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Nozick Revisited: The Formation of the Right-Based Dimension of his Political Theory

THEO PAPAIOANNOU

ABSTRACT. Nozick's *Anarchy, State, and Utopia* is still influential today among right-wing (neo-)libertarian thinkers. The latter are engaged in the current debate on distributive justice, insistently defending the minimal state and the case against social justice on the grounds of inviolable individual rights. The premises of their defense are explicitly derived from *Anarchy, State, and Utopia*. Therefore, if one is interested in challenging the right-wing libertarian arguments today, one should be interested in revisiting Nozick, refuting the key elements of his theory. That is what this article does: it re-examines the formation of the moral dimension of Nozick's political theory. It argues that this dimension consists of the idea of absolute individual rights and is formed upon the premises of full self-ownership and the moral inviolability of persons. Both premises are problematical because they are abstracted from any epistemological principle of self-realization.

Keywords: • Nozick • Individual rights • Morality • Politics
• Libertarianism

Introduction

In the field of political theory, the epithet “libertarian” is usually employed to characterize Robert Nozick, despite the fact that in his later writings he had shifted away from his positions in *Anarchy, State, and Utopia*. There are two reasons for this. First, Nozick's *Anarchy, State, and Utopia* (1974), 32 years after its original publication, has become a classic. As B.H. Fried (2005: 221) points out, “It is not only the central text for all contemporary academic discussions of libertarianism; together with John Rawls's *A Theory of Justice* (1971), it also arguably framed the landscape of academic political philosophy in the last decades of the twentieth century.” Second and more importantly, Nozick's early politico-theoretical project is still very influential today among right-wing libertarians who are actively engaged in the current academic debate of distributive justice. Especially in the USA, but

also in Europe, right-wing libertarians such as John Hasnas (2003, 2005), Eric Mack (2002a, 2002b, 2005), Edgar K. Browning (2002), and others “clash” with left-wing libertarians such as Philippe van Parijs (1995) and Peter Vallentyne et al. (2005) as well as with egalitarians (liberals and Marxists) such as Ronald M. Dworkin (2002), Brian Barry (2005), and Gerry A. Cohen (1995) on issues of just distribution and social welfare.

Left-wing libertarians and egalitarians hold that “individuals have no right to a disproportionate share of external resources of the world” (Fried, 2004: 67), while they also stress that the state in a just society cannot be minimal. In response to their claims for social justice, right-wing libertarians insist on defending the minimal state and the case against income redistribution on the grounds of inviolable individual rights. For instance, Hasnas (2003) challenges the traditional politico-theoretical argument that holds that the state is morally justified because the market is unable to supply the rule-making and enforcement services that are essential to life in society. On the other hand, Mack defends the thesis that each individual possesses moral rights over his own body and capacities, proposing that “through the exercise of these rights of self-ownership, individuals may readily become entitled to substantial unequal extra-personal holdings” (2002a: 76).

The premises of right-wing libertarian arguments are commonly explicitly derived from *Anarchy, State, and Utopia*. For instance, Hasnas and Mack make a number of direct references to this text, reconstructing Nozick’s political theory in the 21st century. Therefore, if one wishes to challenge the right-wing libertarian arguments today (especially from an egalitarian point of view), one should be interested in revisiting Nozick, refuting the key elements of his theory on even more fundamental grounds than those already provided by the existing body of literature. That is what this article does: it re-examines the formation of the moral dimension of Nozick’s political theory and refutes its key elements on epistemological grounds.¹ In doing so, the article introduces a distinctive and novel approach to Nozick. In this sense, it implicitly addresses the premises of right-wing libertarian arguments, offering fresh criticism against inviolable individual rights and answering questions that the existing body of literature leaves open.

In what follows, it will be maintained, first, that the moral dimension of Nozick’s political theory consists of the idea of absolute individual rights, formed upon two premises: full self-ownership and the moral inviolability of persons. Second, it will be suggested that both premises are problematical not just because, as many authors have so far shown, they are indifferent toward basic freedoms and welfare consequences, but, above all, because they are abstracted from any epistemological principle of self-realization. Only in the context of this principle can the role of society and external resources in self-development and self-ownership be recognized. Due to its problematical formation, Nozick’s libertarianism is fundamentally implausible. This has negative implications for right-wing libertarians today.

The article is divided into four sections. Section 2 examines the problematical premises of Nozick’s right-based² morality. Section 3 focuses on the implausibility of Nozick’s libertarianism. Section 4 summarizes the main argument of this article.

The Problematical Premises of Nozick’s Right-Based Morality

From the preface of his *Anarchy, State, and Utopia*, Nozick stresses that “Individuals have rights, and there are things no person or group may do to them (without

violating their rights)" (1974: ix). The very idea of rights is concerned with entitlements. According to H. Steiner (1977: 770), "any possible set of rights contains a set of titles to objects." From this it follows that individual rights contain titles which individuals may have to objects. What are the titles individuals may have in terms of Nozick's theory? To what objects may individuals have titles? What rights does Nozick think individuals have?

As many scholars have observed, Nozick's concept of individual rights is founded upon the principle of self-ownership.³ According to Cohen and Graham (1990: 25), "The principle says that every person is morally entitled to full private property in his own person and powers. This means that each person has an extensive set of moral rights ... over the use and fruits of his body and capacities." The concept of moral rights refers to those rights which are thought to exist independently of social recognition and legal enforcement (Lyons, 1984: 111; Waldron, 1993: 24). For Nozick, moral rights⁴ are negative rights. This negativity might be better understood in terms of Hohfeld's (1919: 38–43) claim-right: if A has a moral right to X, then B has a moral duty not to interfere with A's right. Apart from questions that such a Hohfeldian view of right-raise (Waldron, 1984: 8), the maxim of non-interference normally constitutes the criterion by which negative rights are distinguished from positive rights. As Wolff (1991a: 19) says, "If I have a *positive* right to something this entails that a particular person, or in other cases everyone, has a corresponding duty to provide me with that thing or whatever is necessary to secure it."

