RIGHT-LIBERTARIANISM AND THE DESTITUTION OBJECTION

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The right-libertarian theory of justice says that the only proper role of government is to protect people from aggression against their person and property. This appears to rule out any form of government assistance to the poor. What I call the destitution objection rests on two claims: (1) any theory of justice which rules out government assistance for the poor is unacceptable; (2) right-libertarianism rules out government assistance for the poor.

My dissertation focuses on two ways right-libertarians can respond to the destitution objection. Right-libertarians can either challenge the claim that any of theory of justice that rules out government assistance to the poor is unjust, or they can challenge the claim that right-libertarianism rules out government assistance to the poor.

After examining variations of these two types of responses, I conclude that right-libertarians cannot make their view compatible with the belief that government assistance for the poor is just. So my dissertation offers support for the second claim underlying the destitution objection. With respect to the first claim, my dissertation is less conclusive. I do argue that one attempt to challenge the first claim, by trying to undermine the belief that persons possess welfare rights, fails. But that leaves open other ways of challenging the claim that any theory of justice must accommodate government assistance for the poor. The plausibility of rejecting that claim, in the end, depends on the plausibility of any argument that can be offered in defense of the right-libertarian’s fundamental commitment to self-ownership and property rights.
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CHAPTER ONE – INTRODUCTION

A. The Destitution Objection

There are a wide variety of political theories that stress the importance of liberty. Among these views there is one in particular that I wish to focus on, namely right-libertarianism. According to right-libertarians, justice requires that each person be free from the initiation of physical force against her body and the confiscation of her property. Force may only be used to retaliate against those who use force, or threaten to use force, or confiscate, or threaten to confiscate, someone’s property. The use of force for any other purpose is unjust. And that means (because all laws are backed by the threat of force) that the only proper role of government is to protect people from the use of force against their bodies or the confiscation of their property.

Because much of what governments do is beyond the scope of that role, much of what governments do is unjust according to right-libertarians. That appears to include any form of government assistance to the poor.

Right-libertarianism’s apparent stance on government assistance for the poor turns many people off from the view. Many think that if there are some people so poor that they are on the verge of starvation, it would not be unjust for some institution (e.g. a government) to take some

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resources from the wealthy and give those resources to the poor so that the poor may survive. Yet that requires confiscation of someone’s property and, for that reason, right-libertarianism seems to imply that any such action would be unjust. What I will refer to as the destitution objection to right-libertarianism rests on two claims: (1) any theory of justice which has the implication just mentioned is unacceptable, and (2) right-libertarianism has that implication. What can a right-libertarian say in response to the destitution objection? Answering that question is the focus of my dissertation.

In response to the destitution objection, a right-libertarian may reject either of the two claims the objection rests on. In chapter two of my dissertation I consider a way in which a right-libertarian could challenge the first claim (that no theory of justice should have the implication that government assistance to the poor is unjust). In chapters three and four I consider different ways a right-libertarian could challenge the second claim (that right-libertarianism implies that government assistance to the poor is unjust). In this introduction I will provide a sketch of those chapters. However, before doing so, I will explain in more detail what the right-libertarian theory of justice amounts to. I will also mention two responses to the destitution objection that I do not address in future chapters.

B. Right-Libertarianism

Right-libertarianism is characterized by three important features: (1) commitment to the self-ownership thesis, (2) commitment to the view that self-ownership grounds rights of external ownership (ownership rights to things external to one’s body), and (3) the only business of government is the enforcement of people’s self-ownership rights and associated property rights. Each of these features needs explaining.
The bedrock of the right-libertarian theory of justice is the self-ownership thesis.\(^2\) The self-ownership thesis states that each person is the rightful owner of herself, including her body and her mind.\(^3\) The ownership involved includes all the components that attend the full ownership of an object: the right to use it, exclude others from using it, dispose of it, immunity from others expropriating it, and the right to transfer ownership of it to someone else. This means that if I am a self-owner I have the right to use my body and mind as I see fit, exclude others from using my body and mind, dispose of my body and mind if I so wish (if I wish to take my own life, you may not coercively prevent me), I am immune from others expropriating my body and mind (no one may force me into slavery), and I have the right to transfer ownership of my body and mind to someone else (I may voluntary make myself someone’s slave).\(^4\)

Among views which endorse the self-ownership thesis, there is disagreement on the relationship between self-ownership and rights of external ownership (property rights). Left-libertarians endorse the self-ownership thesis, but do not think that self-ownership, by itself, has any implications with respect to external ownership.\(^5\) Right-libertarians do think that self-ownership, by itself, has implications concerning external ownership.

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\(^2\) Not all libertarians would describe themselves as committed to the self-ownership thesis. For instance, see Machan, *Individuals and Their Rights*, 139-40; Rasmussen and Den Uyl, *Norms of Liberty*, 206-22. Nonetheless, these authors endorse views practically equivalent to the self-ownership thesis.


\(^4\) Not all libertarians are agreed on whether or not voluntary slavery is permissible. For the view that it is permissible, see Nozick, *Anarchy, State, and Utopia*, 331. For the view that voluntary slavery is impermissible, see Barnett, *Structure of Liberty*, 78-82; Rothbard, *Ethics of Liberty*, 40-41.

Some right-libertarians endorse John Locke’s idea that a person, by owning herself, owns her labor, and so, by extension, owns the things she “mixes” her labor with. For instance, Murray Rothbard argues that “if every man has the right to own his own body, and if he must use and transform material natural objects in order to survive, then he has the right to own the product that he has made, by his energy and effort, into a veritable extension of his own personality.” And Edward Feser argues that “in owning myself, I also own my abilities, talents, and labor, viz. the effort I exert in working. For if I own these things, then I also own the products of my abilities, talents, and labor, that is, whatever wealth I produce in using them.”

Both authors express the idea that by using our talents and energies to alter the material world according to our plans and projects, those bits of the world we alter become something we own.

Other right-libertarians draw the connection between self-ownership and property rights in a different way. For instance, Jan Narveson does not appeal to Locke’s labor-mixing idea. Rather, Narveson simply argues that when you create a material object, or cultivate land, you are undertaking certain actions. A person who seizes the material objects you have created, or trespasses on the land that you have cultivated, interferes with the actions you have undertaken.

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9 Nozick famously finds the labor-mixing idea of property acquisition problematic: “But why isn’t mixing what I own with what I don’t own a way of losing what I own rather than a way of gaining what I don’t? If I own a can of tomato juice and spill it in the sea…do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?” See Nozick, *Anarchy, State, and Utopia*, 174-75.
By interfering with the actions you have undertaken, a thief and a trespasser in effect prevent you from using your body and mind as you see fit, which, as a self-owner, you have a right to do.\textsuperscript{10}

As noted, Locke believed that, because we are self-owners and, as such, own our labor, we also come to own whatever natural resources we mix our labor with. However, Locke also said that, although we are allowed to mix our labor with unowned resources and make them our own, we are only allowed to do so as long as we leave “enough and as good” for others.\textsuperscript{11} This has come to be known as “the Lockean proviso.”\textsuperscript{12} Most right-libertarians reject the idea that there is any restriction on how much of the (unowned) external world one may acquire. Some right-libertarians, on the other hand, do embrace something akin to the Lockean proviso. However, I will wait to discuss their view until my preview of chapter four.\textsuperscript{13}

The right-libertarian’s strong commitment to property rights entails a strong commitment to free markets. The reason is that property rights include the right to transfer those rights to other parties. As long as the self-ownership rights and property rights of outside parties are not threatened, the exchange of ownership rights between parties to a transaction should be free of


\textsuperscript{11} Locke, \textit{Two Treatises}, 288.

\textsuperscript{12} The Lockean proviso is also sometimes referred to as “the sufficiency limitation” or “the no-harm requirement.” See A. John Simmons, \textit{The Lockean Theory of Rights} (Princeton: Princeton University Press, 1992), 281. The Lockean proviso should not be confused with Locke’s “spoilage” or “nonwaste” limit. See Locke, \textit{Two Treatises}, 290.

\textsuperscript{13} While not embracing Locke’s “labor-mixing” view of property acquisition, \textit{left-libertarians} do embrace versions of the Lockean proviso. On their view you are permitted to appropriate natural resources as long as your appropriation does not run afoul of the Lockean proviso, which they interpret in an egalitarian manner. The precise nature of that interpretation, however, is an area of disagreement. For instance, Hillel Steiner thinks a proper proviso on acquisition requires that everyone else be left with an equal share of the value of natural resources; Steiner, \textit{Essay on Rights}, 235-36. Michael Otsuka, on the other hand, thinks that a proper proviso on acquisition requires that everyone else be left with an equally advantageous share of natural resources; Otsuka, \textit{Libertarianism Without Inequality}, 24-29. In each case these provisos are motivated by egalitarian considerations entirely separable from considerations of self-ownership.
any coercive interference, because, according to the right-libertarian, such interference would be a violation of the norms of justice.

This brings us to the third feature of right-libertarianism. According to the right-libertarian theory of justice, the right of self-ownership and the rights of external ownership that follow from it, exhaust all considerations of justice.\textsuperscript{14} (Here “justice” refers to the subset of moral norms that it is permissible to enforce with the threat of physical force.) Other considerations such as social equality, the well-being of the least well-off, communal solidarity, etc. may or may not play a role in the correct account of morality, but they have nothing to do with justice, so it is not permissible to pursue these things with the threat of force. This means that right-libertarianism is what Gerald Gaus has called a “monistic political theory.”\textsuperscript{15} The only political value for right-libertarians is self-ownership (including the property rights that are grounded in self-ownership). Right-libertarianism’s monism sets it apart from other views that emphasize individual liberty, including classical liberalism.

Classical liberalism is the liberalism of John Locke, David Hume, Adam Smith, Friedrich Hayek, and Milton Friedman, and is a precursor to libertarianism. Classical liberalism shares libertarianism’s commitment to property rights and free markets. However, classical liberals believe governments act within their rights by providing public goods (e.g. roads and sidewalks), supporting education, and by providing some, albeit minimal, social insurance. Classical liberals believe these things because they are not political monists – they believe there are other political values besides self-ownership.\textsuperscript{16} Classical liberalism has experienced somewhat of a renaissance

\textsuperscript{14} A complete theory of justice will also have something to say about what is required to rectify injustices. However, this is not directly relevant to my topic.


\textsuperscript{16} My characterization of classical liberalism relies on the characterizations offered by Samuel Freeman and John Tomasi. See Samuel Freeman, “Illiberal Libertarians: Why Libertarianism is Not a Liberal View,” \textit{Philosophy
recently. This renaissance is, I suspect, the result of disenchantment with right-libertarianism due to concerns related to the destitution objection. By focusing on right-libertarian responses to the destitution objection we will see if this disenchantment is warranted.

That concludes my characterization of right-libertarianism. Inevitably there will be theorists identified with the right-libertarian tradition whose views do not line up perfectly with the characterization I’ve offered. For instance, Robert Nozick’s views expressed in *Anarchy, State, and Utopia* are typically taken to be quintessentially right-libertarian. But what Nozick says in that book does not clearly fit my description of right-libertarianism. The main reason is that Nozick endorses a proviso on the acquisition of natural resources which is not grounded in self-ownership, so Nozick’s view would not count as monistic (an attribute I’ve attributed to right-libertarianism). Several things can be said about Nozick’s proviso on property acquisition, as well as his reputation as the quintessential right-libertarian. Suffice it to say, my primary concern in this dissertation is with ideas, not authors. Right-libertarianism, as I’ve described it, is the idea of justice I am interested in discussing. And there are people – philosophers, economists, non-academics – who believe in this idea.

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18 One could easily argue that Nozick’s proviso is ad hoc and at odds with the rest of what he says about justice. Some question whether there really is a theory of justice being defended by Nozick in *Anarchy, State, and Utopia*. The editors of *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia* don’t think so. See Ralf M. Bader and John Meadowcroft, introduction to *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia*, ed. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 11.
C. Right-Libertarian Responses

Before discussing the types of libertarian responses I will focus on in my dissertation, let me first mention two responses I will not be focusing on, but which might have immediately occurred to the reader.

The first response says that nothing about right-libertarianism is incompatible with assistance for the poor. Right-libertarianism is only incompatible with government assistance for the poor, since such assistance involves violating people’s property rights. This still leaves open, as morally permissible, voluntary forms of assistance, e.g. church-organized charities, NGO’s, and individual acts of giving. In addition, there are several ways of getting others to be charitable besides the forcible transfer of wealth, e.g. argument, boycott, and shaming.

This response is true as far as it goes. Right-libertarianism is clearly not incompatible with a wide variety of voluntary forms of assistance to the poor. And how effective such assistance to the poor is, versus government assistance, is not something knowable \textit{a priori}. But the response misses the point. The point of the destitution objection is that, if people are unwilling to voluntarily help the poor, it would not be unjust for the government to forcibly take resources (i.e. collect taxes) in order to transfer those resources to the poor. The same applies if, although people are willing to help, various coordination problems prevent any effective action from taking place. Even if voluntary forms of assistance can do as good, or better, than governmental forms of assistance to the poor, that does not undermine the belief that, \textit{in principle}, there is an enforceable obligation to provide assistance to the destitute.

A second response, which I will not focus on, is that, as a matter of fact, no one would be destitute in a society compliant with the right-libertarian theory of justice. The operation of the free market (not to be confused with the quasi-free market of the United States and all other
capitalist countries) would make all of us richer. No one would be in poverty, at least not in the absolute sense that the term “destitute” connotes.

Supposing for the sake of argument that this response is correct, it still appears true that *in principle*, if some are destitute, right-libertarianism rules out the government assisting them. The destitution objection expresses the thought that in principle no theory of justice should have that implication. Also, although laissez-faire capitalism may be the wealth generating machine right-libertarians say it is, it is likely, at the very least, that there would be some incidences of destitution. As an easy example just consider people who find themselves in dire circumstances because of natural disasters.

I will now discuss the responses to the destitution objection that I do focus on. The first type of response that I focus on challenges the claim that no theory of justice should have the implication that government assistance to the poor is unjust. In chapter two I address a challenge to the existence of universal welfare rights. Now it needs to be made clear that the destitution objection does not presuppose any theory of justice, so it does not presuppose the existence of welfare rights. One does not have to believe in universal welfare rights in order to accept the two claims the destitution objection rests on. That said, appeals to welfare rights are quite often made in defense of government assistance to the poor. If the existence of welfare rights can be successfully challenged, that undercuts one of the most often cited reasons for government assistance to the poor and so would, *ipso facto*, undercut (if only partially) the first claim the destitution objection rests on.

The challenge to welfare rights that I discuss in chapter two I call the *scarcity objection*. The objection is that because resources and services are scarce, it is possible for one person’s welfare right to resource or service x to conflict with another person’s welfare right to resource
or service x. On the assumption that rights-conflicts cannot exist, welfare rights must not exist.\textsuperscript{19} If welfare rights can be shown to not exist, then the notion that justice involves concern for the poor loses a lot of support.

I consider and reject two responses that have been offered to the scarcity objection: that rights-conflicts are not problematic, and that scarcity is an issue for the right-libertarian’s favored set of rights just as much as for welfare rights.\textsuperscript{20} Instead I argue that a better response to the scarcity objection would appeal to the resources provided by two views that appear in the literature on the stringency of moral rights: specificationism and generalism.\textsuperscript{21} I also argue that the right-libertarian is in no position to reject these views, because if she is to avoid implausible implications (on almost any moral/political view), she will have to be either a specificationist or a generalist. The conclusion is that the scarcity objection fails to neutralize the destitution objection.

The second type of response I address accepts the claim that no theory of justice should have the implication that government assistance to the poor is unjust. But then the response goes on to argue that the right-libertarian theory of justice does not have that implication. The appearance that right-libertarians are committed to saying that government assistance to the poor is unjust is just that: an appearance.


