Instead, we can appeal to certain *facts* about her situation to do so: the wife is an agent that is physically prevented from pursuing a long list of activities (e.g. walking away from her assailant). Of course, we would also want to say that the husband's restricting her freedom is wrong, but that question can remain distinct from the factual question of whether she is free. In responding to an attempt to justify Sharia law in terms of freedom, Nozick would be conceptually unarmed. He cannot argue that the wife lacks freedom as a matter of fact because he does not have recourse to a purely descriptive conception of freedom. Instead, he would have to appeal to the rights contained within his normatively loaded conception. In this way, he is forced to push freedom out of the debate, and must stand instead behind a set of rights for which he has given no argument.

In debating right-libertarian values versus those espoused in Sharia law, it would be helpful to have neutral terminology so that the exchange could be a

³¹ As quoted in Feltner, Yotam. "Honor Murders' - Why the Perpetrators Get off Easily." *Middle East Quarterly*. Volume 7, Issue 4. December 2010. p. 47.

productive one. Nozick cannot appeal to the value of freedom as a criterion to be used for assessing the plausibility of the respective views. When each side states that *freedom is essentially what they want it to mean*, the discussion immediately reaches an impasse. The same issue reappears if the sides stand behind differing moralized conceptions of equality or any similar term that has been disconnected from its descriptive meaning. The problem is not a dearth of normative views; the problem is confused language.

The treatment of freedom as a value term rather than a descriptive concept is conceptually problematic and entails insurmountable barriers to a coherent philosophical discourse. It might be thought that freedom should be approached as a value term because that best preserves the word's obvious appeal. If each theory defines freedom in terms of its favored normative doctrine, then of course everyone will agree that freedom is valuable. However, they will not be talking about the same thing, and the debate becomes an exercise in futility. Liberals, communists, socialists, libertarians and fascists can all import their respective moral content into the word and claim that they are the true defenders of freedom. Yet these claims are meaningless if there is no agreement on how to apply the concept.

It is curious that Nozick, the most prominent defender of right-libertarianism (the theory that leans most heavily on the value associated with freedom), does not use the concept in a neutral and descriptive way. In fact, right-libertarians' use of freedom as a value-laden concept is not the norm within

contemporary political philosophy – it is the exception. Through this sleight of hand, right-libertarianism paints itself in the lustrous veneer of freedom while never actually referring to freedom in a neutral way.

Chapter II

Nozick's Libertarianism and Neutral Conceptions of Freedom

“Freedom for the wolves has often meant death to the sheep.”

-Isaiah Berlin³²

2.1 Freedom and Right-Libertarianism

Libertarians generally exalt freedom as the supreme value and position themselves as principled defenders of it.³³ They can be divided into the factions of right- and left-libertarians based on their respective views of property and natural resources.³⁴ Right-libertarians dominate the contemporary political

³² Berlin, xlv

³³ For example, David Boaz writes in his introductory *Libertarianism: A Primer*, “Libertarians, as the name implies, believe that the most important political value is liberty” (14). He further states, “libertarianism holds out the goal...of a freer [society]” (26). In his view, libertarianism is, or adheres to, “the philosophy of liberty” (27). Boaz, David. *Libertarianism: A Primer*. New York: Free Press, 1997. Print. pgs. 14, 26, 27.

³⁴ Right libertarians endorse self-ownership, strong individual property rights and capitalism. They are often further divided into minarchists and anarcho-capitalists based upon their respective views of the legitimacy of the state. Minarchists favor a “night-watchman” state that generally protects only private property, contracts, courts and national defense. In contrast, anarcho-capitalists reject the legitimacy of the state and seek to secure unrestricted private property rights through exchange that voluntarily respects those rights, producing a stateless capitalist society. Anarcho-capitalists include Murray Rothbard (*For a New Liberty: A Libertarian Manifesto*, 1973; *The Ethics of Liberty*, 1982), Jan Narveson (*The Libertarian Idea*, 1988), and Hans-Hermann Hoppe (*A Theory of Socialism and Capitalism*, 1989). Minarchists include Robert Nozick (*Anarchy, State and Utopia*, 1974), Tibor Machan (*Libertarianism Defended*, 2006), Ludwig von Mises (*Human Action*, 1949) and Friedrich Hayek (*The Constitution of Liberty*).

Left-libertarians also endorse self-ownership, but disagree with right libertarians over the nature of property rights in natural resources. Left-libertarians often overlap with libertarian socialists and left-anarchists, and their differences tend to stem from contrasting views of the state. Left-libertarianism is both a historical tradition, dating to Henry George, and also an ascendant perspective in contemporary analytic philosophy that takes its inspiration from that historical tradition. Left-anarchist and libertarian socialist thought tends to share in common with left-libertarianism an emphasis on freedom, a commitment to self-ownership, and a relatively egalitarian commitment to resource distribution. Left-libertarians include Hillel Steiner (*An Essay on Rights*, 1994),

discourse, so I focus my attention on them. Though they claim to promote freedom, careful analysis reveals that, behind their rhetoric, the doctrine they endorse countenances forms of severe unfreedom. They protect freedom for a specific group of persons at the expense of the rest. Upon reflection, it becomes clear that either freedom is not their primary value after all, or else freedom is their primary value but they do not adequately secure it.

I aim my critique at Robert Nozick's right-libertarian view because his famous *Anarchy, State and Utopia* is the work that has received the greatest response from philosophers. He argues for a form of libertarian capitalism that appears to rest most heavily on a commitment to freedom, which he seeks to capture through a particular set of individual rights. In the first chapter I argued that his view is deficient because it relies on a normatively loaded understanding of freedom and does not provide compelling reasons to support the particular set of rights that he defends, as opposed to others. Despite this severe shortcoming, his view is often thought to offer the philosophical grounding for right-

Michael Otsuka (*Libertarianism Without Inequality*, 2003), Philippe Van Parijs (*Real Freedom for All, What (if anything) can justify capitalism?*, 1995). Left-Anarchists and libertarian socialists include Pierre-Joseph Proudhon (*What Is Property?: or, An Inquiry into the Principle of Right and of Government*, 1840), Emma Goldman (*Anarchism and Other Essays*, 1910), Robert Paul Wolff (*In Defense of Anarchism*, 1970), and Noam Chomsky ("Government in the Future," 1973; *Chomsky on Anarchism*, 2005).

libertarianism, so I take Nozick's theory as my point of departure in order to assess the right-libertarian defense of freedom.³⁵

In this chapter I argue that Nozick's view fails to adequately protect freedom under either of the remaining neutral interpretations of the constraint (*y*) variable, under which constraints refer either to inability or to social interference. Under both of these conceptions, he does not protect freedom in any of the three plausible ways that a successful defense of freedom might: through a maximal, equal maximal or a guaranteed minimum amount of freedom. I then argue that regardless of his view's relation to freedom, his right-libertarian theory does not support the values he articulates regarding the importance of self-ownership or a Kantian respect for persons, values that might potentially have inspired his theory of justice.

2.2 Nozick's Libertarianism

In order to evaluate Nozick's libertarianism, it is first necessary to explicate it. He aims to secure individual freedom through rights of self-ownership and property ownership in natural resources. The doctrine of self-ownership is simply the concept that each person fully owns herself and has the right to choose what she does with her body. Nozick's view grants individuals

³⁵ My argument should be understood as attacking most directly the minarchist (minimal state) strain of right-libertarianism, though it also applies in many ways to the anarcho-capitalist (stateless) variant.

the possibility of a similar right of ownership in external things through absolute property rights in natural resources.³⁶ He uses the mechanism of inviolable “side constraints” against interference to demarcate the boundaries within which each individual is allowed to enjoy those rights. These constraints are drawn such that one has a right to use her body or property up until the point at which that use constitutes a transgression on the self-ownership or property rights of another individual. He believes this view protects individuals against violence and forced labor, as well as the more ordinary restrictions on freedom (e.g. seatbelt laws). Nozick trusts that these side constraints, the rights of property and self-ownership, will do the work necessary to protect individuals’ freedom because they sharply limit what others may do to the individual and her property.

While Nozick’s protection for individuals’ rights over their own bodies (self-ownership) is less controversial, his view of distributive justice and external property rights is radical. As such, it requires a defense. He attempts to defend these property rights by contrasting his theory with patterned theories, under which holdings are distributed among individuals according to some “natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions.”³⁷ Such patterns might include need or hair color, but regardless of the favored criterion, the distribution must be in place at all times in order for patterned theories of justice to obtain. He observes that the term

³⁶ He makes one caveat to this absolute protection, but holds that the caveat does not apply to the society he envisions. See my later discussion of the Lockean Proviso.

³⁷ Nozick, 68.

“distributive justice” seems to imply the existence of a central collection of assets that is to be distributed amongst persons by some entity, as if the recipients are just so many vessels into which wealth is deposited. He argues that assets should not be thought of in this way because such an ahistorical conception neglects how those assets came to be and each person’s respective role in creating them.

While Nozick believes that patterned theories of justice neglect these factors, he seeks to keep them at the heart of the “historical entitlement” theory that undergirds his libertarianism. According to this view, an individual is entitled to a particular holding if, and only if, the past actions that led to that holding satisfy the principles of justice in acquisition, transfer (if applicable) and rectification (if applicable). Nozick’s *principle of justice in acquisition* is largely derived from Locke’s view, and allows an individual to gain an absolute right of property in a natural resource by “mixing his labor with it.”³⁸ His *principle of justice in transfer* is met if a holding is transferred consensually. These two principles are tempered by the Lockean Proviso, which requires that no appropriation make anyone worse off – that there be “enough and as good left in common for others.”³⁹ He also asserts a *principle of rectification* of past violations,

³⁸ Nozick, 79

³⁹ Nozick, 80. He stipulates that property rights are to be held fully, except as tempered by the Proviso. Yet he holds that “the operation of a market system will not actually run afoul of the Lockean Proviso... The proviso will not... provide a significant opportunity for state action” (182). However, the Proviso can be interpreted many ways, and different interpretations yield vastly different outcomes in terms of what distribution of resources is considered just. For the purpose of my argument, I shall follow him in his assumptions because my argument is primarily concerned with freedom, not the competing versions of just acquisition or interpretations of the Proviso. For

but does not specify the principle's content. Under Nozick's view, these three principles constitute the only standard by which we are to judge whether a particular distribution is just.

While most other proposed principles of distribution are patterned, Nozick emphasizes that his historical entitlement theory is not.⁴⁰ For example, the principles of distribution according to need, effort and utility are all patterned, and so is any principle that requires distribution according to some fixed combination of these principles. He believes that the historical entitlement theory looks only at the set of actions that produced a given distribution of holdings, whereas a patterned principle does not. Nozick argues that the historical entitlement theory's lack of a pattern makes it not just unique, but also better. He contends that his view protects individuals' freedom, whereas patterned theories cannot. The entitlement theory can be seen as a form of pure procedural justice because any distribution of holdings produced by individuals' historical actions is just, so long as those actions did not violate the principles of

interpretations of resource acquisition and the Lockean Proviso that depart from Nozick's view, see: *Left-Libertarianism and Its Critics: The Contemporary Debate*. Edited by Peter Vallentyne and Hillel Steiner. Houndmills, Basingstoke, Hampshire: Palgrave. 2000.