In Nozick's theory, the principle of self-ownership upon which the idea of moral rights is based, appears to be abstract and formal. This is something that early critiques of Nozick also recognize (Nagel, 1975), but fail to overcome. Nozick conceives self-ownership without presupposing any epistemological principle of self-realization. His conception is not founded upon empirical observations or logical arguments. For Nozick, if I own my self, then I also own my talents and capacities (Kymlicka, 1990: 105). This view is rather implausible. Nozick does not address the concrete problem of self-development. In fact, I cannot be the owner of my self and the fruits of my talents unless those have been developed. Self-ownership, especially when connected with certain talents and capacities, has an inherently developmental dimension that is wholly ignored by Nozick.⁵ For instance, to be the owner of my talent to play basketball at a competitive level presupposes that I have already had the social and economic means to realize and develop my talent through a lot of training in an indoor court to which I have access. The principle of self-realization refers to self-knowledge through self-development. Self-development depends on purposeful activities, including work.⁶ Self-development as such is prior to self-ownership. If I have not realized my self and my talents, I may not have the title to them. As Steiner (1977: 770) points out, "A title is a relation between two terms: the name of an agent and the name of an object." Objects such as my capacities and talents may not be named unless they have been developed through purposeful activities. But even if my capacities and talents have been developed, this development cannot be full, due to scarcity of external resources. A society cannot guarantee that I get what I need to carry out my preferred project of full self-development since it might be impossible to match my demand for external resources with the supply. By conceiving self-ownership without presupposing any epistemological principle of self-realization, Nozick abstracts the former from the substantial presuppositions

of its reflexive constitution. These presuppositions concern the relational context of society and the division of external resources.

In his *Anarchy, State, and Utopia*, Nozick introduces the principle of self-ownership as the first premise of his right-based view of morality. That premise might be seen through his idea of the separateness of persons. According to Nozick, each person leads a separate life. No one is justified to “interfere with someone else’s shaping of his own life” (Nozick, 1974: 50). Nozick develops the first premise of his theory as a natural right. This is based upon a picture of an isolated self. As H.L.A. Hart says, a natural right possesses two important characteristics: “(1) This right is one which all men have if they are capable of choice: they have it *qua* men and not only if they are members of some society or stand in some special relation to each other. (2) This right is not created or conferred by men’s voluntary action” (1984: 77–8; Wolff, 1991a: 24). In Nozick’s theory, men have the right of living separate lives because they are thought to be beings “capable of choosing autonomously among alternatives” (1974: 48). This capability is founded upon three characteristics: (1) rationality, (2) free will, and (3) moral agency (Nozick, 1974: 48). Nozick seems to believe that it is those characteristics of which each isolated self consists. Certainly, one could not argue that a theory of the self is explicitly presented in *Anarchy, State, and Utopia*. Nevertheless, as Cohen point out, “The term *self* in ... self-ownership has a purely reflexive significance. It signifies that what owns and what is owned are one and the same, namely, the whole person” (1995: 69, emphasis added; also cited in Kymlicka, 1990: 105). Unfortunately, neither Cohen nor Kymlicka go any further to establish the link between the reflexive self and the traits of rationality, free will, and moral agency. It might be argued, though, that, for Nozick, the capacity of the self to be, at the same time, the subject who owns and the object that is owned is due to its traits. In the Nozickian account, rationality, free will, and moral agency seem to be what makes a self capable of reflexive self-reference. In his *Philosophical Explanations*, Nozick says that “To be an I, a self, is to have the capacity for reflexive self-reference” (1981: 105). That view is latent in *Anarchy, State, and Utopia*. The question that arises is whether the capacity for reflexive self-reference can come about throughout the three aforementioned traits that each self is thought to possess by nature.

It might be argued that the capacity for reflexive self-reference cannot be exclusively formed in terms of rationality, free will, and moral agency. Even if we accept that a self by nature possesses those traits, it cannot realize them by itself and outside of the relational context of society. That is to say, rationality, free will, and moral agency, as well as other capacities and talents, need to be developed in order to be known by a self. As has already been mentioned, the principle of self-realization refers to self-knowledge through self-development.⁷ Such a development presupposes a dialectical process of interaction between a self and other selves.⁸ As Hegel (1991: 185) points out, “each has its own determination only in its relation to the other: it is only inwardly reflected insofar as it is reflected into the other, and the other likewise; thus each is the other’s *own* other.” Hegel’s point should not be advanced in abstraction from the division of external resources in society. Since a self is born within a given division of external resources, its interaction with other selves takes place in terms of that division. Whether the interaction between different selves in a society is full or partial does not only depend on whether those selves are willing to interact with one another. It also

depends on whether the division of external resources in that society allows full or partial interaction between different selves.

Nozick (1974: 49) does not present any theory concerning the role of society and external resources in the dialectical development of human rationality, free will, and moral agency. On the contrary, by following individualist anarchists such as Tucker (1911: 23–4) he treats those characteristics individually and separately. As a result, he abstracts self-ownership from its social and economic presuppositions, and thereby he understands it as a pure and isolated individualistic matter. Therefore, communitarian thinkers such as C. Taylor are right to accuse Nozick of extreme individualism (Taylor, 1985: 187). Nevertheless, one could accuse communitarians of determinism since they claim that “there are social attachments which determine the self” (Avineri and De-Shalit, 1992: 3). Communitarians do not seem to take seriously into account the dialectical nature of the whole process of self-development.⁹ At this point, the principle of self-realization might be distinguished from the communitarian understanding of the principle of self-determination. According to Kymlicka (1990: 202), “Self-determination involves deciding what to do with our lives.” For communitarians, the capacity for self-determination can only be meaningfully exercised under certain social preconditions. Therefore, the principle of self-determination, as communitarians understand it, describes a more substantive self-ownership within a community. Although the principle of self-realization can describe a substantive conception of self-ownership in a manner similar to that within the principle of self-determination, the former cannot be reduced to the narrow and deterministic boundaries of a community. Communitarians who argue for self-determination cannot resolve the problem of antithesis between the principles of individuality and community.