Chapter three addresses two arguments made by James Sterba that represent the second type of response to the destitution objection. Sterba, in sharp contrast to the strategy discussed in chapter two, defends the claim that right-libertarians are committed to the existence of welfare rights.\(^{22}\) I argue that Sterba fails to demonstrate through either argument that the right-libertarian is committed to the existence of welfare rights. He fails in this demonstration because he offers a superficial characterization of the right-libertarian’s position, leading him to present two arguments, neither of which includes particularly right-libertarian premises. In addition, each argument contains a crucial premise that any right-libertarian unfriendly to welfare rights would, and while holding a consistent view could, reject. Therefore, as an attempt at the second type of response to the destitution objection, Sterba’s is a non-starter.\(^{23}\)

Chapter four addresses a more promising attempt at the second type of reply, namely an argument made by Eric Mack, Edward Feser, and Daniel Russell, that self-ownership, properly understood, requires that as self-owners, we are not blocked from access to external objects (generally speaking) that we could make use of.\(^{24}\) So understood, self-ownership can account for


\(^{23}\) To be clear, Sterba is not engaged in the project of helping right-libertarianism avoid any objections. His actual project is to show that from right-libertarian premises one can arrive at radically egalitarian, socialist conclusions. Nonetheless, Sterba’s arguments, if sound, could serve the purpose of a right-libertarian response to the destitution objection. And if one stops at the conclusion each argument tries to establish (rather than continuing on with further arguments, which I do not discuss, that attempt to arrive at radical egalitarian conclusions) then one will have arrived at a moderate form of right-libertarianism. What is meant by moderate right-libertarianism is discussed below.

the thought that justice requires concern for the poor, therefore justifying some type of
government assistance to that group. Although this argument does not commit the same mistakes
as either of Sterba’s arguments, it does have its problems. One in particular is that the argument
rests on an understanding of the concept of self-ownership that has bizarre implications
concerning the concept of ownership more generally. In the end I conclude that self-ownership
cannot account for the sort of worries expressed by the destitution objection.

A couple of general conclusions follow from the arguments in my dissertation. The first
conclusion is that the prospects for a moderate version of right-libertarianism look hopeless. By
that I mean a version of right-libertarianism that is able to accommodate the thought that justice
allows for government assistance to the poor, while also remaining committed to the view that
justice is purely a matter of respect for self-ownership. As I try to show in chapters three and
four, construing justice as purely a matter of self-ownership is incompatible with the intuitions
underlying the destitution objection.

The second conclusion, which follows from the first, is that a consistent right-libertarian
must be a hard-line libertarian. In response to the destitution objection the hard-line libertarian
must explain what is wrong with the thought that justice must not rule out government help for
the poor. A response along these lines includes the scarcity objection to welfare rights. But, as I
argue in chapter two, the scarcity objection is not the knock-down objection to welfare rights
some right-libertarians make it out to be.

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CHAPTER TWO - THE SCARCITY OBJECTION TO WELFARE RIGHTS

A. Introduction

Is there a universal human right to welfare? That is, is every individual entitled, as a human being, to resources or services necessary for achieving some level of well-being? Most right-libertarians say no, and a popular argument offered for that answer is the scarcity objection. The scarcity objection to welfare rights starts with the premise that resources or services are scarce. In that case, if you and I both have a welfare right to resource or service x, and the scarcity of x means that either you can be provided with x or I can be provided with x but we cannot both be provided with x, then our rights conflict. On a view of morality that precludes the existence of rights-conflicts, welfare rights cannot exist.25

Welfare rights are positive rights. Positive rights require others to provide one with resources or services. They are contrasted with negative rights. Negative rights require merely that others not interfere with someone (not that they be provided with any resource or service). One way to think about the distinction is that everyone can discharge their duties corresponding to everyone’s negative rights by, to quote Adam Smith, “sitting still and doing nothing.”26 Such is not the case with positive rights. If everyone’s positive rights are to be respected, at least some people will have to provide resources or services to others in order to discharge their duties corresponding to those rights. (In what follows I will use the expressions “negative rights” and

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“rights to non-interference” interchangeably.) According to right-libertarians, all our basic rights (those rights we possess in virtue of being humans or persons) are negative rights.27

The standard responses to the scarcity objection are (a) to reject the claim that rights-conflicts are problematic and (b) to argue that scarcity poses as much of a problem for the rights the right-libertarian favors as for welfare rights. The first goal of this chapter is to argue that these standard responses do not work. The second goal of this chapter is to present a response to the scarcity objection that does work. Doing so will involve looking at the debate over the stringency of moral rights.

In the debate over the stringency of moral rights, there are two main views: specificationism and generalism.28 Generalists believe that rights are not absolute. Rights entail pro tanto obligations that other moral considerations may outweigh. When those pro tanto obligations are outweighed and a person acts accordingly, that person is said by the generalist to have infringed someone’s right. Infringements of rights are morally justified. However, violations of rights are not justified. Rights-violations occur when someone does not act according to the pro tanto obligations imposed on them by a person’s right, and there were no moral considerations that outweighed those obligations.

Specificationists believe that “the very description of any right includes all of its exceptions, those morally justifiable circumstances in which it is permissible for someone to act

27 Right-libertarians are willing to grant that people may have positive rights that are derived through exercises of their basic rights. For example, a right-libertarian would say that if I pay my health insurance premium I have a positive right to the health coverage I’ve paid for. But that is not a right I possess in virtue of being human or being a person.

28 Again, these labels are borrowed from Liberto, “Moral Specification.”
in a way that, ordinarily, would appear to be at odds with the right.”\textsuperscript{29} So understood, specificationists believe that rights entail \textit{absolute} obligations.

The literature on the scarcity objection has not linked up with the literature on specificationism or generalism. My aim in this chapter is to provide such a link. More specifically, I will argue that specificationism and generalism provide the resources needed for the best response to the scarcity objection. I will also argue that in order to avoid highly implausible moral verdicts in the case of emergency situations, right-libertarians ought to be specificationists or generalists. The upshot of all of this is that the scarcity objection fails to blunt the force of the destitution objection. However, before getting there, and before I criticize standard responses to the scarcity objection, I need to explain in more detail what the scarcity objection is.

\textbf{B. The Scarcity Objection}

The scarcity objection, in a nutshell, is that welfare rights cannot exist because, if they did, then there would be conflicts between the welfare rights of some persons and the welfare rights of others. The conflicts would arise because of the scarcity of the resources people would supposedly have rights to. Let me say a few things about this argument to make it clearer.

First, a question that needs addressing is whether or not the scarcity objection really has anything to do with rights-conflicts. One might think that the scarcity objection is simply pointing to an “ought”-implies-“can” problem: because not all persons \textit{can} be provided with the relevant resources, it is not the case that all persons \textit{ought} to be provided with those resources.

\footnote{Ibid., 176.}
Strictly speaking, this is the problem the scarcity objection is pointing to. But this way of stating the objection is just another way of saying that rights to those resources conflict. To say that two (or more) rights conflict is to say that their correlative duties cannot all be discharged simultaneously. As Adina Preda puts it: “[T]he duty that correlates with a right has the same content as the right.”30 The correlative duty to my right not to be punched in the nose is the duty others have not to punch me in the nose. In addition to correlative duties, rights may also have implied duties.31 What makes these duties distinct from correlative duties is that they do not have the same content as the rights that imply them. For instance, my right not to be punched in the nose might imply a duty on the part of some to protect me against would-be nose punchers. That right might also imply a duty on some to come to my aid if I have been punched in the nose. Neither of these duties have the same content as the right not to be punched in the nose.

Preda presents two reasons why it is better that a rights-conflict be defined in terms of correlative duties, rather than implied duties. The first reason is that not all rights-theorists think that there any other duties that attach to rights besides their correlative duties. Yet no one denies that rights have correlative duties. Second, defining rights-conflicts in terms of implied duties prejudices the question of whether rights-conflicts exist in favor of an affirmative answer. If we say that two (or more) rights conflict whenever any of their implied duties conflict, then rights-conflicts are essentially unavoidable. But if rights-conflicts are defined in terms of correlative duties, then it remains an open question whether or not they can occur, and so the issue is not prejudged either way.


31 Ibid.
So, to repeat, two (or more) rights conflict when their correlative duties cannot all be discharged simultaneously. To point out that not all persons can be provided with the relevant resources, and so that it is not the case that all persons ought to be provided with the relevant resources, is just another way of saying that if all people have rights to these resources then those rights conflict.32

The next thing that needs addressing is the term “scarcity.” The term “scarcity” in the scarcity objection does not mean “in very short supply.” The word is being used in the way economists understand it: the quantity demanded exceeds the quantity available. But it does not matter whether or not the demand exceeds supply in the actual world. The objection says that if there is any possible world where the demand exceeds the supply of the relevant resources, then there is no world where people have rights to those resources. The motivating thought is that if there are human rights to welfare in any world, then there are human rights to welfare in all worlds (at least where there are humans). If one of those worlds, because of scarcity, contains conflicts between people’s welfare rights, then, because rights-conflicts cannot exist, welfare rights do not exist in that world. But if they don’t exist in that world, then they don’t exist in any world.

In defense of this interpretation of the scarcity objection, consider some direct quotes from those who raise it. For instance, Douglas J. Den Uyl and Tibor Machan argue that, in contrast to a right to welfare, “each and every individual at any and all times (and irrespective of contingent technological and economic conditions) can exercise his right of freedom.”33 And

32 The controversial move, of course, is from the premise that these rights conflict to the conclusion that they do not exist. That is an issue I will take up in the next section.

Michael Levin argues that the satisfiability of welfare rights depends “on the contingency that enough people...continue to engage in productive work” or “on the coincidence that nature has produced enough.”34 In contrast, “[n]o comparable condition limits negative rights, which would remain simultaneously satisfiable were all the galaxies teeming with rational agents.”35

The crucial premise of the scarcity objection is that rights-conflicts cannot exist. A standard response to the objection is to question that premise. I now turn to discuss the issue of rights-conflicts.

C. Rights-Conflicts

Why assume, as the scarcity objection does, that rights-conflicts are problematic? The reason is that one can derive a contradiction from the claim that any set of rights conflict. One way this can be shown is by assuming the following standard principles of deontic logic:

- **The “ought”-implies-“can” principle**: if one ought to do A, then it must be the case that one can do A.

- **The agglomeration principle**: if one ought to do A, and one ought to do B, then one ought to do both A and B.36

With the assumption of these two principles, the reductio is as follows:

1) A has a right to x.
2) B has a right to x.
3) If A has a right to x, then A ought to be provided with x.
4) If B has a right to x, then B ought to be provided with x.
5) A ought to be provided with x. (From 1 and 3.)
6) B ought to be provided with x. (From 2 and 4.)

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34 Levin, “Negative Liberty,” 91.

35 Ibid.

36 This term was coined by Bernard Williams to refer to this principle. See Bernard Williams, “Ethical Consistency,” *Proceedings of the Aristotelian Society* 39 (1965): 118.
7) Both A and B ought to be provided with x. (From 5 and 6 and the agglomeration principle.)
8) If both A and B ought to be provided with x, then both A and B can be provided with x. (Instantiation of the “ought”-implies-“can” principle.)
9) A and B cannot both be provided with x.
10) It is not the case that both A and B ought to be provided with x. (From 8 and 9.)
11) Both A and B ought to be provided with x, and it is not the case that both A and B ought to be provided with x. (From 7 and 10.)

To make this more concrete, imagine that Larry and Jeff each have a right to a pacemaker in order to treat their abnormal heart rhythms. In that case Larry ought to be provided with a pacemaker and Jeff ought to be provided with a pacemaker. If the agglomeration principle is true, then both Larry and Jeff ought to be provided with a pacemaker. However, their rights conflict: there aren’t enough pacemakers so that Larry and Jeff can both be provided with one (although there are enough so that one of the men could get a pacemaker). If the “ought”-implies-“can” principle is true, that means it’s not the case that both Larry and Jeff ought to be provided with a pacemaker. So it is the case, and it is not the case, that both Larry and Jeff ought to be provided with a pacemaker.

Those that accept rights-conflicts can avoid this contradiction by rejecting either of the principles of deontic logic the reductio assumes. I think it would be a mistake to reject the “ought”-implies-“can” principle, although I do not have the space to argue for that here. More plausibly one might reject the agglomeration principle.38

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37 This reductio is a slight modification of an argument against the existence of moral dilemmas (situations where a person ought to do A and ought to do B, but cannot do both A and B) found in Terrance McConnell, “Moral Dilemmas,” Stanford Encyclopedia of Philosophy (2014), http://plato.stanford.edu/entries/moral-dilemmas/. Frederick’s presentation of the scarcity objection takes basically the same form as this reductio. See Frederick, “Universal Welfare Rights,” 429-430.

38 Williams rejects this principle. See Williams, “Ethical Consistency,” 120.
In fact, that is just what Jeremy Waldron does. In order to motivate rejecting the agglomeration principle, Waldron uses the example of two individuals, A and B, who are drowning. In this situation you can rescue A and you can rescue B, but you cannot rescue both. “Ought”-implies-“can” rules out being under an obligation to rescue both A and B. And in accordance with the agglomeration principle, if you are not obligated to rescue both A and B, then it is not the case that you are obligated to rescue A and obligated to rescue B. However, if the agglomeration principle is not true, then “ought”-implies-“can” does allow us to say that you are obligated to rescue A, since you can, and obligated to rescue B, since you can. And this, according to Waldron, is the natural way to read the situation with respect to your obligations.

Waldron applies this argument to welfare rights:

Sometimes it is said that there is no human right to welfare (education, a decent standard of living, medical care, a job, holidays with pay, etc.) because these are not goods that can be secured in poor countries for everyone…But for each of the inhabitants of these regions, it is not the case that her government is unable to secure holidays with pay, or medical care, or education, or other aspects of welfare, for her… So, for any inhabitant of these regions, a claim might sensibly be made that her interest in basic welfare is sufficiently important to justify holding the government to be under a duty to provide it, and it would be a duty that the government is capable of performing. So, in each case, the putative right does satisfy the test of practicability.

I believe, however, that Waldron’s reading of the drowning example is not the most natural one to take. Instead, I think a more natural reading, one that accepts the agglomeration principle, is to say that in such a scenario you have a disjunctive duty: you ought to rescue A or B. From this it does not follow that you are obligated to rescue A, and it does not follow that you are obligated to rescue B. This is in contrast to Waldron, who says you are obligated to rescue A,

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39 Waldron, “Rights in Conflict.”
40 Ibid., 506.
41 Ibid., 506-07.
and you are obligated to rescue B. He only says you aren’t obligated to rescue both A and B, because he rejects the agglomeration principle. The disjunctive duty strategy, however, preserves the agglomeration principle by denying that you are obligated to rescue A and obligated to rescue B.

What motivates the disjunctive duty reading is the thought that if you went ahead and rescued A, while B drowned, or you went ahead and rescued B, while A drowned, you would not be blameworthy for not rescuing whoever drowned. That said, you would be blameworthy if you sat by and rescued neither of them. The same can be said about the government of a poor country. Such a government has a disjunctive duty to help citizen A, or citizen B, or citizen C, and so on. But for any of these individual citizens, the government does not owe her assistance. And the reasoning concerning blameworthiness in the drowning example applies here in the same way.

For those that reject the agglomeration principle the drowning example is an instance of inescapable wrongdoing. On Waldron’s reading, you ought to rescue A and you ought to rescue B, while he admits that you cannot rescue both. Fulfilling your obligation to rescue A entails failing in your obligation to rescue B, and vice versa. The same goes for the government of a poor country. According to Waldron, the unavailability of various goods does not prevent the government from being under an obligation to each citizen to provide those goods to her. This means that when the government fulfills its obligations to its lucky citizens by providing for them, it necessarily fails in its obligations to its unlucky citizens by not providing for them.

Of course Waldron and others who reject the agglomeration principle (and embrace rights-conflicts) are perfectly willing to grant that there are instances of inescapable wrongdoing,
and, by implication, inescapable blameworthiness.\textsuperscript{42} Dealing with this issue is beyond the scope of this chapter. However, let me make two brief comments. First, the usual types of cases that seem most plausibly to be instances of inescapable wrongdoing involve conflicts between different moral principles or values; acting in accordance with one moral principle means violating another.\textsuperscript{43} However, in the case of a welfare-rights-conflict (like that between Larry and Jeff) only one moral principle need be involved. Second, it would be strange if the only way to avoid the scarcity objection were to accept the possibility of inescapable wrongdoing. If there is a way for the welfare rights advocate to respond to the scarcity objection while not having to take a stance on that issue, then that way should be pursued.