⁴⁰ Nozick, 69. However, this contention is debatable, for the Lockean Proviso could be interpreted as requiring a pattern: namely, that "enough and as good is left in common for others." If it were true that Nozick's theory of justice is partially patterned, then his theory would be a hybrid that combines a pattern with an attention to agents' past actions. In this case, his theory would not be otherwise dissimilar from many other theories of distributive justice. For example, a theory that sanctions resource distribution according to some combination of consensual transfer and need would also be a hybrid theory. Furthermore, in "Review of *Anarchy, State and Utopia*," Thomas Nagel argues that fewer theories of justice feature the kind of strict patterning that Nozick criticizes.

justice in acquisition and transfer.⁴¹ Given a set of justly acquired and transferred holdings, the resulting distribution is just no matter how unequal individuals' respective holdings turn out to be. Nozick holds that a patterned principle, on the other hand, will require continual restrictions of individuals' freedom in order to maintain the desired pattern, whatever it may be.⁴²

Nozick argues that even if the favored pattern of distribution *D1* can be realized, individuals' free actions will inevitably move *D1* to a new distribution *D2*. The tightly woven pattern of distribution will increasingly unravel as individuals gift, gamble and trade away some of their holdings to others, thus creating distribution *D2*. Nozick holds that "liberty upsets patterns," so that no "distributional patterned principle of justice can be continuously realized without continuous interference with people's lives."⁴³ Thus, Nozick suggests that a theory of distributive justice can protect either individuals' freedom or a pattern, but not both. He concludes that his historical entitlement theory is compatible with individual freedom, but that patterned principles are not.

I will criticize the libertarianism Nozick presents in *Anarchy* using the very criterion that he seems to value – freedom. However, I will assess his account from a neutral perspective, in accordance with the reasons that I gave in the first chapter against treating freedom as a normatively loaded concept. Within the

⁴¹ The distribution must not violate the Lockean Proviso. The principle of rectification must also be satisfied if it is applicable, but since he does not specify the content of this principle, I will not discuss it.

⁴² Nozick, 74

⁴³ Nozick 71, 74

interpretation of the triadic relationship that I defended in that chapter, two neutral views of the constraint (*y*) variable are possible: freedom as ability or freedom as an absence of social interference. Both of these views treat freedom as a descriptive concept and agree fully on two out of the three triadic variables: they understand that freedom is *of* empirical individual (*x*) *to* do some action (*z*). They differ over what that individual is free *from* (*y*), over whether a constraint on freedom should be understood as consisting of social interference or mere inability.

It is not necessary to decide between the two remaining normatively neutral views of freedom for the purposes of further evaluating Nozick's libertarianism. One may mount an attack on his view using either conception because examining his theory through either lens reveals that freedom cannot be his supreme value. In responding to these criticisms, he cannot fall back on his morally loaded conception of freedom for the reasons discussed in the first chapter. Thus, Nozick runs out of conceptions of freedom on which to rest the theory he propounds. This outcome does not in itself render his view illegitimate, but it does imply that he must appeal to some value besides freedom to justify it. However, because much of right-libertarianism's rhetorical appeal is its apparent protection of freedom, the plausibility of this view fades if no compelling alternate justification can be given.

2.3 Inability as the Constraint Variable

The first neutral conception of freedom that I will use to evaluate and attack Nozick's libertarianism is *freedom as ability*, which interprets the constraint variable as referring to physical inability. Under this view, the physical inability to complete an action is necessary and sufficient to render an individual unfree: x is free to do something only if she is physically able to do it. Formulated using MacCallum's triadic model, freedom obtains when x (the empirical individual) is free from y (physical barriers) to do z (some action).

In assessing individuals' freedom from the perspective of freedom as ability, a question emerges immediately. Is not our freedom inextricably tethered to the resources that we can use? To simply exist for a mere moment we need access to a small measure of resources, including a place to stand and clean air to breathe. To exist for more than a moment, we need sustenance in the form of food and water. To actually possess the ability to act in the world and pursue our ends (i.e. possess a degree of freedom), we need access to yet more resources. If we were to lack access to resources, we would be unable to exist for even a moment, and we would have no freedom at all.

Because the ability conception of the constraint variable conceives of freedom as a function of our access to physical means, this view presents a strong challenge to Nozick's libertarianism. His theory of justice finds its articulation in capitalism, and capitalist societies are notable for their unequal distribution of resources. This tendency towards inequality would be especially pronounced under Nozick's view, which forbids taking resources from the rich

and giving them to the poor. However, the problem with which Nozick must deal is not simply that equality is desirable for its own sake (though many think it is), but instead that this inequality limits the *freedom* of a significant contingent of the population.

It is presumably very clear to a poor individual (let us call her Smith) that when her lack of resources prevents her from achieving her ends, she is thereby less free. In contrast, the extensive resources of a wealthy individual (let us call him Rockefeller) give him a greater ability to achieve his ends. Rockefeller's ability to travel, acquire goods, buy influence, etc., is far-reaching, and his ability to do these things delivers him extraordinary freedom. In contrast, Smith is acutely limited in her ability to do these things, and this inability constitutes a restriction on her freedom, especially relative to that of Rockefeller.

Nozick might respond to this objection in two ways. First, he might say that the case of Smith and Rockefeller is marginal because it examines only the persons at the polar ends of the spectrum of wealth distribution. On this basis, he might hold that such cases exist only at the periphery, so the objection does not strike at the heart of his theory. However, the example does precisely that because differential access to resources of any degree restricts the freedom of those with diminished means (they are less able to do what they wish). The second way that he might respond would be to say that although those with less access may have less freedom, freedom in the aggregate remains the same. He

would posit that it has simply been taken from some and given to others. This second response fails in several ways.

Nozick's latter response seems problematic because it departs from the principle of equal distribution that for many enjoys presumptive justification. However, this may not pose a problem for him if he does not assent to that presumptive justification, or if other values (e.g. freedom) outweigh any *prima facie* inclination towards equality.⁴⁴ The most fundamental problem for his view is neither simply that he permits an unequal distribution of resources nor that such a distribution yields an unequal distribution of freedom. Those issues are raised from outside his view, and problems internal to his view would be much more destructive. A fundamental, internal problem is that his property rights restrict not just the freedom of a particular group, but also aggregate freedom. The reason is that a property right is "barbed": it secures freedom for the individual who holds the right, but only by limiting the freedom of all others in society by excluding them from using that resource. In this way, a society with property rights will not attain maximal freedom, and the defining feature of his libertarian society is rigid property rights. Therefore, libertarianism falls far short of achieving maximal freedom neutrally construed.

⁴⁴ It is difficult to know how Nozick might respond to this charge because he does not discuss or explicitly endorse a principle for the distribution of freedom (conceived neutrally).

Furthermore, a highly inegalitarian society will suffer a greater reduction in aggregate freedom than a more egalitarian one, even if the egalitarian society is propertied. The reason is that we can identify a law of “diminishing marginal freedom” with regards to increased wealth, parallel to the economic law of a diminishing marginal utility.⁴⁵ The law does not state that we are less free when we have more wealth, for that would be plainly false (as the case of Smith and Rockefeller illustrates). Rather, it states that we secure exponentially less freedom from each additional unit of wealth beyond a certain point, just as economic actors derive exponentially less utility from each unit of wealth. Under my neutral conception, the actions we are free to perform are to be understood in terms of physical space. For example, if Smith acquires \$7,000, and she is therefore able to purchase a car or to access other means of transportation that she previously could not, her freedom increases dramatically. Yet if Rockefeller adds \$7,000 to his fortune of \$300 billion, he does not see the same jump in his overall freedom because he was already able to travel essentially wherever he wished. Nozick’s society is highly propertied and allows a highly inegalitarian distribution of resources, and both of these facts eviscerate the claim that his

⁴⁵ Ian Carter suggests the existence of a law of diminishing marginal freedom with regards to choices that are available to us that are qualitatively similar yet do not refer to significantly different physical actions. However, he does not argue for a connection between that law and wealth, as I do. For his discussion see: *A Measure of Freedom*, p. 80, 201. Stephen Mathis has also suggested the existence of a law of diminishing marginal utility of freedom, such that beyond a certain point each additional increase in freedom matters less than that before it. For example, a person who is already free to pursue most of her goals may value a modest increase in her freedom less than the individual who is unfree to pursue most of his goals and receives the same increase in freedom.

view secures maximal freedom. The problem is not that he fails to secure equality (of freedom/resources) for its own sake: he sacrifices not only the freedom of a certain group, but also the total amount of freedom in society as a whole. There is no freedom-based justification for sacrificing freedom in this way.⁴⁶

2.4 Social Interference as the Constraint Variable

Having evaluated Nozick's libertarianism from the perspective of freedom as ability, I now assess his view from the perspective of the second neutral conception—*freedom as a lack of social interference*. Under this view, the physical inability to complete an action is necessary to render an individual unfree. However, unlike as in freedom as ability, physical inability is not sufficient to render her unfree because freedom is seen as an interpersonal relation. Freedom as a lack of social interference understands the constraint (*y*) variable to refer

⁴⁶ One might attempt to make the (empirically-based) argument that such absolute property rights are justified because the market would function most efficiently under a complex of such stringently enforced rights. This line of reasoning would hold that when the economy grows, more people are able to accomplish more of their goals with that newfound wealth. This argument is not compelling for several reasons. *First*, in addition to the law of diminishing marginal freedom, this argument is called into question by the exceedingly high per capita Gross Domestic Product (GDP) and GDP growth rates of the relatively egalitarian, economic interventionist Scandinavian economies. *Second*, the argument is undermined by the failure of unregulated markets to adequately deal with externalities or public goods, to maintain a minimal degree of equality (e.g. because capital begets capital), to combat monopolies, and to promote consumer demand in a recession or depression (e.g. in contrast to Keynesian stimulation). *Third*, and most fundamentally, even if one doubts the extensiveness of such problems in an unregulated market, it is not clear that there is any freedom-based reason for why those particular absolute property rights should in principle be held in cases when such problems do in fact occur.

only to obstacles placed in one's way by other agents: x is free to do something if no other person prevents her from doing it. Formulated using MacCallum's triadic model, freedom obtains when x (the empirical individual) is free from y (social interference) to do z (some action). If right-libertarianism cannot survive an analysis using the remaining neutral conception of freedom, then it is deficient as a defense of freedom.

Because Nozick relies on a normatively loaded conception of freedom, he undertakes no discussion of the merits or disadvantages of each neutral view. In response to the charge that he does not secure freedom as ability, he might concede the point but argue that what we really mean when we talk about freedom is a lack of social interference. Though Nozick never explicitly discusses principles for the distribution of freedom (conceived neutrally), he might argue that he successfully protects freedom under the social interference conception in one of three ways: either by securing maximal, equal maximal or a guaranteed minimum amount of freedom.