The same problem also emerges in Marxist theories which extend the strict idea of community to the whole of society, that is, communism.¹⁰ Marxists insist on defending communism as a higher type of society that can bring about a synthesis of the principles of individuality and community. However, this type of society can only be seen as an abstract ideal. Undoubtedly, the principle of self-realization is of central importance to theorists who work within the Marxist tradition. Nevertheless, that principle does not seem to justify, as Marx believed, “the full and free actualisation and externalisation of the powers and the abilities of the individual” (Elster, 1986: 101). As Elster (1986: 101) points out, “The idea that the individual can *fully* bring to actuality *all* the powers and abilities he possesses is one of the more utopian elements in Marx’s thought.” Indeed, Elster is right in rejecting this utopian idea. It might be argued that full and absolutely free self-actualization, as well as full self-externalization, are impossible because self-development cannot be full even in an ideal society where the principles of individuality and community are synthesized into what Marx calls “universality” and Archard interprets as “sociality” (Archard, 1987: 29). Since scarcity is always present, the development of each individual’s powers and abilities can never be full. This implies that the concept of full self-ownership as such is impossible not because, as Kant (1991: 90)¹¹ argues, the self is not a thing that can be owned by itself, but because, ontologically speaking, the self cannot live as a full self-owner. The self lives because scarcity is inescapable and it lives in society because it cannot by itself deal with certain aspects of scarcity. From this it follows that persons who live in society might not have a full set of moral rights over themselves. There is no society founded upon a principle of absolute

negative liberty. Marxist and (right- and left-wing) libertarian proposals which dismiss this point can certainly have a theoretical and symbolic significance, but not a pragmatic one. Nozick (followed by right-wing libertarians today) does not seem to acknowledge this. Although he, unlike Marxists, does not presuppose any principle of self-realization, he advocates a thesis of full self-ownership. At this point Nozick, right-wing libertarians, and Marxists also find themselves in agreement with left-wing libertarians (Vallentyne et al., 2005). Such an agreement is not surprising since, as Cohen (1995: 118) observes, "All libertarians say that each person has a fundamental entitlement to full private property in himself, and consequently, no fundamental entitlement to private property in anyone else." It might be argued that the essential difference between Marxists and left-wing libertarians, on the one hand, and Nozick and right-wing libertarians, on the other, is that the latter group forms their thesis of self-ownership in abstraction from conditions of social choice and scarcity of resources. This abstraction might be viewed as a consequence of Nozick's unwillingness to form his concept of self-ownership by presupposing an epistemological principle of self-realization. The latter does not signify a more specific form of the good life that is competing with that of Nozick. Therefore, the question is not whether we ought to pursue self-realization over any alternative form of the good life. Rather, the question is whether self-realization is epistemologically presupposed of any specific form of the good life, including Nozick's form of self-ownership. Self-realization is a principle that entails that the dialectical interaction between different selves and society, as well as the division of external resources, is developed under certain conditions of social choice and availability of external resources. Since self-realization is a matter of social interaction and since the latter depends on external resources, Nozick by abstracting from self-realization also abstracts his libertarian form of the good life from conditions of social choice and scarcity of external resources.

In particular, the standpoint of Nozick's thesis of self-ownership is that each person who by nature possesses the individualizing traits of rationality, free will, and moral agency is, as Nozick himself writes:

a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others, and so on. (Nozick, 1974: 49)

Nozick does not take into account that the ability to formulate plans for life is a matter of available external resources. To him, planning exists at the individual level. Only individuals who possess the traits of rationality, free will, and moral agency know how to shape their separate lives. In Nozick's view, such an individual knowledge is full. Even so, it might be said that individual planning cannot be abstracted from the problem of external resources. In fact, such planning is a matter of availability of both external resources and knowledge. Whether a person is able to form a long- or a short-term plan for his life depends on whether his amount of available external resources is large or small, and whether his knowledge about that amount is sufficient or not. For instance, in a world where natural resources are scarce, persons are able to formulate long-term plans for their lives when they have equal access to those resources. Nozick's principle of

self-ownership does not deal with that problem. As Cohen correctly observes, the principle of self-ownership “says ... nothing about anyone’s rights in resources other than people, and in particular, nothing about substances and capacities of nature, without which the things that people want cannot be produced” (1995: 13).

Nozick considers each person’s picture of an appropriate life to be a matter of absolute individual choices. Nevertheless, it might be argued that within the relational context of a society there are certain pictures which are socially approved. Nozick does not consider the role that social choice plays in individual decisions. For him, those decisions are made in accordance with each individual’s overall conception of life (Nozick, 1974: 49). This argument does not seem to take into account the relationship between social choice and social recognition. It might be said that each individual’s overall conception of life does not, in fact, abstract from social choice, because if the latter were incompatible with his overall conception of life, his goals and his decisions would not be socially recognized. The principle of social recognition is an essential presupposition of society’s moral obligation toward individual goals (Wolff, 1991b: 156–7).

Nozick’s abstraction of self-ownership from conditions of social choice and scarcity of external resources results in the development of a moral theory of absolute individual rights. These rights are centered in private property. Specifically, Nozick seems to adopt Hart’s thesis that “if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free” (Hart, 1984: 77). In the Nozickian view, the equal right of all men to be free is the natural right of men to live their own separate lives, that is, the right to self-ownership. This natural right accords men with moral rights to a meaningful life. Having the natural right of owning himself, and thereby shaping his life, each person is thought to have moral rights which permit him to do whatever he chooses with his body and his life, so long as he does not cause or threaten any harm to the body and life of others. For Nozick, “A person shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for meaningful life” (1974: 50). Certainly, Nozick does not provide any explanation as to why rights to a meaningful life are moral rights. On the contrary, in the preface of his *Anarchy, State, and Utopia*, he confesses that his “book does not present a precise theory of the moral basis of individual rights” (Nozick, 1974: xiv). But even so, one would probably argue that the morality of meaningful life is derived from the natural right to full self-ownership. Nevertheless, Wolff is justified in asking “Could there be such things as natural rights? Human beings naturally have arms and legs. Do they just naturally have rights?” (1991a: 24). Wolff goes on to remind us that the very idea of natural rights is not biologically founded, and classical utilitarian thinkers such as J. Bentham¹² dismiss it as being nonsensical (1991a: 24). Indeed, Bentham argues that the idea that there are natural rights which exist independently of social recognition and enforcement and which could be the starting point of morality is wild (Waldron, 1984: 1).