D. Is Scarcity a Problem for All Rights?

In light of what was said in the last section, we should be looking for a way to respond to the scarcity objection which does not embrace rights-conflicts. But perhaps that is a hopeless task. The reason (supposedly) is that scarcity is a problem for all rights, including the rights that the right-libertarian endorses, so rights-conflicts are inevitable.

If scarcity turns out to be a problem for the negative rights that the right-libertarian endorses, then she is in no position to dismiss welfare rights on the ground that scarcity poses a problem for their existence. If scarcity poses a problem for the existence of welfare rights, it

\textsuperscript{42} In the article, “Ethical Consistency,” where Williams both names and rejects the agglomeration principle, his main purpose is to defend the existence of moral dilemmas. For evidence that Waldron endorses the existence of moral dilemmas, see Waldron, “Rights in Conflict,” 508.

\textsuperscript{43} Even Thomas Nagel, a resolute believer in moral dilemmas, says: “There may be circumstances in which nothing is permissible – true moral dilemmas in which every possible course of action is wrong. But these arise only from the clash of distinct moral principles and not from the application of one principle.” See Thomas Nagel, “Equality,” in \textit{The Ideal of Equality}, ed. Matthew Clayton and Andrew Williams (New York: Palgrave MacMillan, 2002), 79, n. 6.
poses a problem for rights to non-interference as well. There are two versions of this response. The first is based on a conceptual point about rights: the very concept of a right entails that for any right, scarcity considerations will play a factor. The second response is based on a practical point about rights: ensuring that rights are respected costs money and resources, which are obviously subject to scarcity.

The first response is presented forcefully by Henry Shue. Shue begins with the following analysis of a moral right: “A moral right provides the (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.”44 By the “substance” of a right Shue means “whatever the right is a right to”: the substance of a right to liberty is liberty; the substance of a right to healthcare is healthcare.45 The third conceptual component places a duty on other people to create or preserve effective institutions that enable people to enjoy the substances of their rights. It is not enough, according to Shue, that no one at the moment is depriving anyone of the substance of their rights.46 The upshot is that scarcity is a factor that must be taken account of with respect to all rights, since the duty to create or preserve effective institutions that enable people to enjoy the substances of their rights requires services and resources. The scarcity “objection” applies to the right-libertarian’s favored set of rights as well.

In thinking about Shue’s analysis it is worth bringing up the distinction mentioned in Section B between correlative duties and implied duties. Recall that correlative duties have the same content as the rights they correspond to. The correlative duty of the right not to be

44 Shue, Basic Rights, 13.
46 Ibid., 16.
physically assaulted is the duty others have not to physically assault you. Implied duties are duties generated by rights that do not have the same content. For instance, the duty to protect people from physical assault might be an implied duty generated by the right not to be physically assaulted. In Shue’s language, the duty not to deprive someone of the substance of her right is a correlative duty. Implied duties are generated by Shue’s third component of a right, which places a duty on others to create and preserve institutions that enforce compliance with correlative duties.

Of course the implied duties grounded in Shue’s third component of a right require scarce resources for their fulfillment. But that’s not the case for correlative duties, at least not for those that correspond to negative rights. And recall, given our definition of a rights-conflict, it is correlative duties that we are concerned with. Only if two or more correlative duties cannot be simultaneously discharged will we say that the relevant rights conflict.

Not all rights-theorists agree that there are duties generated by rights besides their correlative duties. And if they do think there are implied duties, they are not all agreed on what those duties are. A consistent right-libertarian does not think that there are any implied positive duties that correspond to the negative rights she favors. That means the consistent right-libertarian rejects the third component of Shue’s analysis of a right.

In defense of his third component, Shue says:

Perhaps if one were dealing with some wilderness situation in which individuals’ encounters with each other were infrequent and irregular, there might be some point in noting to someone: I am not asking you to cooperate with a system of guarantees to protect me from third parties, but only to refrain from attacking me yourself.47

47 Ibid., 38.
But for pretty much everyone, Shue goes on to argue, there is no point in merely insisting that others not assault you:

[I]n an organized society, insofar as there were any such things as rights to physical security that were distinguishable from some other rights-to-be-protected-from-assaults-upon-physical-security, no one would have much interest in the bare rights to physical security…A demand for physical security is not normally a demand simply to be left alone, but a demand to be protected against harm. It is a demand for positive action, or, in the words of our initial account of a right, a demand for social guarantees against at least the standard threats.48

The problem with Shue’s response is that it only shows that we have an interest in setting up institutions for protecting our rights to physical security. Because of such an interest, any distinction between a right to physical security and a right to be protected against violations of one’s physical security won’t have any effect in public policy.49 Shue’s response does not demonstrate that there is no conceptual distinction to be made between a right to physical security and a right to be protected against violations of physical security. Nor has he demonstrated, against the consistent right-libertarian, that the latter right exists.50

But, practically speaking, although it is possible for negative rights not to require scarce resources to see that they are respected, in the actual world this is not so. As Raymond Plant observes: “[B]ecause the appropriate amount of forbearance may not be present…protecting negative rights will require legislation, sanctions, police, law courts, and prisons, and these are not costless.”51 Granted, in a counterfactual world of saints everyone’s negative rights could be secured, cost-free. But the welfare rights advocate could just as easily argue that in a

48 Ibid., 38-39.
50 Ibid.
counterfactual world without material scarcity, everyone’s welfare rights could be secured, cost-free. Therefore, appealing to counterfactual worlds does the right-libertarian no good.

Now it is true that in the actual world, the enforcement of negative rights does require resources, and the motivation to respect these rights is often (unfortunately) in short supply. But if the scarcity of resources for enforcement leads to rights-conflicts, those are not rights-conflicts involving negative rights, but rather positive rights to enforcement of one’s negative rights. Second, the scarcity of motivation to respect negative rights is a problem that leads to rights-violations, not rights-conflicts. How can that be a problem for the right-libertarian’s theory? After all, this type of scarcity is only present in worlds where people are not acting in accordance with the way the right-libertarian’s theory says they should. The scarcity objection, on the other hand, claims that everyone can be acting according to the way the welfare rights advocate says they should and scarcity will still pose a problem - the problem being, of course, that rights will conflict.

Both attempts to show that scarcity is a problem for negative rights fail because they are insufficiently attentive to the content of the negative rights being considered. They are also insufficiently attentive to the distinction between correlative duties and implied duties.

The same problem occurs when appeals are made to trolley cases in order to argue that negative rights can conflict. Take for example a trolley scenario presented by Frances Kamm:

“Suppose an agent has to send a deadly trolley either down track A or down track B. Joe is on one track and Jim is on the other. It seems that each has a negative right not to be killed, and the agent has to decide whether to do what will certainly kill Joe or certainly kill Jim.”

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takes this to be an example of a conflict between Joe’s negative right not to be killed and Jim’s negative right not to be killed.

Kamm, I believe, is too hasty in reaching that conclusion.\textsuperscript{53} If the agent is a bystander, then it is possible for the agent to comply with both of her duties correlative to the negative rights of Joe and Jim. Those duties are the duty not to kill Joe and the duty not to kill Jim. By doing nothing, the agent fulfills both duties. If there is any duty the agent is guilty of violating, it is an implied, \textit{positive} duty to protect people from dying. So, if anything, Kamm’s scenario presents a conflict between a negative right and a positive right.

In the standard trolley case the agent is a bystander. Imagine, however, a different trolley case where the agent is the driver of the trolley car and has a choice between killing Joe and killing Jim. If the trolley car driver is not morally responsible for the situation, then the driver’s situation is no different than the bystander’s. If, however, she is morally responsible, then she has already violated her duty not to kill Joe or Jim. Prior to violating that duty it was possible for her to respect the negative rights of both Joe and Jim.

The \textit{tu quoque} response to the scarcity objection, therefore, fails. It is not true, either as a conceptual point or a practical point, that scarcity is a problem for the right-libertarian’s favored set of negative rights. Some other type of response to the scarcity objection must be found. In the next section I will discuss the type of response I do think is promising.

E. Specificationism and Generalism

As I said in the introduction, presenting what I think is the most promising response to the scarcity objection necessitates delving into the debate over the stringency of moral rights.

\textsuperscript{53} My criticisms of Kamm’s example are the same as those provided by Preda. See Preda, “Conflicts of Rights?” 682.
Again, within that debate, two views have emerged: specificationism and generalism. In what follows, I will explain how these approaches work and how a welfare rights advocate can use them in responding to the scarcity objection.

Specificationism and generalism are best explained by looking at the kind of case these theories are supposed to handle. Suppose that you have been lost in the woods and have not had anything to eat in several days. You come upon my cottage which I visit now and then, but am not at currently. Desperate for food you manage to break into my cottage and find food which you proceed to consume. Now most of us would say that I have a property right in my cottage.

And what is a property right in something if not a right to exclude others from using that thing? On the other hand, most of us would say it is perfectly permissible for you to enter my cottage and eat my food, especially in light of the fact that you had not eaten in several days. But then we seem to arrive at the following set of inconsistent statements:

1. I have a property right in my cottage.
2. If I have a property right in my cottage, then you are not permitted to break into my cottage.
3. You are not permitted to break into my cottage.
4. You are permitted to break into my cottage.

Specificationism and generalism are meant to erase the contradiction. The way the specificationist does that is by specifying in more detail the property right I have in my cottage. When we thoroughly specify what my property right in my cottage includes, we see that it does

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54 The scenario that follows is a slightly modified version of the famous cabin scenario described by Joel Feinberg. See Joel Feinberg, “Voluntary Euthanasia and the Inalienable Right to Life,” *Philosophy and Public Affairs* 7 (1978): 102. The scenario does not involve a conflict between welfare rights, but my aim here is only to explain how specificationism and generalism work. Later in this section I will explain how specificationism and generalism can be used to defend welfare rights against the scarcity objection.
not include within its bundle of claims a claim against you, or anyone else similarly situated, breaking into my cottage. My property right in my cottage is more precisely stated as “A right to the exclusive use of the cottage, except in cases A, B, C, D…” (where one of those cases is a case like yours). And the same goes for any right. The lesson to take home is that a person’s rights only appear to be simple when, in fact, they are much more complex. Phrases like “My right to life,” “My right to free speech,” and “My right over my cottage” are really shorthand for more complex and lengthily worded entitlements.55

Generalism, on the other hand, says my property right in my cottage does amount to the right to its exclusive use, but in this scenario you are permitted to break into it. The generalist’s explanation for this is that rights don’t entail all-things-considered oughts, rather, they entail pro tanto obligations, which may be outweighed by other considerations (i.e. your starving belly).56 When you break into my cottage, the generalist says that you have infringed my right, but you have not violated it. A rights-infringement occurs when a person does not discharge her pro tanto obligations entailed by a right and she is morally justified in not doing so (because the balance of moral reasons counts against discharging those obligations). A rights-violation occurs when a person does not discharge her pro tanto obligations entailed by a right, and she is not morally

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justified in doing so. If you had broken into my cottage and eaten my food, not because you were starving, but because of the thrill you get from burglary, then you would have violated my property right in my cottage, as opposed to infringing it.

At first the difference between these two views might seem merely semantic. But if we look at why some philosophers prefer one approach to the other, real differences emerge.

Specificationists argue that their view, unlike generalism, can explain the advantage having a right provides the rightholder. On the generalist’s view, a right can be infringed in light of overriding considerations. On the specificationist’s view, rights cannot be infringed - what the generalist refers to as infringements are already built into the content of the right. Whatever the content of the right, the right necessarily generates an all-things-considered ought. This feature of a right is what explains the advantage it provides a rightholder. Another way to put it is that this feature explains why rights are so important; why so many philosophers are prone, along with Ronald Dworkin, to describe rights as “trumps.”

Generalists, however, lodge several objections to the specificationist. For instance, specificationism has been criticized for leading to ignorance about what our rights are, because it will be difficult to know how to fill in all of their content. Others say that specificationism strips rights of their ability to explain the permissibility or impermissibility of an action, because it appears on the specificationist account that we cannot determine what the content of a right is until we know what actions are permissible or impermissible – again, until we have filled in all


of its content. Finally, it has been argued that the specificationist cannot explain why it is appropriate, in cases like our cottage scenario, for you to compensate me (or even just offer an explanation) for breaking into my cottage if no right of mine has been infringed. All the reasons for and against either of these two views cannot be rehearsed here. I mention some of them only to give the reader some insight into the differences between them.

How might these views help the welfare rights advocate respond to the scarcity objection? If the welfare rights advocate endorses generalism, then your right to resource or service x does not entail an all-things-considered ought, and my right to resource or service x does not entail an all-things-considered ought - each of our rights entail only pro tanto obligations. Certain considerations might make it the case that you ought to be provided with x and not me, or vice versa. Perhaps a coin should be tossed or, as the case may be, neither of us should be provided with x.

If the welfare rights advocate endorses specificationism, she can argue that in the alleged context where your right to resource or service x conflicts with my right to resource or service x, we only need to specify further what you and I have a right to in order to see that our rights do not, in fact, conflict. One way of doing this, proposed by Andrew Melnyk and Katherine Eddy, is to “conditionalize” welfare rights: each person’s right to resource or service x is conditional on there being enough of x so that each person can be provided with it. In this sense, scarcity is actually built into the framing of the right. As Andrew Melnyk explains:


We can conditionalise positive rights – formulate them so that they are had only if some condition is satisfied – and thus make them in the appropriate sense universal i.e. had by all. We could, for instance, characterise the right to a welfare minimum as the right, if one is poor, to receive resources sufficient to satisfy basic physical needs, given of course, that there are enough rich people around. And this conditionalised right could be held by every person.

One might argue that this would be a suicidal move on the part of the advocate of universal welfare rights. Imagine a world that has achieved very little economic development, so that many people are unable to meet their basic needs, regardless of any redistribution that could be accomplished. On the conditionalized interpretation of welfare rights proposed by Melnyk and Eddy, everyone’s welfare rights are respected in this world. What could be troubling for the welfare rights advocate is that, were she in this world, she could not appeal to welfare rights as a reason to strive for a level of development where all people could have their basic needs met.

Now maybe this is not such a troubling implication. In worlds where there is enough of resource X to satisfy everyone’s right to X, and some people are without X, Melnyk and Eddy’s proposal gives the welfare rights advocate room to complain. Unfortunately this is all very cursory, but at the very least, conditionalizing welfare rights is a way to avoid the charge of incoherence, which is what the scarcity objection alleges the believer in welfare rights is guilty of.

F. The Right-Libertarian’s Response

The right-libertarian objector to welfare rights might respond that a set of rights which only included rights to non-interference would not need to avail itself of the theoretical tools of

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62 Andrew Melnyk, “Is There a Formal Argument Against Positive Rights?” Philosophical Studies 55 (1989): 206. And as Eddy explains: “[I]f A only has a right to what the state can reasonably be expected to provide to her, and to others relevantly like her, then the fact that her right is to a good does not lead obviously to a problem of joint fulfillment because we have already taken the availability of the good into account in our framing of the right; thus the good, from the perspective of A’s entitlement, is no longer scarce”; Katherine Eddy, “Welfare Rights and Conflicts of Rights,” Res Publica 12 (2006): 354.
either specificationism or generalism. The right-libertarian can happily maintain that our moral rights are general, thus avoiding some of the alleged pitfalls of specificationism outlined above, such as the worry concerning ignorance of the content of our rights and the worry over the resulting lack of explanatory power on the part of rights. The right-libertarian can also happily maintain that rights are absolute, thus being able to account for the special advantage rights provide us.

But the combination of generalism and absolutism has implausible implications. For instance, the combination implies that it would be morally unacceptable for you to break into my cottage even if it was necessary to do so in order to prevent the destruction of a nearby city. This would be the case because my property right would not be specified by any exception clauses, nor would it be overridable because it is absolute. We could imagine countless similar scenarios involving catastrophic losses of life, where a non-specificationist-absolutist position would lead to implausible moral verdicts.