I argue that his right-libertarianism fails to adequately secure freedom in *any* of these three ways. First, I argue that he does not secure maximal freedom (even under a social interference conception of constraints) because it cannot be achieved in a propertied society, where property rights are exclusionary. Second, I argue that he does not secure equal maximal freedom because freedom is inextricably tied to resources, which would be distributed very unequally; a lack of means constitutes not just a lack of freedom as inability, but also a lack of

freedom as the absence of social interference. Third, I argue that he does not adequately secure a guaranteed minimum amount of freedom because even when individuals do possess a degree of freedom, he allows that amount to decline too greatly – to the point at which it is held only nominally or even eradicated altogether. In such cases, his commitment to the right of self-ownership is merely formal, because it cannot be effectively exercised.

The first position that Nozick might take, and that I reject, is that his theory of justice obtains secures maximal freedom (conceived as a lack of social interference). This line of thought would state that self-ownership and property rights exclude the possibility of social interference because individuals may not cross the boundaries that such rights delineate. In adopting this approach, he might argue that side constraints and the historical entitlement theory are constructed in such a way as to forbid individuals from obstructing each others' pursuits. This response would contend that when the sanctity of property is guaranteed in this way, individuals are provided with a sphere within which they may pursue whatever activities they wish, and that they therefore enjoy maximal freedom.

This first response is not sound because it does not recognize the state as a source of social interference. The state is not a natural entity, but is instead created and constituted by persons. Though the historical entitlement theory might secure our freedom to do whatever we wish within the space carved out by our property rights, Nozick does not secure maximal freedom because we

would be, *ceteris paribus*, unfree to pursue whatever actions lie outside our island (or islands) of property. While it is true that maximal freedom could obtain if no one exercised her exclusive property rights, it is implausible to suppose that all property owners would waive such rights. If x is caught attempting to sneak into stranger y 's guest bedroom to sleep there, y will forcibly remove x either alone or with the authority of the state. Because (as I also argued with respect to freedom as ability) property rights restrict the freedom of all but the owner, the claim that Nozick protects maximal freedom is false.

The second position that Nozick might attempt to take would be to claim that his theory secures, if not maximal societal freedom, equal maximal freedom. This line of thought would state that because each person is considered equal under the minimal laws of Nozick's night-watchman state, every individual receives the greatest amount of freedom compatible with the maintenance of a similar amount for others. This response would contend that although right-libertarianism does not secure maximal freedom (because property rights are exclusionary), the state respects and enforces every individual's property rights equally, and thereby protects equal maximal freedom.

This second position fails for reasons similar to those that undermined right-libertarianism's protection of freedom as ability: under both views, our degree of freedom is at least partially a function of the amount of resources to which we have access. When Nozick speaks of equal property rights, he does not mean that each individual has a right to an equal amount of property. Rather, the

right is merely formal and an individual only has a right to particular parcels of property (some have a right to more than others under Nozick's view). If Smith owns one acre of land and Rockefeller owns 10,000 acres, Rockefeller has greater freedom. Similarly, if Smith has only \$30,000 to purchase access to others' property while Rockefeller has \$300 billion with which to purchase access, this difference also affords Rockefeller greater freedom. Furthermore, a lack of wealth translates much more readily into a lack of freedom in Nozick's society than in the modern world because his view would sanction the privatization of the entire earth. Nozick's theory does not secure equal maximal freedom because freedom is partially a function of resources and the right-libertarian state will actively preserve the economic inequities that yield disparities in freedom.

The third position that Nozick might take would be one that claims that his theory secures, if not maximal or equal maximal freedom, a guaranteed minimum amount of freedom for all. He would observe that his theory of justice forbids individuals from crossing the boundaries delineated by property, as distributed according to his historical entitlement theory. He would hold that within the designated space that individuals' respective property rights carve out, they are free to do whatever they like without the concern that others will obstruct them. This interpretation argues that protecting freedom as a lack of social interference using absolute side constraints and the rights dictated by historical entitlement creates a minimum, fixed area in which individuals may do what they wish. Nozick might hold that when this sphere is treated as

sacrosanct, it achieves a guaranteed minimum of freedom for all. This third position also fails, but the reasons why are less straightforward than with his first and second position. Articulating these reasons requires a lengthier discussion – which I give below – than do the first two positions.

2.5 **Workers and Freedom**

I argue that Nozick's third position is untenable because he fails to guarantee an adequate, or possibly any, degree of freedom. He does not provide a sound argument for why the radical external property rights that he posits should demarcate the sphere of individual freedom. Because he uses the state's coercive power to protect full private property rights, he allows individuals' freedom to be severely curtailed. Furthermore, in doing so, he allows individuals' fundamental right of self-ownership to be desecrated, if not annihilated altogether.

Nozick's libertarian society allows conditions in which certain individuals' sphere of guaranteed freedom becomes so thin that it is questionable not only whether it retains any meaning, but also whether it can even be said to exist at all. In order to make this point, it is useful to draw upon G.A. Cohen's discussion of Nozick's example of Z, the worst off individual in a twenty-six-

person economy.⁴⁷ In the example, the actions of persons *A* through *Y* satisfy Nozick's principles of distributive justice, but have created a situation that has the unfortunate effect of placing *Z* in a situation in which he must choose to give his labor to a capitalist or starve to death. Nozick holds that someone is forced if, and only if, illegitimate human actions violating the principles of distributive justice are the cause of that person's situation. In this view, *Z* is not forced to work for a capitalist because the actions of persons *A* through *Y* were legitimate, so *Z*'s "choice" to give his labor to the capitalist instead of starving to death is voluntary.

Cohen demonstrates the falsity of this last claim and shows that *Z* is forced to work for the capitalist. He uses a pair of straightforward examples to show that a person can be forced to do something both in cases where prior actions were illegitimate and also in cases where all prior actions were legitimate.⁴⁸ Each case features a farmer who permits a villager to traverse his property. In the first case, farmer *F* owns a tract of land that he allows villager *V* to traverse because *F* and *V* have signed a contract allowing *V* to do so. In the second case, farmer *G* owns an identical tract of land that he permits villager *W* to traverse, but does so out of mere good will.

⁴⁷ See Cohen, G.A. "How Patterns Preserve Liberty." *Justice and Economic Distribution*. 225.

⁴⁸ Here I use Nozick's criteria for legitimacy (his three principles of distributive justice).

If farmers *F* and *G* each construct insurmountable fences around the perimeters of their respective properties, *F* acts illegitimately because he violates his contract with *V*, but *G* acts legitimately because he has no legal duty to allow *W* to traverse his property. However, villagers *V* and *W* are in essentially the same predicament as each other. As Cohen observes, “according to Nozick, *W* may not truly say that, like *V*, he is now forced to use another route. But the examples, though different, do not so contrast as to make that statement false. *W* is no less forced to change his route than *V* is.” Their positions are parallel in all relevant respects, and they are equally forced to change their routes. This example shows that individuals can be forced to do something even if all others have acted legitimately. Thus, we can reject Nozick’s claim that *Z* (the worst-off, destitute person in an economy) is not forced to work for a capitalist even if persons *A* through *Y* acted within their rights. The fact that *Z* is forced to surrender his labor to a capitalist – as supported by Cohen’s example with the farmer and the villager – shows how a lack of resources can force those with lesser or no means to submit themselves to those with greater means even when those greater means were acquired legitimately (under Nozick’s view of legitimacy).

In order to further criticize Nozick’s view, it is useful to build upon Cohen’s discussion. We can plausibly say that *Z* loses his freedom altogether because there is a legal barrier, in the form of property rights backed by the state, that prevents him from achieving any of his ends (including even survival, in

this case). To say that Z is free even though he is forced into a role of absolute subordination is to twist the concept of freedom beyond recognition. I argue that Nozick's view allows freedom to be gutted to the point where individuals' fundamental right of self-ownership must either be effectively surrendered or stripped of its meaning. That right is made hollow when we lack access to resources. Nozick's historical entitlement theory does not guarantee a minimum amount of freedom. Instead, it allows freedom to be sacrificed and the right of self-ownership to be effectively violated.

If only the worst-off person in a given society (Z) were forced to subordinate himself in order to live, then the criticism might have limited clout; but it is not the case that Z alone is forced in this way. A whole class of people in Nozick's libertarian society could not survive without subordinating themselves to the better-off individuals, because few people would have sufficient resources to completely and indefinitely provide for their own survival.⁴⁹ For this reason, among others, Nozick's libertarianism "erodes the liberty of a large class of people,"⁵⁰ not just a handful of unfortunate individuals at the periphery. Under Nozick's theory of justice, a great many individuals are forced to work for capitalists.

⁴⁹ I assume here that even if the few capable of self-sustenance decided to charitably donate to the great majority of those incapable of self-sustenance, that those donations would not be sufficient to keep most people from the need to subordinate themselves to those with productive capital. The majority of people could not be sustained indefinitely through charity because the generous owners of productive property would themselves run out of resources, and could no longer keep them afloat without bringing them in as workers.

⁵⁰ Cohen, 225

I argue that the reason a large group of people must subordinate themselves to another group is threefold. First, the scarcity of the world's natural resources entails a limited carrying capacity for human beings, and this limited capacity is further reduced if individuals use only those resources that exist on their own allotment of private property without specializing and using some allocative mechanism to increase efficiency. With today's population, this ideal distribution is likely impossible. Second, even if this ideal distribution of private property were possible, markets would not secure this distribution because a) they require price signals – which do not exist if no exchanges take place – to allocate goods, and b) markets do themselves aim at this particular distribution.⁵¹ As Nozick himself observes, markets would secure a particular distribution only contingently and this particular distribution would not necessarily be stable. Third, even if this ideal distribution were attainable and capable of being preserved in the future, it is not presently a reality. Most people now and in the foreseeable future would need to subordinate themselves to a capitalist under Nozick's libertarianism, and therefore have their freedom diminished severely

2.6 Labor Relations and Freedom

⁵¹ As Peter Singer observes, "the market will not necessarily protect [rights]; if it does protect them at a particular time in a particular society, it does so only accidentally, since the market is not structured to produce any particular distribution." Though Singer's discussion is in the context of positive rights, his point also applies to the distribution of property rights in general. Markets cannot have intentions and do not necessarily preserve any particular distribution, as Nozick acknowledges. Singer, "Rights and the Market."

In a right-libertarian society, there can be no law explicitly enslaving a particular class of people, but the structure of full, state-enforced property rights can effectively serve precisely this function.⁵² For example, Nozick would hold that, *ceteris paribus*, it would be wrong for the state to allow all brunettes to be forced to work for, and be enslaved, preyed upon, violated, and turned into automatons by all blondes. He would object that the blondes destroy the brunettes' freedom in such a scenario. But he allows this destruction of freedom for the class of persons caught on the wrong side of property rights. The destitute laborer (e.g. Z, Smith) does not freely contract with the capitalist, but is instead forced to do so. It is not clear that there are sufficiently relevant differences between the case involving the brunettes and the case involving those living on the outside edge of property rights. The freedom of property owners is substantially and uniquely privileged, in a manner to which Nozick would presumably object in similar cases.