Of course, Nozick’s theory of rights is not derived from Bentham, but from Locke. For Locke, as is well known, the moral source of all natural rights is God.¹³ It might be argued that Nozick follows Locke not only in conceiving of the right to self-ownership as a natural right, but also in linking it with the right to private appropriation. Locke says that even though God has given the earth to men in common, he has given it to them in order to use it for the best

advantage of their lives (1988: sect. 26), and use requires appropriation (1988: sect. 35). In the Lockean account, the use of the earth for the best advantage of people's lives is what links the natural right to self-ownership with the right to private appropriation. In Nozick's theory, a similar link is established through the concept of meaningful life. Nozick, like Locke, derives the right to meaningful life from the natural right to self-ownership. In this sense, the rights of all men to meaningful life might be viewed as natural rights to private appropriation. Nozick is not "willing to rest the case for his theory on biblical authority" (Wolff, 1991a: 27). Behind his concept of the self seems to lie an abstract naturalism rather than a Christian theology. Nevertheless, Nozick gives the impression that he agrees with other libertarian thinkers such as A. Rand that "Whether one believes that man is the product of a Creator or of nature, the issue of man's origin does not alter the fact that he is an entity of a special kind – a rational being" (Rand, 1961: 94). This agreement does not imply that Nozick also agrees with Rand that rights are a necessary condition of man's survival (Rand, 1961: 94). On the contrary, in his essay "On the Randian Argument," he argues that if rights are explained as conditions of man's survival, then there is no answer to the question of why they should not be violated (Nozick, 1982: 226–7). Nozick seems to believe that only if rights are explained as a necessary condition of a Lockean type of self-ownership is there an answer to the question of why they should not be violated. For Locke, property is inviolable. As he says, "I have truly no property in that, which another can by right take from me, when he pleases against my consent" (Locke, 1988: sect. 138).¹⁴ The reality of my moral right to property is the moral duty of another not to interfere with my property against my consent (for instance, not to steal my property).

Of course, the aforementioned difference between Nozick's and Locke's metaphysics should no longer be overlooked. Theological beliefs matter. Thus, it might be argued that the theological foundation of Locke's concept of self-ownership implies a particular view of self-realization. According to it, in the state of nature, each person is an individual self who realizes himself through his realization of God. In Locke's theory, God as such seems to play the role of the "social self" in the interactive process of self-realization. Although that process might not be regarded as dialectical, it seems that God gives reason to each man (Locke, 1988: sect. 26) by means of which the latter realizes himself as a divine and moral creature with similar characteristics to those of God.¹⁵ Then, on the basis of that realization, each person claims the rightful ownership of his body and powers. In Locke's theory, the notion of self-ownership seems to be partial. Since each person is a creature of God, his life belongs to God. Locke, through the theological foundation of his theory, acknowledges that the link between self-ownership and private appropriation is possible only if it does not violate the equal right of all men to use external resources. This acknowledgment justifies unlimited private property rights in unequal amounts of external resources only where those resources are abundant.

By contrast, in Nozick's theory, the notion of partial self-ownership is not justified (1974: 172). Since each person by nature possesses the individualizing traits of rationality, free will, and moral agency, and since the development of those traits is abstracted from any dialectic process of self-realization, the life of each person belongs neither to God nor to society, but to the person himself.¹⁶ As Nozick says, "being myself, a property no one else has, is the ground of my

value" (1981: 454). From this it follows that persons who by nature are capable of owning themselves and shaping their lives are values in themselves. Hence, those persons are moral and therefore inviolable.

The principle of inviolability might be seen as the second problematical premise of Nozick's right-based morality. According to C. Swanton, this premise along with the premise of the separateness of persons "forms the basis of Nozick's own interpretation of the second formulation of Kant's Categorical Imperative. The interpretation is: never use a person as mere *resource* for the ends of others without her consent" (Swanton, 1983: 69, emphasis added). Since that interpretation is based upon the premises of inviolability and the separateness of persons, it does not justify the equal right of all men to use external resources in the Lockean manner. Such an equality is incompatible with the notion of full self-ownership. In Nozick's theory, the link between full self-ownership and private appropriation (that is, the meaningful life) is possible only if each person has unlimited private property rights in unequal amounts of external resources (Cohen, 1995: 118), even in cases where those resources are in scarcity – as they always are.

The important role that the second formulation of Kant's Categorical Imperative plays in Nozick's theory does not imply the Kantian character of *Anarchy, State, and Utopia*. As Wolff (1991a: 28) stresses, the Categorical Imperative is just one Kantian idea that Nozick takes over and adapts. Wolff is right in stressing this because Nozick's Kantianism is instrumentally formed in order to defend unrestricted private property rights against egalitarianism. It is such absolute individual rights that the first premise of Nozick's theory (that is, the principle of full self-ownership) morally justifies, and the second premise (that is, the principle of inviolability) safeguards.