It is no doubt because of the wish to avoid such implausible moral verdicts that most philosophers within the right-libertarian tradition reject the combination of non-specificationism and absolutism. Robert Nozick famously rejects absolutism when he concedes that it would be acceptable to violate side-constraints (i.e. rights) when doing so would be necessary to avoid “catastrophic moral horror.”63 And Jan Narveson refers to the view that rights are infinitely stringent as “preposterous.”64

Some of these views are worth looking at in more detail. Take, for instance, Randy Barnett’s view on the stringency of moral rights. According to Barnett, the rationale for natural

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64 Narveson, *The Libertarian Idea*, 55.
rights is that “given certain facts about human beings and the world in which they live, if we want persons to be able to pursue happiness, peace, and prosperity while living in society with others, then we should respect certain rights.” When these facts no longer hold (i.e. in an emergency situation) respect for natural rights is no longer morally binding. “We might say that ordinarily one has a moral duty to adhere to the requirements of justice, but under emergency life-threatening situations, this moral duty is overridden by one’s moral duty to preserve oneself.”

When Barnett says that in an emergency life-threatening situation, the moral duty to adhere to the dictates of justice is overridden by the moral duty to preserve oneself, he sounds an awful lot like a generalist. And when discussing the morality of an injured hiker breaking into a cabin in order to take shelter, Barnett argues that the hiker owes the cabin owner compensation. This also makes Barnett sound like a generalist.

A similar view is taken by Douglas Rasmussen and Douglas J. Den Uyl. Rasmussen and Den Uyl argue that rights only apply in situations where “human social and political life is possible.” Emergency situations are situations where social and political life is *not* possible. Emergency situations include things such as “earthquakes, fires, floods, famines, shipwrecks, and so forth.” In such situations social and political life is impossible because it is “impossible for human beings to live among each other and pursue their well-being.”

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66 Ibid., 171.
67 Ibid., 171-72.
68 Rasmussen and Den Uyl, *Liberty and Nature*, 144.
69 Ibid., 145.
70 Ibid., 146.
of individuals in such situations are to return to a situation where it is possible for them to flourish. For this reason, Rasmussen and Den Uyl believe it is morally permissible for a starving person to take a rich person’s loaf of bread, and it is morally permissible for starving people in the midst of a famine to “break into the grain silos of the rich.”\(^7^1\) I take it that in our cottage scenario Rasmussen and Den Uyl would say that you are permitted to break into my cottage in order to feed yourself.

Unlike Barnett, it is harder to classify Rasmussen and Den Uyl as either generalists or specificationists. The reason is that Rasmussen and Den Uyl believe that rights-talk is simply not applicable in an emergency situation. In contrast, a generalist would say that rights still exist in this context, but they are overridden. A specificationist would also say that rights exist in this context, but their content is specified so as to include reference to emergency situations. I must confess that I do not fully understand what Rasmussen and Den Uyl mean when they say that individual rights “do not apply” in the context of an emergency situation, other than to say that they may be morally overridden or that their content does not include freedom from certain interferences in emergency situations. Regardless, if their view is a genuine alternative to generalism and specificationism, it seems that their view is open to the welfare-rights advocate to adopt. The welfare-rights advocate can say that in situations where there is not enough of the relevant resources or services, welfare rights “do not apply.”\(^7^2\)

Regardless of how exactly their views are classified, we see that among prominent right-libertarians, rights are not understood as both general and infinitely stringent.

\(^7^1\) Ibid., 149.

\(^7^2\) Such a strategy does raise the same issues, discussed on p. 32, as the conditionalized welfare rights strategy.
G. Conclusion

In this chapter we’ve looked at a strategy the right-libertarian could take in response to the destitution objection. That strategy takes the form of a counter-objection. This counter-objection, the scarcity objection, says that welfare rights cannot exist because it is possible for welfare rights to conflict. I argued that two common responses to the objection – that rights conflicts are unproblematic, and that the right-libertarian’s favored rights are also subject to problems involving scarcity – have flaws which make it desirable to find a different way of responding to the objection.

A promising way of responding to the scarcity objection, I argued, is provided by the resources of specificationism and generalism. If the welfare rights advocate goes the specificationist route, she can argue that if we carefully specify what each person’s welfare right entitles them to, we will see that a situation of scarcity does not lead to a conflict between people’s welfare rights. Alternatively, if she goes the generalist route, then she can argue that, in a situation of scarcity, there is no conflict between people’s welfare rights, because rights only entail pro tanto obligations – certain considerations may favor providing one person with the relevant resources as opposed to another. It may even be acceptable to flip a coin to decide who is provided with the relevant resources.

Specificationism and generalism not only provide tools for the welfare rights advocate. The two views also provide tools the right-libertarian needs if she is to present an account of rights that doesn’t have implausible implications for what is required or forbidden in emergency situations. So the tools that allow the welfare rights advocate to overcome the scarcity objection are tools the right-libertarian must also use.
The scarcity objection is an attempt to dislodge the notion that justice must allow for government assistance to the poor. In the next two chapters I look at attempts to show that right-libertarianism can account for that notion.
CHAPTER THREE - STERBA ON RIGHT-LIBERTARIANISM AND WELFARE RIGHTS

A. Introduction

James Sterba argues that right-libertarianism, “contrary to what its defenders usually maintain, requires a right to welfare.” He offers two arguments for this claim. The first argument appeals to the “ought”-implies-“can” principle (OIC), and the second appeals to a model of moral theorizing Sterba calls “Morality as Compromise” (MC). In what follows, I summarize each of these arguments and evaluate whether or not they successfully demonstrate that right-libertarianism entails welfare rights. I argue that in each case the argument is not successful, for two reasons. The first reason is that they rest on a mischaracterization of right-libertarianism. The second is that no right-libertarian unfriendly to welfare rights would accept, or would be compelled to accept, their crucial premises.

B. Sterba’s Characterization of Right-Libertarianism

According to Sterba, right-libertarians, as their name suggests, fundamentally value liberty. Sterba ascribes to right-libertarians two conceptions of liberty: the “want” conception

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73 Sterba, *From Rationality to Equality*, 100. It should be noted that Sterba does not use the expression “right-libertarianism,” but rather only uses the expression “libertarianism.” He is referring to the same view, however. What he has in mind falls under the label “hard-line libertarianism.” As explained at the end of chapter one, this label refers to a right-libertarianism that rejects the view that justice must accommodate government assistance for the poor. This is in contrast to “moderate right-libertarianism,” a view that does not reject the idea that justice must accommodate government assistance for the poor. In this chapter I drop the qualifiers “hard-line” and “moderate” except for clarification in a footnote later.

and the “ability” conception. According to the want conception of liberty, “[l]iberty is being unconstrained by other persons from doing what one wants.”\(^7\) If someone wants to criticize her political leaders, but is constrained from doing so by the threat of jail, then she is not at liberty to criticize her political leaders. The ability conception of liberty, on the other hand, says that “[l]iberty is being unconstrained by other persons from doing what one is able to do.”\(^6\) The ability conception captures all the liberties determined by the want conception, but also captures liberties not determined by the want conception. Take, for example, the familiar contented slave who has no desire to leave his master. Given that he has no desire to leave his master, the opportunity to leave, under the want conception, does not count as a liberty lost. Whereas under the ability conception, assuming the slave would be able to leave his master were his master not to constrain him, the opportunity to leave does count as a liberty lost.

It is not important for Sterba’s purposes which conception right-libertarians really endorse.\(^7\) What is important is how both conceptions, and the right-libertarian interpretation of them, restrict what counts as a constraint on liberty. Both conceptions restrict the constraints to those posed by other persons. Natural forces that prevent you from doing things do not count as constraints on your liberty.\(^8\) Furthermore, constraints by other persons only include acts of commission, not acts of omission. This means I can only constrain your liberty to φ by taking active steps to prevent your φ-ing. Merely forgoing helping you to φ does not count as constraining your liberty to φ.

\(^7\) FRE, 101; MWWI, 36; ALEC, 8.

\(^6\) FRE, 102; MWWI, 37; ALEC, 9.

\(^7\) Sterba does, however, think the ability conception is superior. See FRE, 102; MWWI, 37-38; ALEC, 10.

\(^8\) FRE, 101-02; MWWI, 36; ALEC, 8.
Given this way of understanding liberty, Sterba says that right-libertarians “go on to characterize their political ideal as requiring that each person should have the greatest amount of liberty morally commensurate with the greatest amount of liberty for everyone else.” From this ideal, right-libertarians derive more specific rights, such as a right to life, a right to free speech, a right to freedom of association, and, importantly, a right to private property. In keeping with the right-libertarian’s understanding of constraints, each of these rights is understood to forbid others from interfering with the right-holder in certain ways (e.g. taking the right-holder’s life, interfering with the use of her property). These rights do not obligate others to assist the right-holder in any way (e.g. provide lifesaving medical treatment, provide her with property to use). In fact, and this is most important of all, right-libertarians do not take their ideal to entail any rights that generate obligations of assistance to the right-holder, which would include welfare rights.

However, as noted, Sterba aims to demonstrate that right-libertarianism does entail welfare rights.

C. Sterba’s “Ought”-Implies-“Can” Argument

Sterba’s OIC argument is as follows:

1) In the case of a severe conflict of interest between the liberty of some person or set of persons x and the liberty of some person or set of persons y, it ought to be determined, if possible, whose liberty is morally enforceable and whose liberty ought to be limited.

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79 FRE, 103.

80 What these last two sentences say does not necessarily apply to a moderate right-libertarian. But Sterba (probably rightly so) takes the vast majority of right-libertarians to be hard-liners. And these are the right-libertarians Sterba is engaged in a dialectic with over what right-libertarian premises entail.
2) Any determination of whose liberty is morally enforceable and whose liberty ought to be limited must satisfy the OIC.

3) In a severe conflict of interest between the liberty of the poor and the liberty of the rich, any determination of whose liberty is morally enforceable ought to satisfy the OIC. (From 1 and 2.)

4) The only determination of whose liberty is morally enforceable (with respect to the case in premise 3) that satisfies the OIC is one that recognizes the liberty of the poor as morally enforceable and that the liberty of the rich ought to be limited.

5) In a severe conflict of interest between the liberty of the poor and the liberty of the rich, the liberty of the poor is morally enforceable and the liberty of the rich ought to be limited. (From 1, 3, and 4.)

As already explained, Sterba takes “liberty” to mean being unconstrained by other persons from doing what one wants to do or is able to do. A severe conflict of interest is one, according to Sterba, where some party to the conflict’s life is at stake or their ability to meet their basic needs is at stake. So, if by exercising my liberty to φ, this would conflict with your liberty to take steps to sustain your life or meet your basic needs, then we have a severe conflict of interest between my liberty and your liberty. In a severe conflict of interest it ought to be determined which person’s, or group of persons’, liberty is “morally enforceable.” By that phrase, Sterba means justifiably protected by the threat of physical force.

The second premise says that whatever resolution is morally enforceable must satisfy the OIC. The OIC, traditionally understood, states that if I lack the ability to φ, then I am not morally

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81 In order to avoid cumbersomeness, I have chosen to substitute “liberty of the rich” and “liberty of the poor” for “the liberty of the rich to use their surplus possessions for luxury purposes” and “the liberty of the poor not to be interfered with when taking from the surplus resources of the rich what is necessary to meet their basic needs.” According to Sterba, “Basic needs, if not satisfied, lead to significant lacks or deficiencies with respect to a standard of mental and physical well-being. Thus, a person’s needs for food, shelter, medical care, protection, companionship, and self-development are, at least in part, needs of this sort”; ALEC, 13n.14. Although he is not explicit about this, I take Sterba to mean by “surplus possessions” possessions one has in addition to those one has for meeting one’s basic needs.

82 ALEC, 16n.17; JFHN, 48.

83 FRE, 99; MWWI, 35.
required to φ. So if Larry is unable to make it to a baseball game that he promised to attend with Jeff because, through no fault of his own, Larry’s car broke down on his way to the game, then Larry is not morally required to attend the baseball game with Jeff. Sterba, however, defines the OIC in an expanded way so as to rule out not only what people are unable to do but also “what would involve so great a sacrifice or restriction that it is unreasonable to ask them, or in cases of severe conflict of interest, unreasonable to require them to abide by.”

Sterba draws out the type of case brought up in premise three in the following way. Suppose, he says, that we have a situation where the rich have more than enough goods and resources to satisfy their basic needs, whereas the poor do not have enough goods and resources to satisfy their basic needs. The poor lack these things despite all attempts to acquire them that are deemed legitimate by right-libertarians. The poor would be able to satisfy their basic needs if they were to take some of what the rich have (loaves of bread, for instance, which the rich have plenty of). Thus we have a severe conflict of interest between the liberty of the poor and the liberty of the rich. As such, given premise one, it must be determined whose liberty is morally enforceable, i.e. whose liberty may be justifiably protected with the threat of coercion. And any such determination, given premise two, must satisfy the OIC.

Applying the OIC, Sterba reasons that it would be unreasonable to require the poor to give up their liberty to take from the surplus goods of the rich what is necessary to satisfy their basic needs. Such a moral requirement would be unreasonable because it would mean in certain circumstances that the poor must sit back and starve to death. On the other hand, it would not be unreasonable to require the rich to give up the liberty of using their surplus goods for the sake of

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84 ALEC, 15. See also FRE, 108; MWWI, 42; JFHN, 46.
the liberty of the poor. The only determination of whose liberty is morally enforceable that satisfies the OIC is one which favors the poor, which is just what premise four says. And finally, from premises one, three, and four, Sterba derives the conclusion that the liberty of the poor in this conflict situation ought to be morally enforceable. This gives the poor what Sterba calls a negative welfare right. It is a right that protects “the liberty not to be interfered with (when one is poor) in taking from the surplus possessions of the rich what is necessary to satisfy one’s basic needs.”

Sterba goes on to provide an additional argument for why, once it has been granted that the poor have this negative welfare right, institutions ought to be set up that, in effect, grant positive welfare rights to the poor, and are able to satisfy these rights through taxation. I don’t discuss this argument because, as we shall see, I think there are enough problems with Sterba’s attempts to demonstrate that libertarianism entails any negative welfare rights that it is unnecessary to evaluate an additional argument which assumes that that demonstration was successful.

D. Sterba’s “Ought”-Implies-“Can” Argument Evaluated

In order to evaluate whether or not Sterba’s OIC argument demonstrates that welfare rights follow from right-libertarian premises we need to clear up an ambiguity concerning the expression “right-libertarian premises.” The expression could refer to premises that are distinctly

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85 FRE, 110; MWWI, 44; ALEC, 17-18; JFHN, 47.
86 FRE, 118; MWWI, 51; ALEC, 26; JFHN, 55.
87 FRE, 111.
88 FRE, 118; MWWI, 51-52; ALEC, 26-27; JFHN, 55-56.
right-libertarian, meaning non-right-libertarians would reject them. Alternatively, the expression could refer to premises that right-libertarians would not object to, but neither would non-right-libertarians.

First, let’s look at whether or not the OIC argument demonstrates that welfare rights are justified on distinctly right-libertarian premises. Recall that Sterba says right-libertarians define liberty according to either the want or ability conceptions of liberty, and that they only include persons’ acts of commission as constraints on liberty. This characterization misleadingly suggests that anytime an act of commission prevents another from doing what she wants to do, or would otherwise be able to do, this a cause of concern for right-libertarians. That is not the case. What the right-libertarian is concerned about is that each individual be free to do what she wants or is able to do with what is rightfully her own: her body and her property. The right-libertarian is not concerned when a person is constrained from doing what she wants to do or would otherwise be able to do with another person’s body or property, when that other person has not offered consent.

Sterba himself appears susceptible to the false impression that every interference is a cause of concern for the right-libertarian. For instance, when it comes to describing the scenario between the rich and the poor as a conflict of liberties, Sterba says the following:

[Right-libertarians] want to deny that the poor have this liberty. But how can they justify such a denial? As this liberty of the poor has been specified, it is not a positive liberty to receive something but a negative liberty of noninterference… But when [right-libertarians] see that this is the case, they are often genuinely surprised, for they had not previously seen the conflict between the rich and the poor as a conflict of liberties.89

89 FRE, 106.
Sterba’s remarks suggest that in granting that the liberty of the poor is at stake, the right-libertarian is making some kind of concession. But all the right-libertarian is “conceding” is that were the rich to do what they want to do or are able to do, this would prevent the poor from doing what they want to do or would otherwise be able to do, (and vice versa). That would be a significant concession only if every interference with what someone wants to do or would otherwise be able to do is a concern for the right-libertarian. It’s not.