The argument that a particular class of persons is subordinated, and does not contract freely has extensive historical roots that precede Marx. In his 1767 *Theory of Civil Laws*, Simon Linguet observes,

The slave was precious to his master because of the money he had cost him... They were worth at least as much as they could be sold for in the market... It is the impossibility of living by any other means that compels our farm labourers to till the soil whose fruits they will not eat, and our masons to construct buildings in which they will not live. It is want that drags them to those markets

⁵² Cohen raises a different but related point at 223.

where they await masters who will do them the kindness of buying them. It is want that compels them to go down on their knees to the rich man in order to get from him permission to enrich him... What effective gain [has] the suppression of slavery brought [him]? He is free, you say. Ah! That is his misfortune... These men [have] the most terrible, the most imperious of masters, that is, need... They must therefore find someone to hire them, or die of hunger. Is that to be free?⁵³

According to this line of thought, worker *A* could be worse off as a capitalist's wage slave than as a plantation owner's traditional slave. Under a conventional model of economic rationality, the plantation slave-owner has a direct interest in keeping *A* alive and maintaining her health because she is the owner's long-term investment. In contrast, the capitalist has no such interest because *A* would be replaceable. The capitalist will treat *A* in whatever way generates the most profit, no matter the deleterious effects on her, because destitute worker *B* will be standing next in line to take *A*'s place the moment she has been expended.

While the idea that "wage slaves" can actually be worse off than traditional slaves might seem radical, it was not seen as such at capitalism's apex in the 19th century. The notion of a free contract between the destitute individual and the wealthy property owner was especially contested in the period before the rise of the modern welfare state, which in theory provides a basic social minimum. Indeed, the idea that poor workers were wage slaves was so

⁵³ Linguet, Simon. *Theory of Civil Laws* (London 1767). Linguet, Londres, 1767. Pg. 274. Cited in Karl Marx, *Theories of Surplus Value* [Part I, Volume IV of *Capital*]. Moscow: Progress Publishers. 1963, Chapter 7.

mainstream that even Abraham Lincoln and the Republican Party accepted it.⁵⁴ Linguet's characterization of the issue describes a condition that resembles, and even surpasses, slavery in relevant ways. He was correct to conclude, "we must renounce this chimera of liberty."⁵⁵

While the modern welfare state partly protects laborers' freedom by enforcing labor rights in the workplace, such rights vanish under Nozick's libertarianism. Currently, labor rights help free workers by creating minimum standards regarding the duration and onerousness of the conditions that laborers must endure. Modern labor rights have made strides towards ensuring that workers may not be made the playthings of the owners of productive capital, and this secures a great deal of freedom for workers.⁵⁶ In addition to securing workers' freedom within the workplace, labor rights free workers from excessive obligations to their workplaces (e.g. through the eight-hour workday, forty-hour workweek, guaranteed vacation). These rights secure greater freedom for the majority of persons, without substantially limiting the freedom of the owners, of whom there are far fewer.

Finally, right-libertarianism sacrifices freedom by eliminating rights against racial, religious, gender and sexual orientation discrimination. The problem here with Nozick's position is not that such discrimination is itself

⁵⁴ Sandel, Michael J. *Democracy's Discontent: America in Search of a Public Philosophy*. Cambridge, MA: Belknap Press of Harvard University Press, 1996. pp. 182-184.

⁵⁵ Linguet, 190

⁵⁶ In addition, labor rights ensure that workers are not subject to abusive demands or hazard conditions and sexual aggression in the workplace.

wrong (though we would want to say that it is), but that such discrimination reduces freedom. For example, when African Americans in the South were denied access to restrooms and lunch counters, their freedom was reduced. Furthermore, their loss of freedom did not translate into a significant increase in freedom for others (there were far fewer white business owners than African Americans). Labor and anti-discrimination regulations that secure a minimum level of freedom for workers are enforced through the authority of the state, typically as a result of enormous popular struggle. In Nozick's libertarian capitalist society, such guaranteed freedoms vanish because defending them is beyond the purview of the minimal, night-watchman state.

Though the important role that labor rights play in securing freedom should be clear, I will expand upon that point by analyzing a possible internal workplace structure into which right-libertarianism forces Z. As has been shown, the case of Z is a central, rather than marginal, feature of a libertarian capitalist society. Nozick's view restricts the freedom of not just Z, but the entire group of persons who must surrender themselves to private owners (whom Nozick places away from the reach of democracy). The reason this fact is problematic becomes clearest when we examine the nature of the social relation into which Nozick's justice forces this class of persons (laborers without access to productive capital).

In Nozick's world, the capitalist will be free to choose whether to transform the destitute worker into his outright slave (through a state-enforced contract) or his mere wage slave. But in either case, workers are effectively under

his control and the capitalist has sovereign authority over the workplace in which they must spend much of their lives. Nozick's view forbids the state, local communities and the workers themselves from exercising any direct control over the nature of the workplace to which this class of persons is consigned. Thus, laborers are forced to give up their freedoms and subordinate themselves to an owner who may wield his authority to satisfy his desires; they become the pawns of the workplace dictator. Furthermore, the state's coercive power and monopoly on violence stop laborers from turning to insurrection against their condition. Though the state will use its coercive power to enforce the owners' desires, no matter the depth of their barbarity, it remains blind to the preferences of the laborers within the factory or on the farm. Not only does Nozick allow the freedom of a large class of people to be restricted and for them to be forced to work for a capitalist, he also allows them to be forced into a condition of slavery.

Nozick's objection to state-enforced labor rights, which guarantee a degree of freedom for a large number of people, reveals his slanted commitment to freedom. In a situation where many workers are forced to work for a single capitalist, Nozick answers the question "Freedom for whom?" with "Freedom for the capitalist." The freedom of the owner to hand down commands through a private bureaucracy outweighs the freedom of the great many laborers to shape the conditions under which they must spend much of their lives. The freedom of one owner to speed up the production line negates freedom from hazardous, deleterious work conditions of many laborers. The freedom of one owner to

satisfy his predilection for short skirts by enforcing an indecent dress code destroys freedom from exploitation for his many workers. The freedom of one owner to indulge his sexual desires replaces freedom from abuse for his many workers. Through his idiosyncratic rights-laden understanding of freedom, Nozick can allow, but also attempt to defend, in the name of freedom, the state's enforcement of these ignominious social relations. However, under a neutral conception of freedom, his form of libertarian capitalism grants a negligible increase in freedom to the few by stripping the more numerous freedoms of the many and plunging them into conditions of domination and unfreedom.

One might object that the preceding discussion takes a cynical, unrealistic view of the general character of those who hold the rights to the means of production. However, this objection is problematic in three ways. First, it does not address the fact that Nozick's position does allow such conditions of unfreedom. Second, it fails to see that the way in which private owners, especially in the case of large transnational conglomerates, share in common with the state many features that threaten freedom. Because it would seem odd to defend a beneficent dictator as a friend of freedom, our concern about the unbridled authority of capitalists remains. Third, private owners are concerned primarily with profit, and they direct their workers towards this end. The same need not be said of beneficent dictators. In this way, a capitalist might in fact be seen as a greater threat to freedom than a freedom-loving dictator.

Even in ordinary cases, where the owner is beneficent, Nozick allows individuals' freedom to be stripped in devastating ways. When the private owner institutes his will over his workers, he places them in conditions of unfreedom, regardless of whether we abhor or celebrate the rules that he creates. To the oppressed worker, it matters little, if at all, whether she is issued commands from a tyrannical state or from a tyrannical private owner. In both cases the locus of control is separate from her, and she has no final influence over the product and no influence on the environment in which she will spend much of her waking life.⁵⁷ She becomes a cog in a machine, an automaton. As Wilhelm von Humboldt, expressing a common Enlightenment sentiment, observes in 1791,

Whatever does not spring from a man's free choice, or is only the result of instruction and guidance, does not enter into his very being but remains alien to his true nature. He does not perform it with truly human energies, but merely with mechanical exactness. And if a man acts in a mechanical way, reacting to external demands or instruction, rather than in ways determined by his own interests and energies and power...We may admire what he does, but we despise what he is.⁵⁸

⁵⁷ The idea that the laborer is alienated from her product is not new, and though Karl Marx had different concerns in his discussion of the alienation of the proletariat, the idea applies to freedom, as well. In fact, comparing the similar positions of a worker who must carry out the production commands given to her by a Communist state versus a corporation the authority of which is not tempered by labor rights reveals few relevant differences.

⁵⁸ von Humboldt, Wilhelm. *Limits of State Action*. 1792. ed. J.W. Burrow, translated by Marianne Cowan. The latter sentence of the quote is found in *Humanist without Portfolio*, ed. Cowan. Cambridge Studies in the History and Theory of Politics. London: Cambridge Press, 1969. pp. 37-64. Both quoted in Chomsky, Noam. *For Reasons of State*. New York: Pantheon Books. 1973. p. 399.

Von Humboldt describes how even in ordinary situations where the domination is not so flagrant as in the previous examples, the capitalist relationship creates a condition of subjection, not freedom. In the workplace, the worker does not freely pursue his interests but is rather *used* as a mere tool of production. He is subordinated as a means to advance the will of his owner, and his freedom is sacrificed on the altar of production as he is transformed into an automaton.

Under Nozick's libertarianism, the owner need not be a sadist in order for the worker to lose her freedom. The owner's supreme and unlimited authority over the workplace can all but extinguish the worker's freedom. As I have argued, the relationship between the worker and the capitalist is often not one of free association and equal authority. Without labor rights or democratic control the workplace can become a sphere of asymmetrical authority and domination.⁵⁹ Nozick's historical entitlement theory is blind to this unfreedom, a serious flaw that undermines his claim to be a protector of freedom.

⁵⁹ Some might respond that in a libertarian capitalist society, the free market will maintain the labor standards previously enforced by the state, this time through competition between employers. However, this is a dubious claim that is subject to empirical confirmation. Logically, the very *fact* of a movement fighting for labor rights undercuts this argument. Even if such standards were broadly present in a libertarian capitalist society at some future date due to market competition, there is nothing *guaranteeing* either an arrival at that outcome or its preservation. A market that does not feature modern regulations would be much more prone to monopolies because capital tends to beget capital. In the face of such monopolies, competition among employers recedes, and private owners have greater leeway to enforce their favored freedom-limiting rules.

2.7 Predatory Encirclement⁶⁰

Though the ways in which Nozick allows freedom to be restricted seem clear enough, he might respond that he does not allow the poor to be *interfered* with, so they still retain their guaranteed minimum freedom. But because the workers have been *forced* to labor for, and submit themselves to, the owners, it seems readily apparent that they have in fact been interfered with, thereby losing their freedom. A further thought experiment will demonstrate how, under Nozick's view, one individual may actively, intentionally and maliciously imprison and torture an innocent person (either poor *or* wealthy) with the blessing of the state. This thought experiment suffices to show that Nozick's view is deficient as a defense of freedom and thereby fails on its own terms.