The question, of course, is why Nozick needs to go from Locke to Kant in order to defend unrestricted private property rights. As an answer to that question the following might be said: since only in Kantian metaphysics is the person considered as an end in himself, sacrifices for the sake of others can only be disapproved of from a Kantian viewpoint. In Lockean metaphysics, the person is the property of God and only God is an end in himself. Hence, sacrifices for the sake of God might be approved of morally. Such an approval opens the door to theologically founded redistributions of resources and therefore to restricted private property rights.¹⁷

The Implausibility of Nozick's Libertarianism: Absolute Private Property Rights and Equal Freedom in the State of Nature

The moral dimension of Nozick's political theory consists of absolute individual rights. In the preceding section, it has been shown that the problematical premises of full self-ownership and the moral inviolability of persons justify unlimited rights to private appropriation of external resources. The link between full self-ownership and unlimited private appropriation results in what is called Nozick's libertarianism. The self-ownership principle entails a particular view of individual freedom. According to R.J. Arneson, "Under self-ownership, I have the moral right to behave voluntarily ... Other persons have no moral right to restrict my liberty" (1991: 37). From this it follows that if I own my natural capacities and talents, I have the moral right to appropriate whatever amount of external resources I voluntarily choose, so long as my choice does not contravene the choices which

other individuals form on the basis of the same right. Hence, any limitation on my private property rights without my consent restricts my individual freedom.

It might be argued that Nozick's view of equal liberty through unlimited private property rights is implausible. In the relational context of society and given the scarcity of external resources, absolute private property rights cannot be reconciled with the right of all individuals to equal freedom of choice. The implausibility of Nozick's libertarianism is due to the problematical premises of full self-ownership and the moral inviolability of persons. These premises are incompatible with any social relational context within which equal liberty might be sustained. Since the moral dimension of Nozick's theory is premised upon full self-ownership and the moral inviolability of persons, the link between absolute private property rights and equal liberty is justifiable only in terms of unfounded analytical abstractions. In this sense, Nozick's libertarianism, even though not internally incoherent as C.J. Nock (1992: 680) believes, is undoubtedly dogmatic.¹⁸

Although Nozick follows Locke in suggesting that the right of all men to equal liberty gives them an equal claim to external resources (Nock, 1992: 683), this does not imply that his libertarianism leans on a Lockean conception of equal liberty. In Locke's theory, the relational context of equal liberty is theologically founded. Since in the state of nature each person realizes his powers through his Christian faith in God, he also realizes his equal freedom to use his powers in order to appropriate the resources which God has given to him in common with others. God's initial distribution of unowned resources to all men is what provides moral justification to the Lockean proviso. In Locke's (1988: sect. 33) view, when persons appropriate things, there should be "enough and as good left" to others. This proviso might restrict private property rights in order to safeguard the right of all men to equal liberty. This restriction is not incompatible with the Lockean notion of self-ownership. The latter, as previously stated, is a concept of partial self-ownership. The Lockean notion of partial self-ownership points out a view of equal liberty as a relative autonomy from God. In the state of nature, each person is equally free to appropriate whatever amount of resources he voluntarily chooses, so long as his choice does not contravene the choice of God. For Locke, the obedience to God's choices and commands is what morality consists of (Gough, 1956: 4). According to Locke's conception of Christian divine choice, in the state of nature "the holdings to which people can be expected to acquire title will not extend beyond 'the conveniences of life'" (Scanlon, 1982: 126). No one is entitled to more resources than he can use.

It might be said that in the Lockean theory, the choice of God reflects the social choice concerning the problem of social reproduction. That is the problem of the continuation of society as a whole and not just of a group of individual property owners who participated in the process of original acquisition. Social reproduction seems to be achieved through the proviso and the law of nature.¹⁹ On the one hand, the proviso guarantees what D. Kelley (1984: 109) thinks the existence of private property rights does not normally guarantee. That is, each individual will possess property if he is willing to mix his labor with an object of appropriation (Locke, 1988: sect. 27). On the other hand, the law of nature guarantees that those individuals who are unable to work and so to mix their labor with objects of appropriation will not end up starving. The law of nature limits egoism, introducing a scheme of welfare that is based on social solidarity. The state of nature is itself a society of God that is governed by his reason.²⁰ In that state

of affairs, as Locke argues, “Every one as he is *bound to preserve himself*, and not to quit his Station wilfully; so by the like reason when his own preservation comes not in competition, ought he, as much as he can, *to preserve the rest of Mankind*” (1988: sect. 6). The relationship between the proviso and the scheme of welfare that the law of nature introduces seems to be clear. The proviso grants “enough and as good” to all individuals who are able to use their labor power.²¹ Hence, those individuals do not think that it is against their interests to redistribute a part of their possessions to persons who are unable to appropriate external resources by themselves. When external resources are not scarce, the problem of social reproduction is easily resolved. So the proviso need not be strong.

Locke (1988: sect. 33) argues that when land is abundant, no one could plausibly claim to be harmed by any private appropriation, even though it is true that after an appropriation of one piece by one or several persons, non-appropriators are no longer at liberty to use that piece at will and to this extent have been deprived of an opportunity (Arneson, 1991: 40).

In Nozick’s theory, the Lockean proviso is irrelevant in the original form of “enough and as good.” Nozick believes that even if resources were relatively abundant “the free activities of individuals would progressively reduce the amount of unimproved resources available for latecomers” (Nock, 1992: 682). Through his critique of the Lockean theory of acquisition, he replaces the original form of the proviso with a Pareto one. For Nozick, “The crucial point is whether appropriation of an unowned object worsens the situation of others” (1974: 175). Pareto’s principle of improvement requires that when some individual becomes better off by appropriating an unowned object, no one becomes worse off in comparison to his situation before the appropriation. Writers such as Cohen (1995: 75) and Arneson (1991: 44) agree with Nozick that the Lockean proviso faces functional problems. Therefore, they come to accept the Pareto principle of improvement as a relevant form of proviso.