Sterba claims that right-libertarians ascribe to each individual a right to the greatest amount of liberty compatible with the like liberty of all. This dispels the false impression that right-libertarians are concerned about all interferences (although, as we’ve seen, Sterba is still susceptible to this false impression). Nonetheless, the claim is misleading in its own right. It suggests that right-libertarians advocate somehow measuring the amount of actions each individual is at liberty to perform (on either the want or ability conceptions) and then making sure everyone has the largest amount compatible with others having the same amount. But right-libertarians are not concerned about the quantity of actions people are free to perform. Rather, their concern is with the sphere of a person’s liberty: within the sphere of one’s body and property, a person ought to be free to do whatever she likes.90

Because of Sterba’s misleading characterization of right-libertarianism, there is nothing distinctly right-libertarian going on with the OIC argument. Perhaps the OIC argument could still be used to demonstrate that welfare rights are derivable from premises that right-libertarians

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90 In fairness to Sterba, it is easy to see why he would think that right-libertarians hold the view that each individual is entitled to the greatest quantity of liberty compatible with the same quantity of liberty for all, because this is the way right-libertarians on occasion characterize their view. For instance, Jan Narveson, in a book co-written with Sterba (ALEC), says, on p. 130, that “We are all entitled to maximum compatible liberty.” Nonetheless, a closer analysis reveals that language like this is misleading, and that right-libertarians are really concerned with whether people are free from interference with the use of their bodies and property, and not with the quantity of actions people are free to perform.
would not reject. In order to see whether or not that is the case, we should focus on premises two and four of the argument, since those are the crucial ones.

Premise two states that any determination of whose liberty is morally enforceable must satisfy the OIC. On the face of it, this seems uncontroversial. But recall that Sterba is relying on a non-traditional construal of that principle. What makes it non-traditional is that Sterba amends the OIC to include the notion that great sacrifices or restrictions are ruled out. To be clear, Sterba does not mean that great sacrifices, as such, are ruled out, but great sacrifices by some for the sake of trivial gains by others.91 I’ll call this amendment to the OIC the benefits/burdens principle.

The benefits/burdens principle says that justice requires us to compare the sizes of the benefits and burdens to the competing parties in any situation involving a severe conflict of interest. This view of justice is antithetical to right-libertarianism. According to right-libertarians, persons’ self-ownership and property rights are worthy of respect, regardless of the distribution of benefits and burdens in any particular situation.

This brings us to premise four. Premise four says that the only determination of whose liberty is morally enforceable that satisfies the OIC is one that recognizes the liberty of the poor as morally enforceable (as opposed to the liberty of the rich). I see no reason why a right-libertarian would reject premise four if we are assuming, as Sterba is, that the poor are only taking what they need to meet their basic needs and not taking everything the rich possess. But

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91 “Notice…that it is not the mere size of the sacrifice required of the poor that is objectionable about the possibility of favoring the liberty of the rich over the liberty of the poor because sometimes morality does require great sacrifices from us…Rather, what is objectionable about this possibility is the size of the sacrifice that the poor would be required to bear compared to the size of the benefit that would otherwise be secured for the rich.” FRE, 113.
since right-libertarians reject premise two, premise four doesn’t matter, Sterba’s conclusion doesn’t follow.

Because there is nothing distinctly right-libertarian about any of the premises of the OIC argument, and because right-libertarians would reject one of the argument’s crucial premises, we ought to conclude that Sterba’s OIC argument fails to demonstrate that welfare rights are derivable from the right-libertarian’s own values. But where Sterba’s OIC argument fails, perhaps his MC argument succeeds.

E. Sterba’s “Morality as Compromise” Argument

Sterba’s MC argument is as follows:

1) In the case of a severe conflict of interest between the liberty of some person or set of persons x and the liberty of some person or set of persons y, it ought to be determined, if possible, whose liberty is morally enforceable and whose liberty ought to be limited.

2) In the case of a severe conflict of interest between the liberty of some person or set of persons x and the liberty of some person or set of persons y, if x has a moral reason not to restrict the liberty of y (and y does not have a moral reason not to restrict the liberty of x), then y’s liberty is morally enforceable and x’s liberty ought to be limited. (From 2.)

3) In the case of a severe conflict of interest between the liberty of the poor and the liberty of the rich, if the rich have a moral reason not to restrict the liberty of the poor (and the poor do not have a moral reason not to restrict the liberty of the rich), then the poor’s liberty is morally enforceable and the rich’s liberty ought to be limited. (From 2.)

4) In the case of a severe conflict of interest between the liberty of the poor and the liberty of the rich, the rich have a moral reason not to restrict the liberty of the poor (and the poor do not have a reason not to restrict the liberty of the rich).

5) In the case of a severe conflict of interest between the liberty of the poor and the liberty of the rich, the liberty of the poor is morally enforceable and the liberty of the rich ought to be limited. (From 1, 3, and 4.)
Premise one in this argument is the same as premise one in the OIC argument and the type of case described in premise three is the same case as that described in premise three of the OIC argument. So what needs to be explained is what Sterba says on behalf of premises two and four. I will start with what he says on behalf of premise four.

Sterba’s defense of premise four rests on his model of moral theorizing he dubs “Morality as Compromise.”\(^\text{92}\) The MC model sees morality as a non-arbitrary compromise between egoism and altruism. Egoism says that “(e)ach person ought to do what best serves his or her overall self-interest”; the only reasons we have for action are self-interested reasons.\(^\text{93}\) Altruism says that “(e)ach person ought to do what best serves the overall interest of others”; the only reasons we have for action are altruistic reasons.\(^\text{94}\) Sterba argues that if we were to assume that the only reasons that are relevant to rational choice are self-interested reasons, we would beg the question against the altruist. Similarly, if we were to assume that the only reasons that are relevant to rational choice are altruistic reasons, we would beg the question against the egoist. So in order not to beg the question against either one, we must grant the \textit{prima facie} relevance of both altruistic and self-interested reasons.\(^\text{95}\)

With respect to reasons, there are two kinds of cases. In the first case there is \textit{no} conflict between our self-interested and our altruistic reasons. In this case it is obvious that the rational thing to do is to act on both reasons. In the second case the relevant reasons conflict. Here three solutions are possible. The first solution is to always give priority to self-interested reasons over

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\(^{92}\) \textit{JFHN}, 32.

\(^{93}\) \textit{FRE}, 33.

\(^{94}\) Ibid., 34.

\(^{95}\) Russ Shafer-Landau argues that Sterba really means “\textit{pro tanto},” not “\textit{prima facie},” and that this lands him into trouble. See \textit{MWWI}, 113.
conflicting altruistic reasons. The second solution is to always give priority to altruistic reasons over conflicting self-interested reasons. The third solution is to require some kind of compromise.

The third solution, Sterba argues, is what is rationally required. This is because the first and second beg the question against altruism and egoism respectively. A non-arbitrary compromise will give priority to the highest ranked reasons in each category. According to Sterba, we can come up with a ranking of self-interested reasons and a ranking of altruistic reasons that might apply to someone. What determines the ranking for each set of reasons, self-interested and altruistic, is the extent to which what a person has a reason to do promotes her overall interest or the overall interests of others, respectively. For example, if you have a self-interested reason to go out clubbing tonight and you have a self-interested reason to stay in and work on your book, then the latter reason will rank higher than the first if staying in and working on your book will promote your overall interest more so than going clubbing. Similarly, if you have an altruistic reason to mow your neighbor’s lawn and an altruistic reason to volunteer for a charity, then the latter reason will rank higher than the first if volunteering for a charity will promote the overall interests of others more so than mowing your neighbor’s lawn. When an altruistic reason ranks higher than a self-interested reason, it means that doing the thing you have an altruistic reason to do promotes the overall interests of others to a greater extent than doing what you have a self-interested reason to do promotes your overall interest.\(^96\)

With the assumption that self-interested and altruistic reasons can be ranked in the way just described, Sterba says: “Typically one or the other of the conflicting reasons will rank

\(^{96}\textit{FRE}, 43-44.$
significantly higher on its respective scale, thus permitting a clear resolution.” Moral reasons are the reasons that constitute a compromise. What this means is that in a conflict situation, if your self-interested reason ranks higher than your altruistic reason, your self-interested reason is your moral reason. But, if your altruistic reason ranks higher, then your altruistic reason is your moral reason. This is why Sterba refers to the model as “Morality as Compromise.”

How does Sterba apply this model to our scenario of the rich and the poor in order to determine whose liberty is morally enforceable? Imagine that R and P are our representative rich and poor persons respectively, and they find themselves in a severe conflict of interest of the kind already described. In this case R has a self-interested reason to prevent P from taking any of his possessions, but also has an altruistic reason to allow P to take from his possessions what P needs to satisfy P’s basic needs. P, on the other hand, has a self-interested reason to take what he needs from R in order to satisfy his basic needs, but also has an altruistic reason not to take anything from R. According to Sterba, R’s altruistic reason to allow P to take from R’s possessions what P needs to satisfy his basic needs ranks higher than his self-interested reason to prevent him from doing so. Therefore, R has a moral reason not to restrict P’s liberty to take from R what he needs to satisfy his basic needs. P, however, has a different ranking of reasons. His self-interested reason to take from R’s possessions what he needs to satisfy his basic needs ranks higher than his altruistic reason not to take anything from R. Therefore, P does not have a moral reason not to restrict R from using his possessions. And so we arrive, via Sterba’s MC model of moral theorizing, at premise four.

Sterba grants that at this point it has not been established that R could be justifiably forced to act on his altruistic reason. But, and this is what Sterba says on behalf of premise two,

97 ALEC, 101. See also FRE, 45; MWWI, 23; JFHN, 27.
an enforceable resolution is needed in this case because we have a severe conflict of interest
between the liberty of P to meet his basic needs and the liberty of R to meet his non-basic needs.

[W]hat does establish that R can be justifiably forced to act on that altruistic reason is that
we either have to enforce R’s low-ranking self-interested reason or to enforce his
conflicting high-ranking altruistic reason. Having no alternative but to enforce one or the
other of these conflicting reasons, it seems clear that we should enforce the high-ranking
altruistic reason of R that corresponds to the negative liberty of the poor not to be
interfered with in taking from the surplus of the rich what they require to meet their basic
needs.98

And so we see how Sterba arrives, via the MC model of moral theorizing, at the conclusion that
the poor have a negative welfare right not to be interfered with in taking from the rich what they
need to meet their basic needs.

F. Sterba’s “Morality as Compromise” Argument Evaluated

As with the OIC argument, there are two questions we can ask with respect to the MC
argument: 1) Does the MC argument demonstrate that welfare rights can be justified on premises
that are distinctively right-libertarian? 2) Does the MC argument demonstrate that welfare rights
can be justified on premises that right-libertarians would not reject? There is no need to dwell on
the first question. The answer is no, because the MC argument rests on the same
mischaracterization of the right-libertarian’s view as the OIC argument. So in this section we
will only need to focus on the second question.

As with the first argument, the crucial premises are the second and the fourth. Premise
two says that in the case of a severe conflict of interest between the liberty of two individuals (or

98 ALEC, 104. Sterba’s most recent version of the MC argument appears in FRE, 120-21. There Sterba
discusses the ranking of your liberties from most important to least important, and the ranking of the liberties of
others from most important to least important, rather than the rankings of egoistic and altruistic reasons. I’ve chosen
to focus on the argument he presents in ALEC, as opposed to the one presented in FRE because I believe the former
presentation of the argument is clearer than the latter with respect to how the conflict of liberties between the rich
and the poor is resolved by appeal to the MC model.
two sets of individuals) x and y, if x has a moral reason not to restrict the liberty of y, and y does not have a moral reason not to restrict the liberty of x, then y’s liberty is morally enforceable and x’s liberty ought to be limited. One might think that right-libertarians would reject premise two on the grounds that rights protect our performance even of actions that would be morally wrong to perform. So, although x may have a moral reason not to restrict the liberty of y (it would be morally wrong of x to restrict the liberty of y), that does not preclude x’s liberty from being morally enforceable as opposed to y’s. In the case of the rich and the poor, a right-libertarian could argue that the rich have a right to do what they want with their surplus possessions and they may exercise that right even if it means doing something they have a moral reason not to do.

But what premise two says is not inconsistent with the idea of a “right to do wrong.” Instead, premise two claims that if A’s liberty is morally enforceable, and B’s ought to be limited, then it must be the case that A has no moral reason not to restrict the liberty of B. But when B has a right to φ (even if that’s a “right to do wrong”), then A does have a moral reason not to restrict B’s liberty to φ. So there is no incompatibility between premise two and a “right to do wrong.” Therefore, the fact that rights can protect our performance of morally wrong actions is not grounds for rejecting premise two. As far as I can tell there are no other reasons a right-libertarian might have for rejecting it.

Let’s turn our attention, then, to premise four. Premise four says that i) the rich have a moral reason not to restrict the liberty of the poor, and ii) the poor have no moral reason not to restrict the liberty of the rich. But right-libertarians not already convinced of Sterba’s conclusion think that the poor do have a moral reason not to interfere with the liberty of the rich. So, even while accepting premise two, a right-libertarian could reject premise four. Doing so does mean

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rejecting the MC model of moral theorizing. However, as I will now explain, rejecting that model is the natural thing for right-libertarians to do.

One of the major flaws with Sterba’s MC model is that it only takes into account egoistic reasons and altruistic reasons. Many right-libertarians (who reject premise four) would take issue with this because they would argue that the reason the poor have not to take the possessions of the rich is not grounded in what is *good for* the rich (or the poor), and so is not an egoistic or altruistic reason. Rather, they would argue that the reason is that taking the possessions of the rich fails to show them the proper respect they are due as persons. I’ll call this a *respect-based* reason.

Also, a reason can be rooted in what is good for people without being an egoistic or an altruistic reason. A person can have a reason to do something good for someone, because, from an *impartial* point of view, it would be good. It makes no difference whether that person is *you* or not *you*. Some right-libertarians would argue that the poor have a reason not to take the rich’s possessions, because, from an impartial point of view, this would be best. These right-libertarians could say, for instance, that aggregate utility is promoted in the long run when everyone, including the poor, respects stringent rules regarding property.

It is important to understand that Sterba’s MC model is not equivalent to the consequentialist’s impartial point of view. One might be misled into thinking they are equivalent because the MC model has the implication that whenever you must choose between conferring a slight benefit on yourself versus conferring a large benefit on others, you ought to choose the latter option. However, there are major differences between the two views.

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100 Consequentialist-right-libertarianism is not a view one often finds (as far as I am aware). The only place where I am aware such a view is expressed is in Barnett, *The Structure of Liberty*, 23-24.
For instance, on the MC model, all your reasons reference you. Egoistic reasons are reasons you have to advance your interests. Altruistic reasons are reasons you have to advance the interests of people other than you. From the consequentialist’s impartial point of view, this is not the case. An impartial reason is a reason to advance a set of interests. It is not relevant whether they are your interests, the interests of others besides you, or both.

Second, the MC model, and the consequentialist’s impartial point of view, can lead to very different judgments about what one ought to do. To illustrate, suppose somehow you are in a position to save five million people’s lives, but in order to do so, you must sacrifice your own life. (To keep it simple, assume you will only have to sacrifice your own life.) The MC model would generate the judgment that you are permitted to take up either of the options available to you. Why? Because the egoistic reason “it would save your life” and the altruistic reason “it would save the lives of five million others” are, it is plausible to imagine, equally ranked on their respective scales. But from the impartial point of view, the reason that “it would result in significantly less lives being lost” ought to be decisive in favor of sacrificing your life in order to save five million people. So there is a difference, with practical significance, between the MC model and the impartial point of view.

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101 I am assuming that the reasons that are ranked are determined by the options that are available to a person. This appears to me to be the best interpretation of Sterba’s position given by the examples he uses, although he never explicitly states this.