The following example illustrates why those who seek to secure, at the very least, a guaranteed minimum amount of freedom should not take his libertarianism seriously. Suppose that Smith owns a small plot of land. Further imagine that a wealthy individual, Rockefeller, purchases the plots of land immediately adjacent to Smith's plot and does not violate Nozick's principle of transfer in doing so. Rockefeller then erects an insurmountable fence around the entire perimeter of Smith's land, imprisoning her. Perhaps Rockefeller is especially sadistic. He takes advantage of Smith's desperation by signing a

⁶⁰ Frank van Dun appropriates the concept of "encirclement," which is often used in a military tactics context, for use in discussion of property rights. See: van Dun, Frank. "Freedom and Property: Where They Conflict." *Property, Freedom, and Society: Essays in Honor of Hans-Hermann Hoppe*. Chapter 23. ed. Hulsmann, Jorg Guido and Stephan Kinsella. Auburn, AL: Ludwig von Mises Institute. 2009.

contract with her such that he will release Smith from her makeshift prison only after he has tortured, maimed, amputated, disfigured, burnt and thoroughly defiled her. Rockefeller then commits all of these heinous acts against her. Nozick's view does not allow us to object that this case unjust.⁶¹ Yet in this case, one person plans, orchestrates and executes the imprisonment and torture of an innocent, so we surely cannot allow this predation out of a respect for guaranteed minimum amount of freedom (conceived neutrally) for all. The historical entitlement theory has placed Smith in a position of complete and utter unfreedom and violation, but one that Nozick's theory would deem just.

Moreover, the encirclement Smith faces would not necessarily be a fringe case in a right-libertarian society because the entire world could be privatized, including even the roads and other means of transportation. Both neutral conceptions of freedom understand freedom in terms of our ability to perform actions, but Nozick would forbid us from occupying any space to which we did not have a title or the permission of the titleholder. We would be confined to the plot(s) of land we own unless others consented to free us from our prison. Similarly, if we were away from our property and wanted to return, we would have to satisfy the desires of all the property owners on the Balkanized path between our property and us in order to do so. The permissions we would need

⁶¹ This scenario does not trigger the Lockean Proviso because Rockefeller does not hold the title to the total supply of a particular kind of resource (e.g. a waterhole), a condition that is necessary for the Proviso to apply. The reason is that Rockefeller holds the title to a small cluster of disparate resources that happen to cut Smith off from accessing parts of the world, but not the total supply of any vital resources themselves.

to seek from these property owners might be granted only under conditions that satisfied the owner's wildest, most oppressive wishes. In this way, Nozick allows freedom to be annihilated. Under his view, everything that Rockefeller does to Smith is just and legitimate, and it would be unjust and illegitimate for a third party to intervene. As Cohen observes, "'libertarian' capitalism sacrifices liberty to capitalism, a truth that its advocates are able to deny only because they are prepared to abuse the language of freedom."⁶² As I have argued, Nozick relies on a normatively loaded definition of freedom, under which Smith remains "free" despite being held captive. Nozick engages in semantic contortions that disconnect the concept from reality, as the preceding arguments demonstrate. Anyone who is seriously interested in securing freedom would be right to reject any such conception.

Because Nozick's view forces one class of persons to submit to the other, leaves everyone vulnerable to predatory imprisonment, and allows our resources to fall to negligible levels, he does not guarantee for us a minimum amount of freedom. Thus, we have now seen that his right-libertarian view fails to adequately secure freedom under either neutral conception of freedom (freedom as ability or as the absence of social interference) in any of the proposed distributions (maximal, equal maximal, or a guaranteed minimum). Thus, Nozick's view is inadequate as a defense of freedom.

⁶² Cohen, 226

2.8 Nozick and a Respect for Persons

Even if Nozick were concerned with protecting self-ownership as a good separate from freedom (and thus not deriving from it), he does not even do that adequately. Though he holds self-ownership to be essential, his theory of distributive justice allows that principle to be rendered meaningless or extinguished altogether. Smith hardly enjoys the right of self-ownership when she is forced to submit to Rockefeller, who assaults her and violates her very body – the basic entity over which Smith ought to retain meaningful control according to the principle of self-ownership. Similarly, the destitute worker under contract barely retains the right of self-ownership when she is forced to be the powerless subject of an employer-owner autocrat, who is supported by the coercive authority of the state. Though Nozick does articulate the principle of self-ownership, he neglects the fact that “people are not floating wraiths; they are not self-subsistent entities; they can only survive and flourish by grappling with the earth around them.”⁶³ In order for individuals to exercise their rights of self-ownership, they must have the means to act in the world. Even if we valued not freedom as such, but instead self-ownership, Nozick’s view does not adequately

⁶³ Rothbard, Murray. “Property and Exchange.” *For a New Liberty: The Libertarian Manifesto*, revised. New York, New York: Libertarian Review Foundation, 1978. Reprint 1982. Cited in *Left-Libertarianism and Its Critics: The Contemporary Debate*, p. 221. It is worth observing that Rothbard’s own right-libertarian view, which is even more extreme than that of Nozick, also neglects this fact by placing the destitute in a position where they must hand themselves over to the owners of productive capital.

protect it because that right withers into nonexistence when we lack access to resources.

At one point in *Anarchy, State and Utopia*, Nozick seeks to ground the importance of freedom in the “Kantian principle that individuals are ends and not merely means.”⁶⁴ Yet his insistence on distributing property rights according to his historical entitlement theory fails to support this angle. Though he states, “side constraints express the inviolability of other persons,” his radical view of property easily allows individuals to be violated (except, perhaps, in the thinnest sense, which nevertheless makes a mockery of the principle).⁶⁵ Smith’s moral equality is not respected as Rockefeller abuses her. Similarly, though Nozick exclaims, “[We are] distinct individuals who are not resources for others,” this is precisely what happens to the destitute worker who must capitulate to the demands of her employer-owner. Nozick’s attempted defense of freedom countenances these displays of domination. Far from being grounded in a Kantian respect for persons, Nozick’s view tramples such respect.

2.9 Nozick’s Inadequate Defense of Freedom

Nozick hangs his fundamental value, freedom, on the historical entitlement theory. But this view does not do the work that a compelling defense of freedom would require. The simple elegance of his view disguises a set of

⁶⁴ Nozick, 31

⁶⁵ Nozick, 32

rules that are too rigid and ill-conceived to secure freedom, if freedom is understood neutrally as either the ability to achieve one's ends or an absence of social interference. When Rockefeller, aided by the coercive authority of state-enforced property rights, actively and maliciously imprisons Smith and commit atrocities against him, Nozick surrenders freedom to its opposite – absolute domination.

Nozick's historical entitlement theory might appear to be elegantly simple at first glance, but careful analysis reveals it to be just simplistic. It fails to secure a maximal, equal maximal or guaranteed minimum freedom under either neutral conception of freedom (either as ability or as the absence of social interference). Rather, it permits spectacles of domination, disregards a respect for persons, and thins out of the principle of self-ownership to the point that it is rendered meaningless. The rigid historical entitlement framework he advances allows the destruction of everything resembling freedom for many people. Though Nozick might respond to these criticisms by advancing a warped conception of freedom through the use of a normatively loaded interpretation of the constraint variable, this response should not be satisfactory to those looking for a theory that rests upon a defensible conception of freedom. Nozick's lip service to freedom belies a skeletal theory that cannot support what he promises to deliver.

Chapter III

Freedom, Constraints and Distribution

3.1 The Constraint Variable Revisited

In the first chapter, I argued for a particular understanding of the agent (x) and action (z) variables, but left the constraint (y) variable largely open. However, I did reject normatively loaded interpretations of the constraint variable, which includes the one articulated by Robert Nozick. In the second chapter, I argued that Nozick's libertarianism could not survive an analysis through the lens of either of the remaining normatively neutral interpretations of the constraint variable (*freedom as ability* or *freedom as lack of social-interference*). I have not yet argued for one of those neutral interpretations over the other, but I will do precisely that in this chapter.

In this chapter I defend a particular understanding of the constraint (y) variable. This understanding, when combined with the interpretation of the agent (x) and action (z) variables defended in the first chapter, completes my normatively neutral analysis of the triadic variables contained within the definition of freedom. In this way, I finish giving content to and fleshing out the skeleton of Gerald MacCallum's meta-theoretical analysis of the concept of freedom. The result is a conception of freedom that may be applied to the real world. With this conception in hand, we are then able to pose the question "What would a society based on freedom look like?"

A further step is required before that question can be answered. I have thus far only given an interpretation of two of the three variables (x and z) of the

triadic model. In order to provide a complete conception of freedom, it is necessary to assess the remaining interpretations of the constraint (y) variable. Having struck down normative interpretations of the constraint variable, the surviving neutral interpretations are freedom as ability on the one hand, and freedom as the absence of social interference on the other. The agent and end variables were fixed without reference to normative content, and doing the same for the constraint variable allows us to use the term freedom in a purely descriptive way, without reference to any particular normative commitments.

Both remaining conceptions (freedom as ability and freedom as lack of social interference) treat freedom as a descriptive term and agree fully on two of the three triadic variables. These conceptions coalesce on the empirical person interpretation of the x variable; they reject views in which that variable refers only to a higher aspect of a person. These conceptions also concur that the z variable refers to an action; they reject interpretations in which that variable refers to value-laden “becomings” or subjective character development, as well as interpretations that discount as ineligible those actions that contravene some normative principle. Finally, the remaining conceptions both hold that the range of the y variable is not limited by any normative principle: a constraint on freedom remains an obstruction even if its imposition is legitimate.

Though the surviving conceptions are silent on normative questions, they diverge when it comes to their respective interpretations of the constraint (y) variable. The crux of their disagreement is over what constitutes a constraint on

freedom. Proponents of freedom as ability, such as G.A. Cohen, take a wide view of when an agent's actions are obstructed.⁶⁶ They hold that agent *A* is free to do action *C* if, and only if, *A* is *able* to do *C*. For example, a hiker is free to climb to the top of Mt. Kilimanjaro so long as he has the ability to do so. Under this view, both natural and human-caused events and facts can restrict one's freedom.

In contrast, proponents of freedom-as-absence-of-social-interference, such as Hillel Steiner, take a more circumscribed position on constraints on freedom. According to them, agent *A* is free to do action *C* if, and only if, person *B* does not interfere with *A*'s pursuit of *C*. For example, a hiker is free to climb to the top of Mt. Kilimanjaro so long as no one interferes with that attempt.⁶⁷ Only other humans can restrict his freedom. Under this view, a hiker's obesity might hamper his *ability* to climb the mountain, but it would not alone constitute a constraint on his freedom. Whereas the ability interpretation treats the concepts freedom and ability as synonymous, the social interference conception understands freedom as an inherently social relationship. While proponents of the ability view perceive a restriction on freedom in every case of inability, proponents of the interference view believe that constraints on freedom exist only when other agents interfere with one's actions. According to the latter view, not all facts or events are eligible to count as constraints on freedom because the

⁶⁶ Cohen, G. A. *Self-ownership, Freedom and Equality*. Cambridge: Cambridge University Press. 1995.

