

## Against Self-ownership: A Philosophical Reflection

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**Abstract:** *This paper argues that the libertarians simply cut off the contingency (between not-yet-persons and persons) into time-slice account. They do not want to deal with a problem such as: how could the structure of Self-Ownership (SO) embed in persons? Indeed, the libertarians arbitrarily ignore who the owner of not-yet-persons is if a child is not a person yet. On the other hand, if God confers people's property in person, it consequently means that a believer of SO is supposed to also believe in God. Insofar as a believer of SO cannot explain what the source of SO is, he needs to rely on a Lockean explanation where God confers human with a property in person. There are two general libertarian reasons for this. First of all, the libertarian notion of slavery, as Cohen encounters it. Secondly, as Narveson conceives, since each individual has separate life, therefore every interaction between individuals is supposed to be based on mutual benefits. Therefore, the more appropriate way to encounter the thesis of SO is by cutting the bridge between the notion of owning self and a matter of moral right. Instead of cutting the bridge, Cohen widens his rejection by proposing another institution. Nevertheless, Cohen does nothing to explain what the structure of the bridge consist in and what the foundation for such a bridge is.*

**Keywords:** *Self-Ownership; Libertarian; rights; property; slavery; God.*

### I. Introduction

To begin with, ownership means the rights, the states, or the acts of possessing something. In other words, ownership does not only linguistically deal with a bundle of rights over things, but also about a state where one possesses things or one's acts with his things. Therefore, one might conceive that ownership means a collection of rights, states, or acts over properties. It does not necessarily imply that one should hold those three categories altogether in order to show that he genuinely owns something: any one of those three is sufficient for indicating ownership. Some rights which occur from ownership are the rights (1) to control and access properties, (2) to exclude others from accessing properties, and (3) to dispose of properties. Consequently, one might say that it is the rights which specifically underlie the states and the acts of possessing properties.

Property does not only refer to objects which are owned by individuals but also refers to the concept of ownership. For instance, Waldron explains "the concept of property is the concept of a system of rules governing access to and control of material resources."

Accordingly, material resources mean material objects which are able to fulfil human needs or wants. He furthermore conceives that although all rules which govern the use of material resources could not be completely covered by the concept of property, the concept itself is concerned with the allocation of them. Indeed, he refers to the problem of allocation of material resources as "...who is to have access to which resources for what purposes and when" (Waldron, 1990: 31-2). In other words, Waldron limits his definition of property to only material objects although he does not straightforwardly refute the existence of intangible or incorporeal properties. Moreover, he also conceives the necessity of a distinction between the owners and the properties which implies an important correlation as follows:

“Ownership...expresses the abstract idea of an object being correlated with the name of some individual (sic), in relation to a rule which says that society will uphold that individual's decision as final when there is any dispute about how the object should be used. The owner of an object is the person who has been put in that privileged position” (Waldron, 1990: 47).

This means that ownership always involves the owners and the objects since the absence of such a distinction would imply no correlation or no structure of ownership. Given that ownership includes owners and objects, one might presumably postulate that ownership generally requires different entities. Therefore, an owner and a property are not the same though we will see below that there is a specific case where they could be denoted to the same entity.

If one owns a property, his holding is regarded as a private property. Waldron defines it as “...each resource belongs to some individual (sic)” (Waldron, 1990: 38) and “...a concept of which many different conceptions are possible, and that in each society the detailed incidents of ownership amount to a particular concrete conception of this abstract concept” (Waldron, 1990: 31).

## **II. Review of Literature**

There are several other conceptions of property such as collective property and common property. According to Waldron, both collective and common properties hold that all individuals are equal with regard to any resource. They are equal in the sense that “no individual stands in a specifically privileged situation with regard to any resource” (Waldron, 1990: 41). Furthermore, he defines collective property as the regime of property where collective interests of society are the main reference for how, when, and by whom that resources would be used. Under this regime, the private owner of the resources is the state, which is supposed to devote the use of it for the sake of collective interests—though the meaning of what the collective interests are could be unclear.