102 A different scenario illustrates a conflict between what the MC model would recommend and what a Kantian would recommend. Suppose that you are being chased by a gunman who is trying to kill you. You come across a child who you realize could serve a useful purpose as a human shield. Unless you use her as a shield (in which case she dies) the gunman will shoot and kill you. Again, the MC model would most likely generate the judgment that you are permitted to take up either of the options available to you. Why? Because the egoistic reason “it would save your life” and the altruistic reason “it would spare a child’s life” are, it is plausible to imagine, equally ranked on their respective scales. But a Kantian, who embraces reasons like “it would be treating a person as a mere means,” would say that you have a decisive reason not to use the child as a human shield.
On behalf of the MC model it might be argued that the impartial point of view just is a compromise between the egoistic and altruistic points of view. For instance, instead of giving my good priority or the good of others priority, I reach a compromise by giving neither priority, placing equal weight on my good and the good of others. But that’s not the compromise reached by Sterba’s model. A compromise is reached on that model by considering both egoistic and altruistic reasons as relevant to rational choice, and then always going along with whatever reason ranks higher on its respective scale. On this model, *a moral reason is an egoistic reason or an altruistic reason*. Whereas with the alternative compromise model just proposed, I ignore my egoistic and altruistic reasons, and instead only consider my impartial reasons.

Sterba might respond that impartial reasons “could be interpreted to be ultimately rooted in some conception of what is good for oneself or others, and as such they would have already been taken into account” by his model. However, when I take an impartial point of view, and consider what is good for me and what is good for others, it does not matter whether something would be good for me, as such, or for good for others, as such. But each of these things does matter from the egoistic and altruistic points of view. This difference matters for practical reasoning, since, as explained above, judgments about what we have reasons to do from an impartial point of view may conflict with judgments that would be generated by Sterba’s model.

In the end Sterba may concede that the MC model cannot account for either impartial reasons or respect-based reasons, and that this may have practical consequences. Nevertheless, when it comes to the conflict of liberties between the rich and the poor, we will either have to enforce what the rich have a low-ranking self-interested reason to prefer (and a high-ranking altruistic reason not to prefer), namely, the restriction of the poor’s liberty, or we will have to

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103 *FRE*, 81. Here Sterba is saying this about malevolent reasons.
enforce what the poor have a high-ranking self-interested reason to prefer (and a low-ranking altruistic reason not to prefer), namely, the restriction of the rich’s liberty. Isn’t it better to enforce what the poor have a high-ranking self-interested reason to prefer, rather than what the rich have a low-ranking self-interested reason to prefer, *all other reasons aside*? No, a right-libertarian could say, because we should not set aside the impartial reasons or respect-based reasons that apply to the rich and the poor. And in this case, she might also go on to say, the poor’s impartial reason or respect-based reason not to steal is what should be enforced.

Again, Sterba might be right about what reasons the poor have and/or what weight those reasons carry. But the only way Sterba shows this involves appealing to the MC model. As I’ve explained, right-libertarians would reject this model, and they would be justified in doing so. After all, consider reasons such as “it would produce more happiness,” “it would be treating a person as a mere means,” and “it would be taking the life of an innocent human being.” These are all reasons philosophers and lay people have taken to be moral reasons for or against certain actions, and none of these are strictly speaking egoistic or altruistic reasons. It may be that in any particular case where reasons like these are applicable, a person may also have an egoistic reason to perform or not to perform the action, or an altruistic reason to perform or not perform the action. But anyone likely to appeal to the reasons just listed would probably think that the egoistic or altruistic reasons are either irrelevant or less relevant. If you have a reason not to shoot someone because you’d be taking the life of an innocent human being, this would be so regardless of the fact that it may be in your self-interest not to shoot the person, or that you’d be doing something good for someone else, *as opposed to yourself*. Unless most of us are mistaken
about our moral reasons, right-libertarians and non-right-libertarians alike should reject the MC model.¹⁰⁴

So with the MC argument, as with the OIC argument, we ought to conclude that Sterba fails to demonstrate that welfare rights are derivable from right-libertarian premises.

G. Conclusion

As ways of avoiding the destitution objection, Sterba’s arguments fail. They both fail insofar as they rely on a mischaracterization of right-libertarianism. Given this problem, neither argument can be taken as demonstrating that welfare rights are entailed by right-libertarianism. His arguments also fail insofar as the right-libertarian who rejects welfare rights would not accept, and would not be compelled to accept, their crucial premises. In the case of the OIC argument, many right-libertarians would reject the premise that conflicts of liberties should be decided according to the benefits/burdens principle. In the case of the MC argument, the right-libertarian is not compelled to accept the premise which says that the rich have no moral reason to refrain from restricting the liberty of the poor. That means rejecting Sterba’s MC model of moral theorizing. But right-libertarians (and non-right-libertarians) have good reasons for

¹⁰⁴ Shafer-Landau points out that the MC model entails very counter-intuitive judgments about what morality requires:

As I understand Sterba’s view, it implies that in any case in which one stands to gain a great deal through very harmful and unfair behavior, and the victim’s stakes are just a little bit lower, then we are morally and rationally required to give the nod to self-interest. But this paints a false picture of our moral duty, as actions that we intuitively regard as gross immoralities will in this view sometimes qualify as our moral duty. For it’s possible that an intuitively evil action does more than any alternative to promote self-interest, whereas the reasons that oppose such actions do not rank at the very top of the applicable altruistic reasons. See *MWWI*, 118.

In response to concerns, of any variety, related to the practical nature of the MC model, Sterba typically argues that the model is not best understood as a formula for making decisions, but only as a way of arguing for the rationality of morality. See *FRE*, 81-83; *MWWI*, 197-98; *ALEC*, 101-02. But soon after saying this, he will proceed to use the MC model to derive practical conclusions concerning the rights of the poor. So clearly Sterba thinks the MC model has some practical implications.
rejecting that model, since it cannot account for a variety of reasons we naturally attribute to people.

Even though Sterba’s arguments do not demonstrate that right-libertarianism can accommodate the intuitions motivating the destitution objection, perhaps there is an alternative way to demonstrate that. In the next chapter I examine a different attempt at accommodating the intuitions motivating the destitution objection, an attempt that does not commit the mistake of mischaracterizing right-libertarianism.
CHAPTER FOUR - THE SELF-OWNERSHIP PROVISO: A CRITIQUE

A. Introduction

Right-libertarians believe that justice is exhausted by considerations of self-ownership and that self-ownership grounds rights of external ownership. Many people resist this view because of its perceived implications concerning the very poor. The view seems to entail that no institution (e.g. a government), as a matter of justice, may forcibly take anything from the very wealthy and give it to the destitute. Right-libertarians might argue that, as a matter of fact, no one in a right-libertarian society would ever be desperately poor because of the wealth and opportunities laissez-faire capitalism would bring. Still, there is something troubling if the view has this consequence even in principle. I have called this worry the destitution objection.

One way of responding to this objection is to argue that, contrary to appearances, right-libertarianism does not have the implications the objection assumes it has. We have seen one attempt at this response by James Sterba. We have also seen why that attempt fails.

In this chapter we will look at a more promising attempt. In recent years a number of philosophers, in particular, Eric Mack, Edward Feser, and Daniel Russell, have argued that self-ownership does not justify unlimited rights of external ownership.\(^{105}\) The reason is that, although self-ownership justifies external ownership, it also justifies a constraint on the acquisition and use of property: an owner’s acquisition and use of property may not severely negate the ability of others to interact with the world. This constraint has been labeled by Mack the *self-ownership*

The intuitive idea behind the proviso is that self-ownership requires that one be able to exercise her talents and abilities to some extent. And being able to exercise one’s talents and abilities requires access to external resources. If self-ownership turns out to require that all persons have access to external resources, then governments, on the right-libertarian view, may be justified in providing some form of assistance to the poor. And in that case, the view that justice is exhausted by considerations of self-ownership may not have the conclusions that have turned so many off from right-libertarianism.

In what follows I will argue that this attempt to use self-ownership to ground a constraint on the acquisition and use of private property fails. To be clear, what I will not be arguing is that such a constraint cannot be justified. Nor will I be arguing that there is no right against the severe negation of one’s ability to interact with the world. All I will be arguing is that any such constraint, and any such right, is not grounded in self-ownership. The resulting conclusion is that right-libertarians cannot appeal to self-ownership in order to avoid the destitution objection.

B. The Self-Ownership Proviso

To remind the reader, the self-ownership thesis states that each person rightfully owns herself. A person has the right to use her body and mind as she sees fit, exclude others from using her body and mind, dispose of her body and mind if she so wishes, is immune from others expropriating her body and mind, and has the right to transfer ownership of her body and mind to someone else.107


107 Although, as I pointed out in note 4, the last right is controversial among adherents of the self-ownership thesis.
Among those who subscribe to the self-ownership thesis, some (right-libertarians) think that self-ownership justifies, on its own, rights of external ownership. Within this group there are hard-line libertarians and there are those who endorse the SOP (SOP-libertarians).\textsuperscript{108} Hard-line libertarians do not think that justice places any restrictions on acquisitions of the (unowned) external world. And they do not think that justice requires restrictions on how people choose to use what they acquire that go beyond restrictions imposed by other people’s rights over their bodies and property. In contrast, SOP-libertarians do think that justice places restrictions on acquisitions of the (unowned) external world.\textsuperscript{109} And they do think that justice requires restrictions on property use that go beyond those merely imposed by other people’s rights over their bodies and property. The point of departure for the two groups is over what count as violations of self-ownership. For hard-line libertarians, a person’s self-ownership can only be violated \textit{invasively}. Invasive violations of self-ownership include such things as assault, kidnapping, trespassing, and theft. All these things count as invasions of the “sphere” around one’s person and property. SOP-libertarians, on the other hand, believe that self-ownership not only can be violated invasively, but also \textit{non-invasively}.

An example of what the SOP’s defenders have in mind by a non-invasive violation of self-ownership is presented by Mack in a hypothetical case he refers to as \textit{Adam’s Island}. In that scenario, a woman named Zelda has been shipwrecked and struggles to come ashore on an island, the whole of which belongs to Adam.\textsuperscript{110} Adam, however, refuses to let Zelda ashore, asserting his property right over the island. By denying her access to his island, Adam severely

\begin{itemize}
\item \textsuperscript{108} SOP-libertarianism is a subclass of moderate right-libertarianism.
\item \textsuperscript{109} It is somewhat misleading of me to say \textit{they} think this about \textit{acquisitions}. I clear this up below.
\item \textsuperscript{110} Ibid., 187-88. It is assumed that Adam has taken whatever steps are deemed necessary, according to a right-libertarian theory of acquisition, to become the sole owner of the island.
\end{itemize}
negates Zelda’s capacity to exercise her talents and abilities. And by doing that, says the SOP-libertarian, Adam non-invasively violates Zelda’s self-ownership. Any property use or acquisition that severely negates a person’s capacity to exercise her talents and abilities is a violation of that person’s self-ownership according to the SOP-libertarian. The SOP forbids this type of self-ownership violation.

Before going on to discuss what SOP-libertarians consider to be examples of SOP-violations, let me be upfront by saying that, despite my characterization of it, the SOP’s defenders intend for the SOP only to be a restriction on property use, not acquisition.111 The SOP is supposed to limit ownership in the sense that it limits the bundle of rights that are included in one’s ownership of a thing. A mere limit on ownership is not the same as a restriction on acquisition. If a restriction on acquisition is violated, that calls into question, entirely, a person’s title to a thing. The person must either give up possession of the thing or compensate others who have lost out as a result of her acquisition. In the case of Adam’s Island, however, Adam’s acquisition of the island is not called into question. What is at issue is what Adam chooses to do with his island. Although Adam has a rightful claim over his island, that claim does not give him the right to exclude Zelda from it (in light of her circumstances). This is meant to be analogous to what I may do with a knife I own. I have no right to use my knife to hack off your fingers. But that restriction does not call into question my ownership of the knife. Similarly, the SOP restricts what a person may do with something she nonetheless has a rightful claim over.

Let me explain why, despite the way SOP-libertarians describe their own view, I have chosen to refer to the SOP as a constraint on property use and acquisition. The SOP is premised

on the idea that self-ownership requires that people not be blocked from having control over external resources. Russell takes control over external resources to mean ownership of external resources.\(^{112}\) (Mack and Feser are not clear what “control” implies.) Now consider a world where all resources are owned – there is nothing left in “the state of nature.” If, in this world, owners prevent non-owners from taking some of their things, the implication seems to be that the owners are non-invasively violating the non-owners’ rights of self-ownership. In that case the owners’ titles to these things are called into question. Perhaps Russell is wrong to go from control over resources to ownership over resources. Imagine someone who leases everything she uses down to the underwear and socks she wears. The problem here is that this could only work for things that could be returned to the property owner. It won’t work for things like food. If I am going to eat, I need to own my food, not just lease it. Second, one may doubt whether one can really have genuine control over parts of the external world if all the control one has amounts to a lease agreement. And third, one may also doubt whether a property owner’s title to a thing has not been called into question when she is forced to lease something she “owns” to someone else. For all these reasons, I think it is better to describe the SOP as a constraint both on use and acquisition.

Proceeding then to the issue of what counts as a SOP-violation, we’ve seen that the SOP rules out property use and acquisition that severely negates a person’s ability to interact with the world. “Severely negates” is clearly a vague notion, as the SOP’s defenders will admit, but we can get some idea of what that notion refers to and, by implication, what counts as a SOP-violation. For instance, *Adam’s Island* suggests that blocking someone’s access to something

\(^{112}\) As evidenced by a passage I quote in a different context on page 76. See Russell, “Embodiment,” 164.
they need in order to avoid impending death counts as severely negating a person’s ability to interact with the world and, hence, is a SOP-violation.

But the SOP is meant to rule out more than just blocked access which leads to someone’s immediate death. For example, the SOP is meant to prevent a certain kind of imprisonment. As an illustration, Mack presents another scenario where Adam non-invasively violates Zelda’s self-ownership, one that he calls *Disabling Property Barrier*: “While Zelda sleeps, Adam employs some of his rightfully held plastic…to construct a porous shell around her. Upon waking, she discovers that she is unable to break through this shell. When she attempts to free herself, Adam accuses her of trespassing on his plastic.”113 The problem is not that Zelda faces immediate death, but that she is a prisoner inside Adam’s plastic shell. So, blocked access that leads to immediate death is not the only type of blocked access to external resources that the SOP forbids.

The SOP is intended to rule out additional forms of blocked access as well. As a guiding heuristic for identifying SOP-violations, Mack suggests checking whether or not the market is working out as well as market advocates expect markets will, in general, work out for people. He explains that market advocates expect that the market will generally increase a person’s “opportunities to bring her powers to bear on the world.”114 But if the fact that a person’s opportunities are not increasing is supposed to raise a red flag, then the SOP appears to be a stronger requirement than one would have initially thought. A quote from an earlier piece by Mack better captures what I gather is the spirit of his proposed market heuristic: “For the SOP to be satisfied with respect to Zelda, she must have before her an array of occupational


opportunities that is not strikingly more narrow than what the fan of market processes would predict for someone of Zelda’s talents, energies, and adaptability.”115 It is not that Zelda’s set of opportunities must be increasing, but that her set of opportunities not fall below a certain threshold.

Precisely where that threshold lays is vague. But at the very least someone who is unable to make a living is someone whose set of opportunities is probably below that threshold. And that’s really all we need to know if we want to know if the SOP can rescue right-libertarianism from the destitution objection. If the destitute are those that are unable to make any kind of living, then the fact that someone is destitute is a red flag for the SOP-libertarian.

Although someone being destitute may raise a red flag for the SOP-libertarian, it is not necessarily seen by her as a problem as far as justice is concerned if the person’s situation has not come about as the result of blocked access. This is because the SOP does not entail an automatic entitlement to any given level of well-being or quantity of resources. Just like the hard-line libertarian, the SOP-libertarian rejects any justice-based duty of assistance. For instance, in a case Mack calls Adam’s Unreachable Island, Zelda, is unable to come ashore, and so Adam never needs to assert his property rights - he just watches her drown. In this case, Mack says, the SOP is not triggered, though there may be much to question about Adam’s character.116 A “threefold distinction” Mack draws should help explain the SOP-libertarian’s position.