⁶⁷ For the sake of brevity, I leave open here the question of whether threats can in themselves restrict freedom, and if so under what circumstances they do so.

question of whether one is free must be answered through a reference to a set of interpersonal relations. It is a necessary condition of a constraint on freedom that it is caused by another agent.

3.2 A Defense of the Social Interference Interpretation

I find two major reasons for endorsing the view in which the constraint variable refers to social interference. The first reason is simply that we lack sufficient motivation to treat the terms 'freedom' and 'ability' as synonymous. They are clearly different concepts and apply to different circumstances. We tend to reserve the term 'freedom' for cases in which an agent confronts an inability for which another person is causally responsible. For example, there would seem to be something odd about an obese would-be mountain climber blaming his lack of freedom – his lack of liberty – to climb Mt. Kilimanjaro on the fact that he has failed to take care of himself. His neglected waistline cannot curtail his freedom. As he stands at the base of the mountain it would seem more accurate to say that he cannot climb it because he is unable to do so than because his freedom has been curtailed. However, if he could not climb the mountain because armed guards at the bottom of it prevent him from ascending, then that would be a clear case in which his freedom has been restricted. We could then say that he is not only unable to climb, but also unfree to do so. The reason why it is appropriate to use the term freedom in the case of prevention by armed

guards but not in the case of mere obesity is that freedom is an inherently social relationship, and constraints on freedom exist only when others put them there.

While obstacles that do not have a human cause may hamper one's *ability* to achieve a particular goal, they would not restrict one's freedom. For example, *x* would be free to swim if no one was stopping her, even if she had never successfully learned how to swim. On the other hand, *x* would be unfree to swim if *y* tied her up against her will and threw her into the ocean. *X* is unable to swim both in normal circumstances and when she is tied up, but she is also unfree in the latter scenario because only it features the imposition of an obstacle by another agent. But perhaps the mundane examples put the point too subtly. Helvetius expressed the idea more directly when he said in the sixteenth century, 'The free man is the man who is not in irons, nor imprisoned in a jail, nor terrorized like a slave by the fear of punishment ... It is not lack of freedom not to fly like an eagle or swim like a whale.'⁶⁸ Similarly, an agent would misuse the language of freedom in complaining that gravity curtails her liberty: an agent's inability to jump straight to Mars does not constitute a lack of freedom. Thus, the interference view allows us to say that someone can be free to do something that she is unable to do. The reason is that the interference view of the constraint variable considers unfreedom a subset of inability that exists only in the context of social relations.

⁶⁸ Helvétius, Claude Adrien. Quoted in Berlin, 122.

Of course, words are often used casually and loosely, and so we may find ourselves or others describing an agent as lacking freedom when what we really mean is that she lacks ability. However, there are good reasons for distinguishing between the terms when we want to engage in deliberate discussion. We already have a word – “ability” – that refers to a lack of capacity, so it seems useful to keep a word in our vocabulary that refers to forms of inability that have a distinctly interpersonal origin. Indeed, there would seem to be a crucial element missing if a slave were to say to her master, “Curse you for my inabilities!” The word “unable” does not carry with it the descriptive force needed to accurately convey the condition in which the slave finds herself, because that word contains no reference to the fact that her master is causally responsible for her condition of inability. It is much clearer and powerful for her to say, “Curse you for stripping me of my freedom!” Yet we do not need to stow moral content in the concept of freedom in order to reclaim the force of the term and put it to use in a way that descriptively communicates the slave’s condition. We need only say that she is unfree and the fact that her master is causally responsible for her condition is what warrants the use of the term “unfree,” and not merely “unable.”

The second reason I find for endorsing the interpretation in which the constraint variable ranges over instances of social interference rather than natural fact is that the natural fact view allows uncontroversial cases of unfreedom to be justified using the language of freedom. This reason for rejecting the freedom as ability view is seen most clearly in the fact that that view allows body parts to be

forcibly redistributed in its name – in the name of greater freedom.⁶⁹ If a person's freedom were merely a function of her abilities, then increasing her physical abilities would increase her freedom. For example, suppose that limbs could be surgically removed from one person and successfully attached to another. Under the freedom as ability view, we could create a net increase in freedom by forcibly redistributing, against the will of the patients, arms from those with two to those with none. When one of *A*'s arms is taken away, she still retains the ability to complete a wide array of tasks using the remaining arm, while previously-armless *B* enjoys an enormous increase in the number of tasks he is able to complete. The number of new tasks that *B* is now able to perform far exceeds the number of tasks that *A* can no longer perform. Though our strong linguistic intuitions see this case as promoting unfreedom, the ability interpretation would require us to see it as advancing freedom.

While it is true that abduction and forcible limb redistribution would limit the freedom of both *A* and *B* for the period (i.e. hours) during which they are in surgery, that loss of freedom would be surpassed by the substantial increase in freedom that *B* will have for the rest of his life (i.e. decades). Thus, under the ability interpretation of constraints, such forcible limb exchanges could be implemented in the name of freedom because they produce a net increase in the amount of it. In fact, if we were interested in promoting freedom as ability, then

⁶⁹ See Vallentyne, Peter. "Left-Libertarianism: A Primer." *Left-Libertarianism and Its Critics: The Contemporary Debate*.

we might not only endorse, but also encourage such abduction and limb transfers. The above example can be coherently formulated using the freedom as ability framework, but not the social interference approach to constraints. Because it is absurd to defend the forced limb transfer scenario by appealing to freedom, we have another objection in place against the view in which mere inabilities constitute constraints on freedom. This objection, along with the linguistic and conceptual problems articulated earlier, warrants a rejection of the inability view of constraints on freedom. In its place, we should endorse the social interference view of constraints on freedom.

3.3 The Distribution of Freedom

With each of the triadic variables set in place, we now have a comprehensive conception of freedom: empirical person x is free to do action z when she suffers no interference from person(s) y . This conception gives us a sturdy foundation with which we can assess theories of justice and questions of actual cases of freedom or unfreedom. The view that I have defended differs from the one articulated by Robert Nozick in that it is normatively neutral, whereas his is normatively loaded.

In the second chapter, we saw that in either of the neutral conceptions of freedom, Nozick's theory appears implausible as a defense of freedom. However, in order to fully ground this appearance, we must appeal to some principle for

how freedom should be distributed. If Nozick's principle is that freedom should be distributed in whatever way his historical entitlement theory produces when it is respected in society, then he is consistent. But this would be a strange defense of freedom because it allows overall freedom to be decimated when a few individuals have a large amount of freedom that is nevertheless outweighed by the many who lack much freedom at all.

The plausible principles for the distribution of freedom, include the principles of maximal, equal, equal maximal, maximin, leximin, and a guaranteed minimum amount of freedom.⁷⁰ Endorsing one of these principles entails leaving the territory of normative neutrality and taking a moral stance. For this reason, a particular distribution of freedom does not follow from my analysis thus far, and additional argument would be required to justify a favored distribution. To do so, one would begin by sketching out a theory of justice, in which freedom might play a lesser or greater role.

Though I will not endorse a particular principle of distribution, I will briefly examine what each respective principle might imply for the rights of persons and their property. In doing so, I argue that each of these principles for the distribution of freedom, except that of unqualified maximal freedom, entails that agents should have a right approximating that of self-ownership. Before discussing the relationship among the 1) competing principles for the

⁷⁰ These candidate principles come from a variety of sources, but Ian Carter helpfully collects and discusses them. See: Carter, 87.

distribution of freedom, 2) the right to self-ownership, and 3) rights in resources, I will summarize the content of each distributional principle.

The distributional principle of *maximal freedom* simply states that the sum total amount of freedom in society should be maximized. This principle differs from the other candidates in that it features no limits on the pursuit of societal freedom. In this way, it mirrors utilitarianism, but distributes freedom rather than utility. The principle of maximal societal freedom has been articulated from viewpoints as otherwise different as radical egalitarians and Friedrich Hayek and (ostensibly) the Libertarian Party of the United States.⁷¹

One alternative to unqualified maximal freedom is that of equal maximal freedom. Among those who have articulated something along the lines of the latter principle is Herbert Spencer.⁷² The principle of *equal maximal freedom* aims to maximize freedom. However, this principle differs from that of unqualified maximal freedom because it aims at the greatest amount of freedom that is shared equally across the individual members of society. This view tempers the pursuit of total societal freedom by stipulating that the freedom of individual members of society cannot be sacrificed in order to achieve greater net freedom

⁷¹ See Nielsen, Kai, *Equality and Liberty: A Radical Defense of Egalitarianism*. Totowa, NJ: Rowman and Allanheld. 1985. p. 304. As quoted in Carter, 77; Hayek, Friedrich. *The Constitution of Liberty*. London: Routledge and Kegan Paul. 1960. p. 11; Libertarian Party | Maximum Freedom, Minimum Government." *Libertarian Party*. Libertarian Party, n.d. Web. 28 Mar. 2012. <<http://www.lp.org/>>. The slogan of the Libertarian Party is "Maximum Freedom, Minimum Government."

⁷² Herbert Spencer, *Social Statics*. London: John Chapman, 1851. "Chapter: CHAPTER VIII.: The Rights of Life and Personal Liberty." Accessed at: <<http://oll.libertyfund.org/title/273/6241> on 2012-05-09>.

shared unequally. One can find reason to place such a constraint on the pursuit of the maximization of freedom by adapting Rawls' critique of utilitarianism, which he argues fails "to take seriously the distinction between persons."⁷³

A second alternative to the principle of maximal freedom is the maximin principle that Rawls famously uses to distribute primary goods in *A Theory of Justice*. Applied to freedom, this principle states that the structure of society should be arranged in a way that maximizes the freedom of the least free. This principle departs from equal maximal freedom, but is a potential improvement over that principle because it allows such inequalities to increase the degree of freedom for those who enjoy the least amount of it. In other words, each person is freer in a society structured by the maximin rule than in one that employs the principle of equal maximal freedom.

A third alternative to the principle of maximal freedom is the leximin principle.⁷⁴ Leximin refines the maximin rule by stating that we should maximize freedom first for the least free, but that when this is not possible, we should maximize the freedom of the second-to-least free, then that of the third-to-least free, and so on. This modification provides reasons to depart from equality because it attends to the position of the least free but also increases the sum total of societal freedom (beyond that secured by the maximin principle) by assisting

⁷³ Rawls, John. p. 27.

⁷⁴ This principle is articulated in Parijs, Philippe van. *Real Freedom for All: What (If Anything) Can Justify Capitalism?*

the second-to-least free when the least free are already made as free as they can be.