Nevertheless, it seems that Nozick does not replace the original proviso because it cannot guarantee unimproved resources for latecomers. If it is true that the Lockean notion of self-ownership is partial, and if “enough and as good” were interpreted as being “enough and as good for other generations,” then the proviso would probably guarantee resources for latecomers. Nozick’s main problem with the Lockean proviso is that it may prove the “Trojan horse” of his right-wing libertarianism because it cannot justify absolute private property rights in abstraction from the real condition of external resources. That is to say, if external resources are in a real condition of scarcity, then the “enough and as good” proviso cannot justify a *laissez-faire* form of capitalism. The theological macro-foundations of the Lockean state of nature²² develop the relational context of equal liberty in such a way as to allow each individual to become a private property owner if he wishes to. Therefore, no individual could claim that his freedom is restricted because there are no external resources left for him to appropriate or because he is unable to achieve the appropriation. Locke on property was not incompatible with Locke on liberty and equality, at least before his introduction of the theory of money. Held (1976: 169) rather mistakenly believes the opposite. As Nock says, Locke recognized that “*the Condition of Human life ... requires [both] Labour and Materials to work on*. Thus, anyone denied access to natural materials would lack the vital element for securing his life and hence, his liberty” (Nock, 1992: 684, emphasis added).

The incompatibility between private property and equal liberty appears in Nozick's theory. Nozick replaces the theological macro-foundations of the state of nature with his own metaphysics. The latter does not justify a socially founded relational context within which equal liberty might be developed in such a way as to allow each individual to become a private owner of external resources. In a hypothetical state of nature characterized by a lack of political organizations, theological macro-foundations, abundant resources, and the Lockean proviso, equal liberty might be developed if there is an initial distribution²³ of equal external resources.²⁴ Such a distribution might grant the right of all individuals to equal private ownership of external resources and thereby to partial self-development. Nevertheless, initial distribution of equal external resources is not compatible with the premises of Nozick's libertarianism. Those premises can only justify unlimited private appropriation of available external resources.

However, in the Nozickian state of nature there would be many individuals who would claim that their freedom of choice is restricted because there are no resources left for them to appropriate or because they are physically unable²⁵ to achieve appropriation. Nozick is aware of that problem and in order to resolve it without restricting private property rights, he introduces the Pareto type of proviso. The latter is thought to provide the means for reconciling equal liberty and laissez-faire capitalism because it justifies a process of compensation. The proviso indicates that when some individual, by appropriating an unowned object, worsens the situation of others, he must compensate them. Does this proviso balance unlimited private property rights and equal liberty in the state of nature? The answer is negative. The Nozickian proviso is ambiguous. According to it, someone who is excluded from the process of original acquisition because there are no resources left for him to appropriate or because he is physically unable to achieve the appropriation is not worse off in comparison to his previous situation. Therefore, Nozick's proviso does not justify the compensation of individuals who are excluded from the process of original acquisition. For Nozick, those individuals are compensated in terms of the laissez-faire process of the state of nature and this is the reason why they finally consent to their exclusion from the process of original acquisition.

Nozick may be right in saying that individuals who are excluded from the process of original acquisition were not better off before their exclusion. But does this imply that those individuals are not worse off after their exclusion? The answer is negative. Individuals who are excluded from the process of original acquisition need to be compared not only against their previous situation, but also against the situation of property owners. The latter constitutes a benchmark for relative comparisons. The view that as long as they stay in the same place in comparison to their previous situation individuals who are excluded from the process of original acquisition cannot be made worse off by falling further and further behind the property owners is nonsense. Against this view, one might fully agree with Barry who, in his recent work *Why Social Justice Matters*, maintains that "becoming relatively worse off can make you absolutely worse off, in terms of opportunities and social standing" (2005: 173).

Having formed his principle of full self-ownership in abstraction from any principle of self-realization, Nozick tends to believe that even if some individuals are excluded from the process of original acquisition, they are not worse off

(relatively or absolutely) because they have particular talents and capacities. For him, the laissez-faire process compensates those individuals by transforming their possession of talents and capacities into ownership of resources. In Nozick's view, the laissez-faire process distributes resources in accordance with the capacities and talents that each individual possesses. From this it follows that, in the state of nature, individuals who possess talents and capacities become private property owners. So, for Nozick no one in the state of nature is forced by initial inequality of resources not to possess private property.

Nozick's argument is not convincing. If it is true that no one can be the owner of the fruits of his talents and capacities unless those have been developed in the relational context of society, then it must be also true that the individuals who are excluded from the process of original acquisition because they are physically incapable of work are likely to starve. The others who are excluded because there are no resources left for them to appropriate are bound to enter into the laissez-faire process of the state of nature without owning capacities and talents, only their labor power.²⁶ Instead of developing their capacities and talents in that relational context, individuals who are capable of work are forced to sell their labor power to those who possess resources with no prospect of becoming private property owners. Consequently, individuals who are excluded from the process of original acquisition are worse off, not in comparison to their previous situation, but in comparison to the situation of private property owners. Private property owners who are physically incapable of work have the opportunity to buy welfare schemes and so they are not likely to starve. Owners who are physically capable of work have the opportunity to develop their capacities and talents because, since they possess resources, they are not forced to enter the laissez-faire process in order to work for others.

Apart from the ambiguity of the Nozickian proviso, it should be said that the principle of compensation, as it is introduced in *Anarchy, State, and Utopia*, is also vague. First of all, that principle does not entail that the individual who, through his appropriation, worsens the situation of others should stop appropriating resources. Second, full application of the principle of compensation presupposes that a universal medium of exchange has been already introduced in society and guaranteed by the state. Third, Nozick does not provide a method by which compensation can be satisfactorily measured.

In fact, Nozick introduces his proviso from the point of view of absolute private property rights and not from the point of view of equal liberty. That is because, to Nozick, it is absolute private property rights which have an intrinsic moral value and not equal liberty. In his early study entitled "Coercion," he argues that "being coerced into not doing an act is neither a necessary nor a sufficient condition for being unfree to do it" (Nozick, 1969: 440). Certainly, this argument is valid in some cases that Nozick describes. Nevertheless, being prevented by an initial inequality of resources from doing an act is a sufficient condition for being unfree to do it.²⁷

Equality of resources and equal liberty are interdependent concepts.²⁸ This conceptual interdependence is fully compatible with the notion of partial self-ownership. Since partial self-ownership is formed through a dialectical social process and since participation in that process presupposes external resources, equal self-ownership²⁹ presupposes an initial distribution of equal external resources.