A “threefold distinction” Mack draws should help explain the SOP-libertarian’s position. According to Mack, there are “(a) interferences by way of interventions against persons; (b) interferences by way of blockages against persons; and (c) failures to provide resources to


116 Ibid., 193.
persons.” Only categories (a) and (b) include violations of self-ownership, and so qua right-libertarians, SOP-libertarians only count these as violations of justice. (Hard-line libertarians only count the first category as violations of self-ownership and, hence, as violations of justice).

Even in the absence of justice-based duties of assistance, the SOP allows governments to do something resembling assistance to the destitute. If someone is destitute as the result of blocked access, then her self-ownership has been violated. Since governments are permitted to protect and enforce people’s self-ownership rights, the government is permitted to protect people from blocked access and to punish property owners who violate the SOP. Whatever that may look like, it would probably resemble, to some degree, government assistance for the poor.

Why is the SOP, according to its defenders, something right-libertarians should endorse? Mack offers two arguments. Subsequent adherents of the SOP have argued along similar lines. The first argument Mack calls the “top-down case.” The second argument he refers to as the “bottom-up case.” I will present and criticize each argument in turn.

C. The Top-Down Case

The top-down case for the SOP as presented by Mack starts with the thought that as a self-owner, each person has a right over her talents and energies. A person’s talents and energies, Mack stresses, are world-interactive powers; they are a person’s “capacities to affect her extra-personal environment in accord with her purposes.” With respect to these powers, “[t]he

119 Ibid.
120 Ibid., 186.
presence of an extra-personal environment open to being affected by those powers is an essential element of their existence.”121 This means that a person’s world-interactive powers can be negated by others when they remove from that person access to an extra-personal environment upon which she could have otherwise exercised her talents and energies. Given this, respect for self-ownership prohibits property use and acquisition that would negate, albeit non-invasively, another person’s talents and energies. That is, respect for self-ownership requires the SOP.

A key idea in this argument is Mack’s claim that our talents and energies require for their existence access to an extra-personal environment which they can be applied to. This claim needs to be examined. It is obviously true that for someone like Zelda in Adam’s Island, her lack of access to an extra-personal environment with which to apply her talents and energies means the loss of those talents and energies. But this is trivially true, because, for someone in Zelda’s situation, such lack of access means death.

But as we saw in the previous section, the SOP is not merely intended to rule out blocked access which leads to someone’s immediate death. It is also supposed to prevent blocked access in the form of imprisonment. In addition, as Mack’s proposed heuristic suggests, a person who has a “strikingly narrow” set of opportunities, as a result of blocked access, is someone who has suffered a SOP-violation.

But if we set aside the threat of death, then in what sense do one’s talents and energies depend for their existence on an extra-personal world with which to engage with? Certainly not all our talents and energies are dependent in this way. After all, a basketball player still possesses her talents when she lacks access to a basketball. A photographer still possesses her talents even

121 Ibid.
when she lacks a camera. And most of us never forget how to ride a bike, even if we haven’t ridden one for years.

A more charitable reading of Mack’s argument is that if we are unable to use our talents and energies, then we don’t really own them, and we can only use our talents and energies if we have access to an extra-personal environment with which to engage with. If we understand Mack’s argument this way, then we can account for the SOP’s prohibition of blocked access that does not lead to anyone’s immediate death. I will proceed, therefore, with this more charitable reading of Mack’s argument. So, any reference to the nullification, negation, or disablement of one’s powers should be understood as a reference either to their literal going out of existence, the imminent threat of their going out of existence, or merely one’s inability to use them.

What I now wish to discuss is an objection to the self-ownership proviso. The objection is that insofar as the SOP is meant to be an extension of the concept of self-ownership, the SOP-libertarian is committed to saying, for instance, that the ownership of a corkscrew entitles you to bottles of wine that you can open with it. Call this the corkscrew objection. The assumption behind the corkscrew objection is that whether we are talking about ownership of the self or ownership of an object, the concept ownership is the same in both cases. So if ownership of the self includes a right against the nullification of the self’s powers, then ownership in the case of an object (e.g. a corkscrew) includes a right against the nullification of that object’s powers. But, as the objection goes, it is bizarre to say that the ownership of an object includes a right against the nullification of that object’s powers. Therefore, it is equally bizarre to say that the ownership of the self includes a right against the nullification of the self’s powers. Non-invasive nullification of powers doesn’t violate ownership. That’s not part of the concept of ownership.

122 Mack attributes this objection to G. A. Cohen. See Ibid., note 21.
The immediate reaction I suspect most readers will have to this objection is that there is a clear disanalogy between the self and external objects such that a right against the nullification of a person’s powers is justified, but not a right against the nullification of an object’s powers. Clearly an agent has a greater stake in being able to exercise her powers than in being able to exercise the powers of any particular object she has. This explains why a right against the nullification of the self’s powers is warranted, while a right against the nullification of an object’s powers is not. But SOP-libertarians don’t just defend a right against the nullification of one’s powers. They argue that such a right is a part of self-ownership. Because of that, the corkscrew objection goes, SOP-libertarians cannot account for the intuitive line of thought just presented. They can’t say that you have a right against the nullification of your powers without also saying that you have a right against the nullification of your corkscrew’s powers.

In response to the corkscrew objection, the SOP-libertarian might argue that it is false to assume that the concept of ownership in the case of the self and in the case of an object must be the same. And so it shouldn’t matter that ownership of the self includes a right against the nullification of one’s powers, whereas ownership of an object does not include a right against the nullification of that object’s powers.

But the assumption behind the corkscrew objection makes sense. This is because the very concept of self-ownership is understood in terms of extending the notion of full ownership of an object to the self. As Peter Vallentyne says, “The core idea of full self-ownership is that agents own themselves in just the same way that they can fully own inanimate objects.”123 This core idea is what makes self-ownership unique, interesting, and controversial. The reason, then, for

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assuming that the concept of ownership should be the same in both cases is because the very concept of self-ownership assumes as much.

A second response to the corkscrew objection might be that, although the concept of ownership is the same in both cases, there is a difference between the self and worldly objects such that ownership of the former includes a right against the nullification of one’s powers, whereas the ownership of an object does not include a right against the nullification of that object’s powers. The difference is that a person’s talents and energies can flourish with use and atrophy with disuse. By contrast, external property, like a corkscrew, retains its powers even with disuse. This difference justifies judging, from the perspective of justice, nullification of powers differently in the case of a person than in the case of external objects. Now as we saw earlier it is not obvious that lack of access to an extra-personal environment will always lead to the atrophy of one’s talents and energies. But even supposing that it does, this second response seems to assume that there are never cases where the powers of one’s external property atrophy with disuse. That is hardly a plausible assumption, as anyone with a car that hasn’t been driven for a long time will testify.

Finally, the SOP-libertarian might respond that it’s not so bizarre to attribute to the owner of an object a right against the nullification of that object’s powers. What could motivate that response is the thought that when others deny you access to things which your object’s powers could be directed upon, they are violating your right to use the object you own. No revision to our ordinary concept of ownership is even necessary – a right against the nullification of an object’s powers, or the self’s powers, is just an aspect of the right to use. But the right to use x

124 Feser offers this reply to the corkscrew objection. See Feser, “Initial Acquisation,” 75.
125 See pp. 67-68.
that invariably attends the ownership of x is commonly understood to prohibit *invasive* behavior on the part of others that stands in the way of an owner’s freedom to use her property, *not* non-invasive behavior. This explains why it is counter-intuitive to think that someone’s refusal to sell you wine bottles is a violation of your right to use your corkscrew, whereas it is not counter-intuitive to think of my snatching your corkscrew as you are about to open a wine bottle as a violation of your right to use your corkscrew.

But what if it were *impossible* for an owner of an object to secure access to things upon which her object’s powers may be directed? Suppose that all of the world’s wine sellers, grape-growers, and fertile land owners agree not to have any dealings with you. If, as this situation seems to indicate, it is impossible for you to obtain wine bottles, maybe it is not all that bizarre to think that your ownership of your corkscrew has been violated. In this situation, the restrictions placed on the use of your corkscrew are non-invasive. So the thought that your ownership of your corkscrew is violated does necessitate a revisionary approach to the concept of ownership.

But perhaps our concept of ownership should be revised so as to include a right against nullification. There are two considerations that might motivate this move. One consideration is that the reason people acquire things in the first place is so that they can *do* things with them. No good comes from owning something if you can’t do anything with it. A second consideration concerns the justificatory grounds for ownership. Surely, the thought goes, whatever reasons we have for respecting the institution of ownership (on the unrevised understanding) are reasons for countenancing a right against nullification. An obvious reason for respecting ownership, one often invoked by right-libertarians, is that ownership is justified by our status as purposive agents. If that status justifies a person’s right against *invasive* interference with the use of the things one owns, it would also seem to justify a right against the *non*-invasive interference with
the things one owns (at least to the point where I cannot use the thing, or can barely make use of it). So, both the point of ownership and the justification of ownership, one might argue, suggest that we revise our ordinary concept of ownership so that it includes within its bundle of rights a right against nullification.

As forceful as these considerations appear, I do not think that they justify revising the concept of ownership so as to include a right against nullification.\textsuperscript{126} Take for instance the “point of ownership” consideration. If the reason people participate in an institution were enough to justify a right, then business owners ought to be granted the right to make a profit. After all, the point of owning a business is to turn a profit. No good comes from owning a business if one only incurs losses. But clearly it would be absurd to revise our understanding of business ownership so as to include a right to make a profit. This means that the reasons people choose to take part in an institution do not, at least on their own, determine what rights or advantages that institution ought to bestow.

The “justification for ownership” consideration also fails to justify revising the concept of ownership. It may be true that whatever value(s) justify ownership (ordinarily understood) also justify a right against nullification, but that does not entail treating the latter concept as part of the former. Two distinct concepts may have the same justificatory grounds: value A can justify rights X and Y, but it clearly does not follow that rights X and Y are the same or that one right falls, conceptually, under the other. It may show that right Y \textit{comes} with right X. But that’s

\textsuperscript{126} I am not in principle against revising our concept of ownership. My arguments are only against revising the concept so as to include a right against nullification.
irrelevant, because the “justification of ownership” consideration is meant as a reason to revise our concept of ownership.\footnote{At the conclusion of this chapter I consider whether the possibility of right Y \textit{coming} with right X, but not being included as part of, or an aspect of, right X, is a possibility that provides a way for the SOP-libertarian to avoid my criticisms.}

If one wants to capture the judgment that people have a right against the nullification of their world-interactive powers, it is not necessary that the concept of ownership be revised. There are already other concepts, or rather, other values, that can capture that judgment. For instance, the value of autonomy, the idea that one’s choices ought to reflect the choices of an authentic self, can be understood to require that one’s choice set not be limited in the same way it is when someone’s world-interactive powers are nullified. More straightforwardly, a minimal level of well-being, taken as a value, would mandate that people’s world-interactive powers not be nullified.

The problem for the SOP-libertarian is that if she backs off from trying to revise the concept of ownership, and instead appeals to other values to justify a right against nullification, she abandons her view that only self-ownership matters when it comes to justice. In the grand scheme of things that might be the right thing to do, but insofar as we are considering the SOP as a way for right-libertarians (who think that justice only includes considerations of self-ownership) to escape the destitution objection, this move is unavailable.

Russell presents an argument similar to Mack’s. He argues that embracing self-ownership while rejecting the SOP, as hard-line libertarians do, is a failure to appreciate that the self, as Russell puts it, is “embodied.” The embodied view of the self, according to Russell, “has two central features: (1) the self is not just one’s psychology and power of choice, but extends also to one’s physical person; and, more provocatively, (2) the reasons that the self extends to one’s
physical person are also reasons that the self extends into the world beyond one’s person.\textsuperscript{128} If this view of the self is true, Russell goes on to say, “then to own a self is (among other things) to have the right to control parts of the extrapersonal world.”\textsuperscript{129} So accepting the embodied view of the self entails accepting the existence of the SOP.

Contrary to what Russell claims, there is no inconsistency between hard-line libertarianism and the embodied view of the self. Embracing the embodied view of the self could explain why someone believes self-ownership justifies external ownership, as hard-line libertarians do. In fact, an embodied view of the self is probably what underlies many hard-line libertarians’ endorsement of Locke’s labor-mixing account of original acquisition.\textsuperscript{130} The disagreement between hard-line libertarians and SOP-libertarians shouldn’t be seen as a disagreement over the embodied nature of the self, but rather over what is entailed by ownership of an embodied self. For SOP-libertarians, ownership of an embodied self entails a right against the non-invasive nullification of the self’s powers, whereas for hard-line libertarians, ownership of an embodied self entails no such right. Given the corkscrew objection, I think hard-line libertarians are right on this issue.

Hard-line libertarians are right on this issue for another reason. Combining the embodied self view with the SOP has worrisome implications (certainly to libertarians, left and right) concerning the freedom to use one’s body.\textsuperscript{131} On the embodied view of the self, the self includes

\textsuperscript{128} Russell, “Embodiment,” 136.

\textsuperscript{129} Ibid.

\textsuperscript{130} See my discussion in the first chapter (p. 4) of how some right-libertarians make the move from self-ownership to external ownership.

\textsuperscript{131} Ironically, Feser brings up the possibility of the SOP being applied to the use of a person’s body as an unwelcome consequence of coupling it with a Cartesian conception of the self. On the Cartesian conception of the self, the self is just an immaterial substance and a person’s body is treated as something external to her, like land, water, food, etc. Coupled with the SOP, which applies to external resources, a Cartesian view would entail
one’s body and things external to one’s body. If the use of parts of the self that are external to one’s body are subject to restrictions grounded in the SOP, then consistency seems to require that the use of one’s body parts be subject to restrictions grounded in the SOP as well. Suppose that I need one of your kidneys to live, but you refuse to give me one of them, instead choosing to use both of them yourself. Are you not, then, choosing to use your kidney in such a way that my powers are negated? Call this the kidney objection.

Before going on to discuss Russell’s response to this objection, and other possible responses, let me address an initial response that will probably occur to most readers. Most readers might think that Russell, and like-minded SOP-libertarians, could say that although the self includes both one’s body parts and things external to one’s body, nonetheless, one can distinguish between things that are more important and things that are less important to the self. The use of things that are less important to the self are subject to the SOP, whereas things that are more important, or more central, to the self, are not subject to the SOP. And, the response continues, body parts are more important to the self and external parts are less important.

There are at least two problems with this proposal. First, it is not at all obvious that the distinction between things that are more important to the self, and things that are less important to the self, maps on to the distinction between body parts and external objects. Whatever way we cash out “importance to the self,” it would be hard to see why a passionate musician’s guitar would be less important to her than any one of her toes. Second, the position that the distinctions are isomorphic is a position at odds with the embodied self view. That view is motivated by the idea that, as constituents of the self, there is a fundamental parity between our body parts and our constraints on people’s use of their bodies, e.g. it would entail that you must give me your kidney. Feser sees this as a problem for a SOP-libertarian who adopts a Cartesian view of the self. What Feser fails to see is that this is also a problem for the SOP-libertarian who adopts the embodied view of the self. See Feser, “Personal Identity,” 108-09.
external possessions. To take the view that external objects are less important, even if still parts of the self, is not to fully appreciate the self’s embodied nature.

Russell is aware of an objection to the SOP along the lines of the kidney objection. In response he argues:

[T]his oversimplifies what the proviso actually does, which is to protect efforts to acquire not full stop, but in a way that is constrained by the fact that others are self-owners as well. Since the proviso protects opportunities to gain rights of use over things by appropriating them, the proviso protects opportunities only with respect to appropriable things, things that are not already owned. The thesis that persons own themselves, interpreted via the embodied conception of the self, automatically removes persons and what persons already own from the set of things that are appropriable and ripe for the picking.\(^{132}\)

I’ve already explained why I think SOP-libertarians are wrong to characterize the SOP only as a constraint on use. As I see it, the SOP, at least in principle, is capable of calling into question an owner’s title to a thing. So understood, what persons already own may be ripe for the picking, and in light of the embodied self view, that may include your kidney.