A fourth alternative to maximal freedom is a guaranteed minimum amount of freedom. Unlike the other views considered thus far, this principle features no maximizing element. For this reason, it makes fewer demands on a theory of justice than those that do contain such an element. The principle of a guaranteed minimum of freedom can be employed in combination with other considerations, for example as a limiting factor on the pursuit of utility. In fact, it could be interpreted as playing just such a role in the form of the Harm Principle, articulated in John Stuart Mill's *On Liberty*.⁷⁵ While Mill's *Utilitarianism* is often seen as in direct conflict with his Harm Principle, the guaranteed minimum delivered by that principle might be seen as exerting a tempering force on the realization of utilitarian ends.

The final alternative to maximal freedom is the principle of equal freedom, which states simply that freedom should be distributed equally among agents. Similar to the guaranteed minimum, this principle also lacks a maximizing element. Its most famous advocate, Hillel Steiner, adopts this principle because of his view that there exists a "conservation of freedom" law, according to which the idea of maximizing freedom is incoherent. He believes that freedom can

⁷⁵ This idea has also found support from Isaiah Berlin, Alexis de Tocqueville, John Rawls, Benjamin Constant, and all those who endorse the principle of self-ownership. Berlin, 124.

neither be created nor destroyed, meaning that distributing freedom is zero-sum: it can merely be distributed either equally or unequally. However, this position contains a weakness that becomes exposed when the communalist position on resources is considered.

3.4 Self-Ownership and Freedom

I here argue that adopting any of the available distributional principles – aside from that of maximal freedom – entails an endorsement of the right to self-ownership. Under these principles, the principle of self-ownership sets the proper resting place for rights because it creates a complex of rights that are equal and mutually consistent for each person.⁷⁶ Furthermore, this principle allows freedom to be maximized to the degree that such maximization respects the distinction between persons that Rawls famously emphasizes. This argument

⁷⁶ Hillel Steiner argues convincingly for the importance of such compatibility within a complex of rights: “The mutual consistency – or compossibility – of all the rights in a proposed set of rights is at least a necessary condition of that set being a possible one. A set of rights being a possible set is, I take it, itself a necessary condition of the plausibility of whatever principle of justice generates that set. Any justice principle that delivers a set of rights yielding contradictory judgments, about the permissibility of a particular action, either is unrealisable or (what comes to the same thing) must be modified to be realisable.” Steiner, *An Essay on Rights*, p. 2.

He defends this view by arguing, “Rights denote a sphere of action, a domain within which the right-holder may act – or require others to act – as he chooses, and must not suffer interference by others with the execution of his choices. *Any coherent or well-ordered set of rights must therefore be such that it is logically impossible for one individual's exercise of his rights (within that set) to constitute an interference with another individual's exercise of his rights (within that same set).*” For further elaboration see his article, “The Natural Right to the Means of Production.” *The Philosophical Quarterly*. Vol. 27, No. 106 (Jan., 1977), p. 42.

yields two noteworthy implications. First, there is a fundamental right upon which essentially all who are most concerned with securing freedom can coalesce.⁷⁷ Second, even though Nozick provides an implausible concept of freedom, he is justified in endorsing the right of self-ownership.

As demonstrated in the first chapter, Nozick cannot justify the theory he propounds in terms of freedom because he illicitly stows certain rights, including that of self-ownership, within his conception of freedom. As we have seen, this argument is circular and begs the question. However, the principle of self-ownership can nonetheless be justified independently, through the lens of the neutral view of freedom that I have laid out. The acceptance of the right of self-ownership does not salvage the rest of Nozick's view, but it does help explain where that view goes astray.

Recall from my brief summary in the second chapter that the *principle of self-ownership* states that each person has robust and exclusive moral rights over the control and use of her own body.⁷⁸ She owns herself in the same way that she might be said to own a toothbrush if she had absolute legal property rights in it. She could do whatever she wishes with her toothbrush, and no one else could do

⁷⁷ Those who adopt the distributional principle of maximal freedom might or might not agree, but their ascension is not needed for this statement to be true. The reason is that those who would simply maximize societal freedom are not concerned with individual freedom as such, but rather the amount of freedom spread across persons.

⁷⁸ I do not here address concerns about those that we may not think of as full agents, such as children, the severely infirm and nonhuman animals. I leave open the question of whether such beings should be understood as each having full rights of self-ownership. I also do not discuss the issue of how when the right of self-ownership may be abridged (e.g. in response to immoral actions or to prevent a social catastrophe).

anything with her toothbrush without her permission. She owns her body in just this way. An infringement on a person's right to self-ownership restricts her freedom and violates her rights. Persons possess this moral right in virtue of their personhood, regardless of their race, gender, sexual orientation, beliefs or creed. The right of self-ownership is held equally and universally, and it provides a natural resting place for freedom from interference: the very bodies that we inhabit, the very matter of which we consist. The principle grants each agent an equal sphere of freedom that extends as far as is compatible with the freedom of every other agent.

The principle of self-ownership is often justified through the combination of two principles that are often construed as antagonistic towards each other (though that need not be the case): freedom and equality. Self-owning agents enjoy *freedom* because no one may obstruct their entrance into a consensual social relationship with any other agent. Self-owning agents are *equal* because each agent's freedom ends where another agent's freedom starts, and self-ownership applies in the same way to each person. A paradigm case that articulates the structure of the principle of self-ownership is expressed in the quote, attributed to Oliver Wendell Holmes Jr. among others, "My liberty to swing my fist ends where the other man's nose begins." In this way, self-ownership sets a natural baseline from which to evaluate infringements on an individual's freedom. Notice that when this right is distributed to each agent equally, it does not secure unlimited freedom: these self-owners have lost the unconditional freedom to use

each other nonconsensually (e.g. assault, rape, etc.). However, an equal distribution does set a natural baseline.

Furthermore, there do not appear to be any reasons for those concerned with freedom to reject an equal distribution of self-ownership rights. An unequal distribution could reduce the amount of freedom in the world, but it could not increase it. For example, if we give *A* the right to assault persons *B*, *C* and *D*, then *A* gains the freedom to complete three actions (assault persons *B*, *C*, and *D*) that he previously could not. However, *B*, *C* and *D* have lost an amount of freedom that exceed the degree of freedom *A* gains. The reason for this is that *A* can now rightfully obstruct – through violent assault – a wide range of the actions that *B*, *C* and *D* might seek to pursue.

In this example, while *A* gains a small number of freedoms by being permitted to pummel three people, *B*, *C*, and *D* lose a large host of freedoms when they are restrained by their aggressor's blows: they are prevented from pursuing a long list of projects (taking a walk, doing yoga, cooking, etc.) that far outweigh the number of freedoms gained by *A*. Thus, even if we do not care about equality for its own sake, we have a reason to endorse the principle of self-ownership because it achieves, *ceteris paribus*, a Pareto optimal distribution of freedom. In other words, abandoning the equal distribution of self-ownership rights could not increase the net amount of freedom. Thus, the scheme of rights embodied in the principle of self-ownership promotes a symbiotic relationship between freedom and equality.

Gestures towards the principle of self-ownership can be found within most prominent moral and ethical traditions, including libertarianism, liberalism, anarchism and act utilitarianism. Classical liberal Wilhelm von Humboldt gave perhaps the earliest formulation in his 1791 *Limits of State Action*. Then anarchist Pierre-Joseph Proudhon expressed it again in 1849, when he wrote, “Whoever lays his hand on me to govern me is a usurper and tyrant, and I declare him my enemy.”⁷⁹ Utilitarian John Stuart Mill advanced a largely similar idea with his Harm Principle in 1859. Liberal John Rawls put forward a similar doctrine with his First Principle of Justice in 1971. Something approximating the self-ownership principle is seen within traditions of political philosophy that otherwise have very little in common. Much in philosophy remains unsettled, so it is impressive indeed that thinkers representing a broad swath of the philosophical landscape have coalesced around ideas that gesture towards the principle of self-ownership.

Though I am here concerned with the principle of self-ownership as it relates to freedom, some also see it as grounded in a Kantian respect for persons. For example, Nozick states that the right to self-ownership (as a moral side constraint) “reflects the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of

⁷⁹ Proudhon, Pierre-Joseph. *What Is Property?: or, An Inquiry into the Principle of Right and of Government*. 1840.

other ends without their consent. Individuals are inviolable.”⁸⁰ The principle of self-ownership embodies a commitment to the equal moral worth of individuals; each individual is considered sacrosanct and may not be forcibly subordinated to the will of another. However, as we have seen, Nozick’s view of resources allows this right to become hollowed out so that certain individuals hold it in only a very thin sense.

3.5 Self-Ownership and the State

The principle of self-ownership protects the individual from the state and other individuals. The right of self-ownership discussed here is moral, not legal, and it is therefore held independently of its acknowledgment by the state. Though an agent’s right of self-ownership might be partially revoked when that agent violates another agent, the right of self-ownership prevents the state from engaging in a broad spectrum of coercive activity. This right places strict limits on what the state may do to a person without her consent. Uncontroversially, infringements on freedom of movement and any manner of arbitrary state violence are, *ceteris paribus*, forbidden. More controversially, the right to self-ownership invalidates all paternalistic laws, including helmet and drug laws and those against swimming without a lifeguard. Further, this right restrains the state

⁸⁰ Nozick, 30-1.

from punishing victimless crimes, such as consensual sodomy or wearing a veil across one's face, even if the state deems such actions offensive.

In addition to protecting the individual from the state, the right of self-ownership protects individuals from each other. No person may force another to do anything that she does not want to do. Thus, aggressive actions such as assault, rape and abduction are prohibited. In this way, the right of self-ownership provides each person with a sacrosanct sphere of freedom, within which she is free to do whatever she wishes without interference.

Knowing what the principle of self-ownership prohibits does not tell us how such principles are to be enforced. Any account of the appropriate enforcement mechanism must describe the proper balance of the roles played by the state, the community and the individual. The statist would say that the state should enforce the right of self-ownership. However the anarchist might claim that the state cannot be entrusted with that job, arguing that the state tends to accumulate and centralize power. The anarchist might point to the extreme loss of freedom under the Third Reich and Soviet Russia, the state-led rights violations that run concomitant with all wars, or the current paternalistic laws found in all developed countries.

The statist might reply to these charges by arguing that the rights-violating behavior of states thus far does not entail that a more circumscribed state role in relation to the individual is impossible. She might point to a country

with a relatively advanced judicial system as an example of a model for state-enforced self-ownership rights. While it is true, the statist might argue, that no country thus far has ceased its rights-violating behavior, that reason alone does not suffice to show that it cannot be done. Indeed, there are reasons for thinking that the statist may be right on the question of enforcing self-ownership rights. For example, though the United States retains laws that clearly violate self-ownership rights, the trend has been one of moving towards greater personal liberties (e.g. for African-Americans and women), not fewer.

In order to protect individuals' freedom, the principle of self-ownership must be maintained in a stable environment with few violations. State-enforced rights are likely to be more stable than those enforced through non-state means such as tribes and communities. Whereas it requires enormous effort to withdraw rights enshrined in a state's constitution, it takes only a slight change in the will of a community for the self-ownership right of a person who has fallen into disfavor to be neglected or violated. It does not even need to be the case that the community at large would seek to actively violate an individual's right; the very fact of a community's hostility or neglect indicates that the community might not enforce the disfavored individual's rights. This fact increases the likelihood of rogue individuals violating such rights. For these reasons, assuming that the state can refrain from eroding personal liberties, state enforcement of self-ownership rights appears preferable to community enforcement.