Within that relational context, equal self-ownership can be formed in terms of social choice. The character of social choice might be considered as abstract as the character of the choice of God in the Lockean state of nature.³⁰ From this it follows that the form of autonomy which the social process of self-realization implies cannot be considered identical with the form of autonomy that the communitarian process of self-determination implies (Gordon, 1988: 46). Both processes refer to the relational context within which a substantial self-ownership might be formed. Nevertheless, in the relational context of self-realization social choice is mainly concerned with the problem of social reproduction. That problem is universal in the sense that its resolution is presupposed by any substantial self-ownership. Hence, autonomy in terms of self-realization means that each person is equally free to develop and use his powers in whatever way he chooses, so long as his choice does not contravene the set of ways which a free society chooses to be reproduced. Since a free society claims equal self-ownership for all its members, it can only choose to be reproduced in ways compatible with that claim. The initial distribution of equal external resources cannot ignore this.

Conclusion

This article has tried to re-examine the formation of the moral dimension of Nozick's political theory, refuting its key elements on epistemological grounds. In doing so, it has implicitly addressed the key premises of right-wing libertarian arguments of full and inviolable ownership of internal endowments (talents and capacities) and external resources of the world.

In summary, it might be said that, indeed, the moral dimension of Nozick's early theory consists of the idea of absolute individual rights. This right-based dimension is based upon the premises of full self-ownership and the moral inviolability of persons. Both premises are problematical because they are abstracted from any epistemological principle of self-realization. This principle immediately points out the role of society and external resources in the development of the self and his ownership of himself.

It might be concluded that, due to its formation upon the problematical premises of full self-ownership and moral inviolability of persons, Nozick's libertarianism is implausible. In the relational context of society and in conditions of scarcity of external resources, absolute private property rights and equal liberty can never be reconciled.

Our conclusion has certain implications for right-wing libertarians today. Their arguments are directly derived from Nozick's *Anarchy, State, and Utopia* and therefore they cannot be theoretically sustained. Right-wing libertarians fail to make the case against redistribution and welfare simply because full and inviolable ownership of internal endowments and external resources could only be an imaginary possibility outside society and in a hypothetical state of abundant resources. Their failure, of course, does not necessarily imply that the case for the welfare argument is de facto true. Further discussion is needed in order to answer the question of whether equal liberty can be achieved through welfare.³¹ What the failure of right-wing libertarians implies is that pragmatic public policy should refrain from further tightening of private property regimes,³² and should allow allocation of resources for self-development through politics and not through the market.

Notes

1. Epistemology is generally defined as “the study of knowledge and the justification of belief” (Dancy, 1985: 1). Questions formulated on epistemological grounds include, what can we know? How can we know? What beliefs are justified? Answers to these questions can be found in different traditions of thought. For instance, in the empiricist tradition of Locke, Berkeley, and Hume, our knowledge of the world (including ourselves) comes about through our sense experience. Nothing around us can be known unless its existence is revealed from information we gain directly in sense experience or introspection of our subjective states (Hunter, 1992: 110). By contrast, in the rationalist tradition of Descartes, Kant, Hegel, and their followers, our knowledge of the world can come about through reason, independently of sense experience. This is what Kant regards as a priori knowledge. In his theory, a priori knowledge is distinct from a posteriori knowledge that is based on experience. Certainly, Kant’s distinction between the two categories of knowledge is not clear-cut. For Kant a proposition known a priori could depend on experience in two particular ways: first, the concepts involved in the proposition are acquired by sense experience; second, experience is always necessary to entertain the proposition (Casullo, 1992: 3).
2. The term “right-based” theory was introduced by R. Dworkin (1977) in *Taking Rights Seriously*. Here he suggested a “tentative initial classification” of political theories into goal-based, right-based, and duty-based theories. According to Dworkin, right-based theories take some right, “like the right of all men to the greatest possible overall liberty, as fundamental” (1977: 171).
3. See, for instance, W. Kymlicka (1990: 105), J. Wolff (1991a: 7), and G.A. Cohen (1995: 61).
4. Nozick’s concept of moral rights seems to include both intellectual property rights and physical property rights. The relationship between the two forms of rights is complex. In Nozick’s theory, intellectual property rights are moral entitlements over specific intangible “objects” such as talents and capacities. What these entitlements have in common with physical private property rights is the possibility of moral exclusivity of use (Campbell, 1990). In order to illustrate this, Nozick explicitly uses the example of someone who, on the basis of his scientific talent and capacity, “finds a new substance in an out-of-the-way place. He discovers that it effectively treats a certain disease and appropriates the total supply” (1974: 181). Nozick justifies this appropriation on the grounds of self-ownership, arguing that “He does not worsen the situation of others; if he did not stumble upon the substance no one else would have, and the other would remain without it” (1974: 181).
5. This point was made even more apparent to me by one of this journal’s anonymous referees. I am indebted to him or her for the contribution.
6. Here the term “work” is used in the same sense as in Elster (1986: 110–11) “to refer to any organised and regular activity whose purpose is to produce use-values or intermediate goods for the production of use-value.”
7. This implies that self-knowledge through self-development is not a priori knowledge.
8. Aristotle is one of those who clearly appreciated the role of that process in the course of self-development. In his *Nicomachean Ethics*, the interaction of a man with another, even though not dialectical, is a matter of friendship. For Aristotle, “a friend, being another self, furnishes what a man cannot provide by his own effort” (1925: 238), that is, his virtuousness and happiness (1925: 240–1).
9. The dialectical nature of self-development is also empirically demonstrated in recent interdisciplinary studies of the behavior of monozygotic and dizygotic twins. See, for instance, Heller et al. (2005), McCartney et al. (1990), and Patric (2000).
10. Anarchist theories such as those of Bakunin, Godwin, Proudhon, and Kropotkin do not escape the problem either. As A. Ritter points out, even though anarchists commit themselves equally to individuality and community, they lack “a principle to adjudicate

between individuality and community" (1980: 29). Of course, many anarchists believe that there is no need for any such principle since the aims of individuals and community are interdependent. Nevertheless, this sort of interdependency cannot be viewed in large societies.