But setting that issue aside, and focusing only on use, Russell’s reply conspicuously fails to mention how, as a constraint on property use, “the proviso protects opportunities to gain rights of use over things by appropriating them.” The way it does this, as we’ve seen, is by protecting people from non-invasive nullifications of those opportunities. An example of such a non-invasive nullification, as we’ve also seen, is Adam’s treatment of Zelda in *Adam’s Island*. Although that is Mack’s example, I gather that Russell agrees that that is an instance of a SOP-violation.\(^{133}\) In that example, Adam’s ownership of his island is not called into question, but his refusal to allow Zelda access to his island violates the SOP. If denying someone access to what you own counts as a SOP-violation, then when the SOP is combined with the embodied self


\(^{133}\) Ibid., 146.
view, it appears that you violate the SOP when you deny me access to your kidney, because, as a result, I am unable to exercise my talents and abilities. Russell’s reply provides no reason to think otherwise.

The SOP-libertarian might respond that in the kidney case, and in similar cases, we need to be sensitive to the distinction between the constraints imposed by the SOP and those imposed by a duty of assistance. In the kidney case only some duty of assistance could mandate that you offer me the use of your kidney, not the SOP. Perhaps this distinction is relevant if what were to occur in our scenario is that you don’t go out of your way to offer me the use of your kidney. This would be analogous to *Adam’s Unreachable Island*. However, suppose that in our scenario I actually attempt to get access to your kidney and you prevent me, while asserting your right to your body. This would be analogous to the original case, *Adam’s Island*, where Adam refuses to let Zelda come ashore. *That* case does involve a violation of the SOP. This shows that the SOP-libertarian can’t get around the kidney objection by appealing to the distinction between SOP-generated constraints and duties of assistance.

There is, however, another response that the SOP-libertarian might offer. She might argue that your keeping me from using your kidney does not violate the SOP because I would be just as badly off with respect to my powers if you had never existed or we had never come across each other. Mack appears to think that it is relevant, in order to assess whether or not a person in a particular scenario has suffered a SOP-violation, that that person would have been just as badly off with respect to her world-interactive powers if the property owner had been absent from that scenario. For instance, Mack presents the following case, *Adam’s Made Island*, as an example where Adam’s treatment of Zelda does *not* violate the SOP:

Since his arrival at the previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal theory, confer upon him sole dominion over all of the
island. Indeed, he has so labored on the island – by building retaining walls, planting protective trees and grasses, and so on – that he has prevented the island from disappearing entirely into the sea. Now the innocent, shipwrecked Zelda struggles toward the island’s coast. But Adam refuses to allow Zelda to come ashore.\textsuperscript{134}

Given that the only difference between this case and \textit{Adam’s Island} is that in this case Adam is responsible for there being any island at all, I take it Mack’s point is that, if Zelda were unable to exercise her powers, even in Adam’s absence from the situation, then Adam has not violated the SOP. The upshot here is that the SOP-libertarian could argue that you have not violated the SOP by refusing me access to your kidney, because I would still be unable to exercise my powers if you had never existed or we had never encountered each other.

The view that Adam does not violate the SOP if Zelda would have been unable to exercise her powers in his absence leads to some unwelcome results. Imagine that Adam sees Zelda struggling to make it to shore. Upon seeing that she is not going to make it, he ventures out on a boat to rescue her and brings her back to his island. Once on his island, however, any time Zelda attempts to acquire food (e.g. fruit hanging from trees) or use objects (e.g. sticks to start a fire), Adam immediately stops her, claiming she is violating his property rights. On the face of it, this seems like a clear-cut case of a SOP-violation. But notice that if Adam had not been on the scene, Zelda would have been \textit{worse} off with respect to her powers because she would have drowned. This entails that Adam’s treatment of Zelda is \textit{not} a SOP-violation. As another example, consider the proverbial only waterhole in the desert. Suppose that the owner of the waterhole refuses to let a lost and thirsty traveler drink from the waterhole. This is a paradigmatic case of a SOP-violation.\textsuperscript{135} But imagine that when our waterhole owner first discovered the waterhole, the water was not potable and he has since installed technology to

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\begin{itemize}
  \item \textsuperscript{134} Mack, “Self-Ownership Provisio,” 193.
  \item \textsuperscript{135} Feser, “Initial Acquisition,” 70; Mack, “Challenges to Historical Entitlement,” 98-103.
\end{itemize}
make the water drinkable. If the waterhole owner had not been around to discover the waterhole, then the lost and thirsty traveler would have come upon a waterhole with undrinkable water and would have died, lacking the time and resources to make the water potable. In this version of the story, therefore, the waterhole owner has not violated the SOP in refusing the lost, thirsty traveler access to his waterhole.

The kidney objection, then, may be avoided by appealing to the requirement that a SOP-violation must make one worse-off with respect to one’s powers than one would have been had the SOP-violator never existed. But insisting on this requirement entails that neither Adam nor the waterhole owner, in the cases just described, violates the SOP. I doubt any SOP-libertarian would be comfortable with that conclusion.

Before proceeding to Mack’s bottom-up case for the SOP, let me be clear about what the corkscrew objection and the kidney objection do not establish. First, the corkscrew objection does not establish that there is anything wrong with the view that a person has a right against the nullification of her world-interactive powers, but no such right with respect to any object she owns. The corkscrew objection is only an objection to the attempt to ground a right against the nullification of one’s powers in self-ownership. Because if that is the ground for such a right, one is committed to saying that such a right is included with the ownership of an external object. Likewise, the kidney objection does not establish that there is anything wrong with a view that says that there are limits on the use of one’s property that do not apply to the use of one’s body parts (that would be a very strong claim indeed!). Rather, the kidney objection only calls into question the consistency of holding such a view, while also upholding the SOP and the embodied view of the self.
D. The Bottom-Up Case

The intent of Mack’s bottom-up case is to demonstrate that the right of self-ownership should be understood to rule out non-invasive as well as invasive disablements of a person’s powers. Mack attempts this demonstration by trying to show similarities between violations of self-ownership, traditionally construed, and what would be violations of the SOP, via several creative thought experiments. The first of these, *Adam’s Island*, has already been mentioned. Mack goes on to provide several other variants of *Adam’s Island*, each involving Zelda, and each meant to blur the distinction between invasive and non-invasive disablement. For instance, in another case we’ve already looked at, *Disabling Property Barrier*, Adam constructs a porous plastic shell around Zelda. Each time Zelda attempts to escape, Adam asserts that his property (his plastic) is being trespassed on. In *Disabling Property Barriers*, instead of placing her in a plastic shell, Adam encases all the objects that Zelda would otherwise use in plastic shells. In *Disabling Denial of Use without Barriers*, whenever Zelda attempts to use an object, Adam uses a device to propel the object beyond her grasp.

Again, the point of presenting all these cases is to blur the distinction between invasive and non-invasive disablement. Mack is arguing that there is no relevant difference between Adam’s treatment of Zelda in these cases and a case where Adam were to directly invade her “sphere” by, say, grabbing her and placing her in a cage, or by assaulting and crippling her, or by destroying all her property. The right of self-ownership should rule out kidnapping, assault, and property destruction, as well as ruling out the way Adam treats Zelda in *Adam’s Island* and the

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137 Ibid., 196.
138 Ibid., 197.
other cases just mentioned. But on a narrow construal of self-ownership – one that prohibits only invasive disablements – the right of self-ownership wouldn’t prohibit such treatment. Only if the right of self-ownership rules out non-invasive disablements (and so includes the SOP) can self-ownership do the work it is supposed to do.

For reasons I gave in the last section I believe it is mistaken to think that Zelda’s self-ownership is being threatened by Adam in Mack’s cases. But one might argue that the reasons I gave are outweighed by the intuitive support Mack’s cases provide for the claim that self-ownership can be violated non-invasively.

I do not, however, think it is so obvious that Mack’s Zelda cases do provide intuitive support for the claim that self-ownership can be violated non-invasively. What is intuitively obvious is that Zelda’s freedom in each case is diminished. But that is not necessarily a judgment that Zelda’s self-ownership is violated. Of course one may be inclined to draw that conclusion for several reasons. Nearly every infringement of a person’s self-ownership diminishes that person’s freedom. The archetype of a person whose self-ownership is violated, a slave, is also the archetype of someone who isn’t free. In addition, writers will often appeal to the same principle in order to justify self-ownership and (typically vague) calls for freedom (e.g. the inviolability of persons). The reverse is also true. Writers will often appeal to either self-ownership or freedom in order to justify the same principle (e.g. a right to private property). On top of all of this, right-libertarians frequently use “freedom” or “liberty” to mean self-ownership.139

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139 As a prime example you have Murray Rothbard’s definition of liberty: “For every man enjoys absolute freedom – pure liberty – if… his ‘naturally’ owned property (in his person and in tangibles) is free from invasion or molestation by other men.” See Rothbard, The Ethics of Liberty, 41. In a footnote shortly afterward, Rothbard says: “[T]his definition of freedom or liberty must be clarified to read ‘absence of molestation of a man’s just property,’ with justice implying, once again, ownership title to one’s own self, to one’s own transformed property, and to the fruits of voluntary exchanges built upon them.” Ibid., 42, n. 4.
In light of the foregoing, it is easy to see why a person would draw the conclusion that the intuition that Zelda’s freedom is diminished is also an intuition that Zelda’s self-ownership is violated. My conjecture, however, is that the intuition we all share, namely that Adam diminishes Zelda’s freedom, is a judgment concerning an undefined, vague sense of “freedom”. Consistent with that judgment one may also judge that Adam does not violate Zelda’s self-ownership.

E. Conclusion

I have argued in this chapter that the concept of self-ownership cannot plausibly be extended to include the SOP. One reason is because extending that concept to include the SOP has bizarre implications with respect to the concept of ownership broadly speaking. Another reason is that, when taken in conjunction with a view of the self (the embodied self view) that motivates it, the SOP has troublesome implications concerning the freedom to use one’s body parts. These objections are not overriden by appeals to intuitions in certain cases (e.g. Mack’s Zelda cases) because, as I conjectured, it is not obvious those intuitions are about self-ownership as opposed to some loose understanding of freedom.

This does not mean that a constraint on property acquisition and use like the SOP cannot be justified. As I said earlier, other values can ground a right against nullification. Perhaps the same value justifies self-ownership (including property rights) and a right against nullification. On this view, although a right against nullification is no longer considered a part of self-ownership, the two come together as part of a package deal, so to speak.

Although I have no objection to such a view, adopting it would be suicide for the right-libertarian. Holding this view is not just a matter of including a right against nullification along

\[140\] See p. 73.
with self-ownership. It involves including a right that would limit, or sometimes outweigh, self-ownership. That’s how *Adam’s Island* would be described on this view. Zelda’s right against nullification limits or outweighs Adam’s property right (which is connected to his self-ownership). It is in order to avoid holding such a view that Mack, Feser, and Russell argue on behalf of the *self-ownership* proviso.
CHAPTER FIVE – CONCLUSION

Many people believe that we possess enforceable obligations of provision toward the impoverished and the disadvantaged. This is a popular belief, regardless of what theory of justice it rests on, if any. Because right-libertarianism appears at odds with this belief, many people reject it as a plausible theory of justice. This reason for rejecting right-libertarianism I have referred to as the destitution objection.

The destitution objection to right-libertarianism rests on two claims. The first claim is that any theory of justice which has the implication that government assistance for the poor is unjust, is, for that reason, implausible. The second claim is that right-libertarianism has the implication that government assistance for the poor is unjust.

The destitution objection is probably the most common reason why most people are not right-libertarians. Because of this, it is important for right-libertarians to respond to it. Right-libertarians have the option of either challenging the first claim that the destitution objection rests on (any plausible theory of justice must countenance government assistance for the poor) or challenging the second claim (right-libertarianism implies that government assistance for the poor is unjust).

Most right-libertarians try to challenge the first claim. One way of challenging that claim is to challenge one of its possible justifications. One purported justification for the claim that justice must countenance government assistance for the poor is the idea that human beings are entitled, as a matter of moral right, to the resources and services necessary for achieving some level of well-being. Now as mentioned in the first chapter, the destitution objection does not presuppose the existence of universal welfare rights (or, for that matter, any fleshed out theory of justice). However, the appeal to welfare rights is one of the most commonly cited reasons in
favor of government assistance for the poor (just consider the United Nations’ Universal Declaration of Human Rights). A successful challenge to the idea of universal welfare rights would be a major victory in undercutting theoretical support for government assistance to the poor.

An attempt at such a challenge is the scarcity objection to welfare rights. The scarcity objection alleges that welfare rights do not exist, because it is possible for one person’s welfare right to x to conflict with another person’s welfare right to x. On the assumption that rights-conflicts cannot exist, welfare rights must not exist.

In chapter two I took up the scarcity objection to welfare rights. I argued in that chapter that the two most common responses to the scarcity objection (that rights-conflicts are unproblematic and that negative rights are subject to problems related to scarcity) are flawed responses. Instead, I argued, two views – specificationism and generalism – which have emerged from work being done on the stringency of rights, offer a better way for the welfare rights advocate to respond to the scarcity objection. In the end I concluded that the scarcity objection does not provide a fatal blow to the notion of universal welfare rights.

In the following two chapters I considered ways in which right-libertarians could challenge the claim that their theory of justice excludes government assistance for the poor.

In chapter three I looked at James Sterba’s two arguments for the claim that welfare rights can be grounded in right-libertarian premises. If this were true, the right-libertarian would have a justification for government assistance to the poor (assuming governments are obligated to protect people’s rights). However, I argued that both of Sterba’s arguments fail. Both arguments rest on a superficial understanding of right-libertarianism. In addition, they each contain crucial premises that right-libertarians reject.
In chapter four I looked at a sophisticated right-libertarian attempt to justify a limit on the acquisition and use of property called the self-ownership proviso (SOP). The SOP prohibits any property acquisition or use that severely negates (non-invasively) a person’s ability to interact with the world. If such a proviso can be grounded in self-ownership, then right-libertarianism can justify governments prohibiting property acquisition and use that makes some so poor or disadvantaged that their ability to interact with the world is severely negated.141

I argued in chapter four, however, that such a proviso on the acquisition and use of property cannot be grounded in self-ownership. Grounding this proviso in self-ownership has very counter-intuitive implications concerning ownership rights to external objects. In addition, when the proviso is paired with a view of the self meant to motivate it (“the embodied self view” defended by Daniel Russell), the proviso has troubling implications concerning the freedom to use one’s body. These objections are not overridden, I argued near the end of the chapter, by our intuitions concerning thought experiments such as Mack’s Zelda cases.

An important conclusion that I believe follows from chapters three and four is that right-libertarianism cannot accommodate the thought that justice requires some enforceable obligation of provision toward the destitute. If one thinks that justice is restricted to respect for self-ownership (including property rights) one cannot also think that government assistance for the poor is just. Therefore, the discussion vindicates the second claim that the destitution objection rests on. I also believe that, (although I only discuss the case of welfare rights), that what I argue in chapter two strongly suggests, if it does not prove, that right-libertarians are unlikely to establish that there is anything incoherent in the thought that justice requires an enforceable obligation of assistance for the poor.

141 As I said in chapter four, I’m not entirely sure what such government action would look like, but it would probably resemble something like assistance for the poor.
It may seem like there is no good way for the right-libertarian to respond to the destitution objection. But nothing I have argued establishes that. For one thing, I have not discussed Nozick’s argument that taxation is a form of slavery. Nor have I discussed the argument that any rationale for wealth redistribution is also a rationale for the redistribution of body parts. Ultimately one must engage directly with the arguments right-libertarians present for their view on property rights, including the connection they see between property rights and self-ownership, and the stringency they place on property rights. Since I have not done that here, nothing I have said is devastating for right-libertarianism. I hope, however, that what I have said in my dissertation contributes to the debate by pointing out where it will need to proceed.

142 “[P]atterned principles of distributive justice involve appropriating the actions of other persons. Seizing the results of someone’s labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.” See Nozick, *Anarchy, State, and Utopia*, 172.

143 This argument is suggested by some of Nozick’s criticisms of Rawls. Ibid., 226-29.

144 Here I am directly referring to hard-liners. But all right-libertarians, even moderates, place a heavy emphasis on property rights. If my arguments are sound, their views on the importance of property rights cannot be tempered by an additional commitment to welfare rights or the self-ownership proviso.
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