3.6 Self-Ownership and Resources

Though the principle of self-ownership is necessary to secure a free society, it is not sufficient. It is true that self-owners are free to do whatever they wish with their own bodies, short of violating the rights of other self-owners. However, the freedom secured by the principle of self-ownership is not extensive because the principle is silent on all matters beyond the interaction of human bodies; it says nothing about the natural world. As libertarian theorist Peter Vallentyne observes:

Self-ownership is a purely formal notion, and does not ensure that one has any effective autonomy involving physical actions. If the rest of the world is owned by others...one has no effective autonomy involving physical actions... So, self-ownership does not ensure (effective) autonomy. It is concerned instead with ensuring that there are certain formal constraints on what others may do to one without one's consent, rather than with ensuring that one has the means to do things.⁸¹

If an individual is denied access to all natural resources, though she might retain her right to self-ownership, her permissible actions are limited to flailing her body in the air before gravity returns her to the ground.⁸² Because people do not live in vacuums, we clearly need a plausible view of natural resources in order to give the principle of self-ownership a degree of purchase in the world we actually inhabit. It is necessary to supplement the principle of self-ownership with a view of how natural resources ought to be used, transferred and owned.

⁸¹ Vallentyne, Peter. "Self-Ownership for Egalitarians," *Canadian Journal of Philosophy*. 28 (1998): 609-626.

⁸² This action would be permissible unless the air is considered a natural resource, in which case she cannot move at all.

The importance of which view of natural resources we adopt is evident when we examine the problems from which Nozick's right-libertarianism suffers. His difficulties stem from an implausible view of the natural world. By constructing a society in which individuals can not only accumulate vastly unequal amounts of property, but can do so with the state's monopoly of violence on their side, Nozick drains the principle of self-ownership of its purchase in the real world. The reason is that individuals need resources to undertake virtually any possible action that they might wish (e.g. ground to walk across, water to drink, an instrument to play). Yet Nozick licenses distributions of resources in which individuals can be granted access to hardly any resources at all, and thereby renders their right to self-ownership useless. Though his view is essentially half-correct because it does endorse self-ownership, the half that he gets wrong matters a great deal – to the point of negating the value of the first half.

Recall the example in the second chapter of the victim of property encirclement. The victim's neighbor surrounds her parcel of land overnight with insurmountable walls erected along state-enforced property lines, and she is forced to agree to whatever contract her predatory neighbor offers her if she wants to avoid starvation. If the contract he offers her is a position as his slave, then she loses all rights to use any natural resources without his permission. Depending on one's view of when and for how long agents can lose their right to self-ownership, the victim may also lose her right to self-ownership, and is

therefore stripped of whatever protection that principle previously secured. If this were to happen, she would have the rights of a pebble (no rights at all). Clearly, a reasonable view of freedom should adopt a view of natural resources that avoids allowing people to be treated like pebbles.

3.7 Rights and Resources

There are two basic positions one can take in describing the problem with Nozick's view of resources. The first position is that his *particular* view of the rights that people can have in natural resources is implausible. I will call this position the "rights" view of resources. The second position is that the *very notion* of rights in natural resources is itself implausible if it is freedom that we are after. I will call this position the "extreme communalist" view of resources. Whereas the rights view would say that a complex of rights to resources should be assembled such that encirclement is not justified, the communalist view would say that we should not assemble any complex of rights to natural resources at all. Though the latter view is extreme, it is instructive to consider the reasons that can be offered in its support.

The communalist view takes as its starting point the fact that enforcing rights entails enforcing the duties that correspond to those rights. For example, a right not to be killed entails a duty to refrain from killing.⁸³ Any system of

⁸³ Of course, such rights might be overridden if they are not absolute.

enforced rights necessarily entails restricting one person's freedom in order to secure the freedom of another. The principle of self-ownership justifies just such a system of enforced rights: *A* and *B* must sacrifice their freedom to kill each other in order to secure the freedom from being killed. The principle of self-ownership does not secure absolute freedom, but instead sets a baseline for equal freedom.

Though the communalist might endorse the right of self-ownership, we can understand why she might do so when we understand that there is a structural asymmetry between that right and property rights. The right to self-ownership and property rights differ in their respective effects on the amount of overall freedom. Enforcing a complex of property rights chips away more significantly on overall freedom because it does not secure to the same degree freedoms that agents can actively enjoy or even be aware of. The reason for this asymmetry is that a person has only one body, and the security from transgression of the body of each person is enjoyed by all equally and at all times, without imposing a burdensome catalog of impermissible actions. Whenever a person possesses freedom from assault, he is able to enjoy that right: I am able to enjoy my freedom from assault (secured for me by the self-ownership principle) at every moment. My freedom from assault allows me, *ceteris paribus*, to pursue whatever projects I wish.

However, the same is not necessarily true of property rights. If someone violates my right to self-ownership by pummeling me in the face, I am aware of

this incursion and it directly affects my freedom. In contrast, if one violates my right to a natural resource, by for example, taking a swim in my pool while I am away and leaving before I return (unbeknownst to me), it is not clear that I have become any less free. I may never become aware of this rights violation and it may not affect me. Moreover, it may not, and often does not, limit my freedom at all. Remember that unfreedom is to be understood as a condition in which one faces an interference with one's action, so even if I were aware and became angry, it's not clear how I could say that my freedom had been restricted.⁸⁴

There are ways that we might describe the intruder as constraining my freedom, but they are unconvincing and do not do the work that we might want them to do. For example, we might say that the intruder interferes with my ability to swim in the pool during the period in which he is using it. If I tried to dive at that moment, then perhaps I would crash into him and he would be interfering with my ability to swim in the pool. But then so too would a guest whom I have given permission to swim in the pool, who did have a right to swim in the pool. If we still want to say that the intruder (and therefore also the guest) restricts my freedom by using my pool, then we are therefore committed to the view that I restrict the freedom of all other people when I use my own

⁸⁴ It is important to note that just because my freedom has not been restricted, that does not mean that such cases do not threaten other values that we hold. For example, my freedom would not be restricted if an intruder spray-painted graffiti across each wall of my house or drew mustaches on my photos of family and friends. However, I would prefer the aesthetic appearance of my walls and photos without his additions. This concern is what drives many of our conservationist and environmentalist impulses, and those impulses can be justified despite the fact that they may be completely unrelated to our freedom.

pool. Thus, we have not yet identified anything special about the case with the intruder that makes it especially freedom-restricting.

Moreover, the objection that the intruder restricts my freedom by swimming does not apply in the case considered above because I am not poolside trying to dive in; I am somewhere else, oblivious to this rights violation. Even if I did return to find him in the pool, the intruder would likely run away immediately, and it is not clear even then how he has interfered with any of my actions. We cannot follow Nozick and say that I am unfree simply because the intruder has violated my property rights, because this assertion relies on the implausible, morally loaded view of freedom that we rejected in the first chapter. Under a neutral view of freedom, it is reasonable to say that if anyone's freedom were restricted in this case it would be that of the intruder's if the police were to forcibly remove him from my pool. We still seem to lack a freedom-based justification for assigning a complex of enforceable property rights.

Without such a complex, each person is free to do what she wishes within the boundary delineated by the principle of self-ownership. We might start backing away slightly from the communalist view by saying freedom can be better secured by stipulating that individuals have minimal rights beyond self-ownership, such as temporary rights to whatever property they happen to be using at a given time (e.g. clothing). By making this move, we expand individuals' rights and duties to include a small degree of natural resources. Doing so requires a restriction on the freedom of some (those who would, quite

literally, take the clothes off one's back) in order to secure the freedom of others (those who wear clothes). But this extension is quite minimal, and it can be justified using the same reasoning to secure rights to self-ownership, namely that such rights can be enjoyed by all person at all times. For example, *A*'s freedom is restricted when he is walking and *B* attempts to pull his sweater off of him. In this case, *B* has physically interfered with *A* indirectly. However, different justifications must be offered to secure rights beyond self-ownership and the minimal resources in one's immediate possession because such rights do not necessarily result in such interference.

Though, conceptually, a society of peaceful cooperation and communal property best maximizes freedom, this view depends upon an exceedingly optimistic position on human nature.⁸⁵ Maximal freedom depends upon certain patterns of behavior with regards to property relations, not just a lack of state interference. It does not matter if it is the state or another individual that limits one's freedom. Accordingly, what one thinks about the feasibility of a society of peaceful cooperation will affect one's view about whether freedom would in fact thrive in conditions without any state enforcement of property rights. For the skeptic of the possibility of peaceful cooperation who is nevertheless drawn to the principle of maximal freedom, it is possible to modify that principle while

⁸⁵ The intention here is not to argue that we should secure maximal freedom, though that's what many right-libertarians claim to do. Rather, it is to show that pure maximal freedom leads to the opposite kind of society from the one that right-libertarians envision.

retaining its aim. One could stipulate that freedom should be maximized to the extent possible given certain facts about human nature. In this way, a complex of property rights might be instituted that maximizes freedom to the degree possible within a set of natural constraints.

While the preceding discussion illuminates the possible increases in freedom that can come from the shared use of property, the radical communalist position can also be easily resisted by those who reject the principle of maximal freedom, and instead adopt the maximal equal, equal, maximin, leximin or guaranteed minimum principle for the distribution of freedom. The latter principles secure freedom according to a fixed standard, which would presumably be enforced by communities or a redistributive state.

It is worth noting that all of the above principles for the distribution of freedom contrast sharply with Nozick's view. Right-libertarianism claims to protect freedom through the minimal night-watchman state. However, the analysis in this chapter exposes the falsity of that claim by showing that freedom might in fact be best protected through some combination of extensive public property and/or substantially egalitarian distributions of private property. When we use a normatively neutral conception of freedom, it becomes clear that a commitment to the supreme value of freedom leads to conclusions that diverge in profound ways from with the view that Nozick and other right-libertarians espouse.

Conclusion

I have defended a conception of freedom that remains silent on normative issues. By building upon Gerald MacCallum's normatively neutral analysis of the concept of freedom, my conception allows us to have substantive, productive debates about justice in which we must explicitly articulate our assumptions and commitments about the value and proper distribution of freedom. However, freedom need not be the only thing that we value, and a plausible theory of justice will feature other considerations. Indeed, we have seen that a popular contender for a freedom-based account of justice – right-libertarianism – cannot rest on a commitment to freedom after all. A commitment to the supreme value of freedom would lead to conclusions radically different from those drawn by right-libertarians. In fact, such conclusions might not be acceptable for many people because we (quite reasonably) value other things in addition to freedom. Yet whatever we might value, by exposing the obfuscation of right-libertarianism and defending a clearer understanding of freedom, I hope to have moved us one small step closer to approaching issues of justice and human development with honesty and clarity.

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