11. It should be noted that Kant rejects both full and partial self-ownership. For him, the whole concept of self-ownership is incoherent. At this point, see also G.A. Cohen (1995: 211–12).
12. Bentham rejects the idea of natural rights on the basis of the relationship between rights and obligations. For him, "meaningful statements about rights must be understood as statements about beneficial obligations, and ... statements about obligations concern requirements of coercive legal rules" (Lyons, 1984: 114). See also Waldron (1993).
13. It should be stated that the God of Locke comes from Christian theology. This theology is monotheistic. Locke believes that one and only one God exists. His monotheism is preserved alongside the belief in the Holy Trinity of Father, Son, and Holy Spirit (Taliaferro, 1998: 16). This distinguishes his Christian faith from other monotheist faiths such as Judaism and Islam. Specifically, "Judaism ... portrays God as calling the people of Israel to be a just and merciful community, dedicated to worshipping and serving God. Its most important early figures are Abraham ... and Moses" (Taliaferro, 1998: 15). By contrast, "Islamic teaching was forged by the Prophet Mohammed (570–632) who proclaimed a radical monotheism that explicitly repudiated the polytheism of his time and the Christian understanding of the Trinity" (Taliaferro, 1998: 15).
14. See also J.O. Grunebaum (1987: 4).
15. That particular process of self-realization is a priori through reason.
16. Nozick replaces Locke's Christian theology with abstract naturalism. Therefore, he never deals with the concepts of the direct will of God (that does not allow behavioral free will) and the permissive will of God (that allows for behavioral free will).
17. Theologically founded redistributions might take two forms: first, voluntary redistributions on the grounds of benevolence and faith to divine values such as mercy, justice, and forgiveness; second, redistributions on the grounds of obedience to God's choices and commands.
18. Nozick's libertarianism reflects a passionate, but uncompromising, belief in the "truth" of unlimited private property rights.
19. The law of nature or natural law refers to those moral rules which are thought to exist by nature, independently of the law of political community, that is, positive law. In Locke's theory, the law of nature or natural law prevents individuals from unlimited egoistic actions. Therefore, the Lockean state of nature is a state of peace and not a state of "war of all against all" (Hobbes, 1991).
20. In Christian theology, it is through the reason of God that the world was created, including the state of nature. God is the first cause of all effects and therefore his reason governs them.
21. As has been already stressed, in Locke's theory the "enough and as good" proviso is founded upon Christian theology. Since individuals in the state of nature make appropriations by mixing their labor with things that God gave to humanity in common, it is the individuals who, using the reason they got from God, define what is enough and as good for others.
22. These macro-foundations play an important role in the transition from the Lockean state of nature to the political state. The latter reflects the dominant theology of Locke.
23. Here, the term "distribution" is treated as synonymous with the term "division."
24. By saying that equal liberty might be developed if there is an initial distribution of equal external resources, we do not mean that equal liberty might also be secured in terms of that distribution. In the course of time, the initial distribution of equal external resources might not safeguard the socially founded relational context in which partial self-development can take place. That context might be secured in terms of politics if

- the initial distribution of equal external resources is followed by social redistribution. Since the self may only develop through a process of social interaction and since that development is always partial, the social distribution of external resources does not violate self-ownership. Rather, it prevents the initial equality of resources from declining into what Van Parijs (1995: 12–14) describes as pure capitalism, that is, an economy in which there is full private ownership of all external resources.
25. In the state of nature there may be some people with physical or mental handicaps (say, low IQs).
 26. Although labor power may be a boundary for everyone, private property owners who have developed their capacities and talents are less likely to be forced to sell their labor power in the laissez-faire market.
 27. Theorists who distinguish between “freedom” and “liberty” may object to the view that unfreedom for doing a particular act leads to unequal liberty. For instance, Wolff argues “that it is not so obvious that we should treat *freedom* and *liberty* as synonymous” (1997: 348–9, emphasis added). By criticizing Cohen’s and Steiner’s view of property and freedom, Wolff comes to suggest “that *freedom* concerns the *possibility of particular actions*. Liberty ... concerns the *permissibility of types of actions*” (Wolff, 1997: 351). There is no doubt that “freedom” as such is a less normative concept than “liberty” and Wolff is correct in stressing this. Nevertheless, it is not sure that libertarians develop their arguments by having in mind the distinction he draws between “freedom” and “liberty.” Most of them either lack an explicit definition of freedom such as Wolff’s or treat “freedom” as a normative concept synonymous with what he describes as “liberty.” It is in this sense that libertarians such as Nozick can be convicted of dogmatism, but not of philosophical incoherence. They lack a concept that concerns the possibility of particular actions and therefore fail to comprehend the relationship between what Wolff describes as freedom and what he describes as liberty.
 28. See further Lukes (1991).
 29. Equal self-ownership should be taken into account as an equal freedom of all persons to partial ownership of themselves.
 30. Generally speaking, political theorists, theologians, and other scholars may not consider a choice of God as necessarily abstract. However, in the particular case of the Lockean state of nature, political theorists, theologians, and other scholars may well recognize that Locke presents the choice of God as necessarily abstract in order for him to provide a model for constructing the abstract character of social choice in the political state of government.
 31. So far, this discussion has been largely among theorists such as Dworkin (2002), Sen (1979, 1990, 1999), Cohen (1995, 2000), Barry (2005), Van Parijs (1995, 2001), and others.
 32. For instance, in a number of countries (including the USA) and in the European Union, public policy involves the further tightening of private property regimes, such as systems of intellectual property rights (Papaioannou, 2006).

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