Yet, according to Waldron, it is clear that collective property generally prioritizes the use of material resources for the sake of the purposes and the needs of society. Such a system is, according to him, shown in socialist countries where the major productive resources are owned by the state. In contrast, common property means the regime of property where every individual could access and use the resources, and any decision about resources should be made on the basis of fairness for all. Some properties which are managed in such a way are national reserves and parks (Waldron, 1990: 40-1).

Having discussed the general concept of ownership, there is a special case of ownership where the property and the owner are one and the same viz., (Self-Ownership or SO) (Vallentyne, 2011: 157). The concept of Self-Ownership (SO) is that persons own themselves, including their bodies, power, labor, talents, minds and so on. Therefore, we will use those words interchangeably. Such ownership is attained by individuals simply by being a person. On the one hand, it means that persons own themselves including their labours while the properties are also themselves and their labours. This concept refers to Locke's property in person. Moreover, SO means that individuals own the liberty over themselves, provided that it does not clash with others' SO. In addition, it implies that a person might be owned by others, provided that there is consent between individuals. In other words, the concept of SO permits voluntary slavery. In general, only a person can own himself. On the other hand, SO might mean nothing. But the lack or even the absence of such ownership could lead to issues such as involuntary slavery (in the context that there is no consent between individuals), the lack of autonomy (in the sense of

available preferences), and merely being used as means rather than ends in our life. The exercise of such ownership should not harm others and each individual should not be used to assist others. According to Cohen, such an idea implies several things, to wit: (1) everyone is free to do anything as long as they do not harm others; (2) some harms are acceptable in the frame of market competition; and (3) if there are obscurities about SO, they do not damage the notion of SO. By having our bodies and power, we could dispose of or even damage ourselves (Cohen, 1995: 228). Therefore, SO is the ultimate attainment of liberty, as proposed by libertarians. Cohen defends the coherency of this concept.

SO attains its determinacy through the necessity of all individuals' enjoyments of full SO rights. Full SO means that no-one owns only part of himself while the universality of SO means that everyone is a self-owner (Cohen, 1995: 213).<sup>4</sup> In contrast, if we do not fully own ourselves, therefore we do not fully own those rights which are conferred under the regime of SO. Accordingly, the combination of the constraint of fullness and universality disqualifies several sets of rights over property in person. It means that 'owning selves' do not create several sets of different rights for everyone but rather produce a set of some rights which are universal or are embedded within all individuals, to wit, a set of SO right. Although there is a significant difference between a full SO for everyone, there is still a universal intersection between them viz., as Cohen puts it: "a set of right S...where S confers fuller rights over herself than any other set of universally enjoyable rights does" (Cohen, 1995: 213-4). Therefore, only one set of rights survives in the context of owning ourselves, to wit, SO, as well as our ownership over things which entails a set of some rights to do anything with those properties (Cohen, 1995: 213-4).

The notion that we can own only things is considered by Cohen as a form of question-begging since there is no clear and distinctive basis for such argument. Some argue that since only things can be owned by persons, therefore individuals transcend things. Yet, the fact that a person is not a subset of things cannot justify the assumption that only things can be owned by individuals. Besides, some might conceive the different structures of having things and having selves as caused by the image of subjects (who own) and objects (which are owned). Although it has different structures, Cohen argues that it is still the same concept of ownership. In other words, the concept of SO stands side by side with the concept of ownership (Cohen, 1995: 212).

Some might doubt SO but certainly are convinced with the general concept of ownership. Insofar as they do not reject the general concept of ownership, they cannot consistently refute the concept of SO since it is only a special case of ownership. Moreover, they dismiss the question of how we could justly appropriate some things, for instance external resources, if we do not foremost own ourselves. We can justify our daily activity such as inhaling oxygen, which surrounds us, not because we own the elusive air around us, but rather, since we own and control our bodies and, by doing so, we have the duty to take a breath. However, our claims over properties could be justified not because we simply mix our labour with it but rather, according to Cohen, by the absence of complaint from others (Cohen, 1995: 75).<sup>5</sup> As long as there is no complaint about our crop on a piece of pristine land, we can justify our cropping activities there. Yet, we need first and foremost the basis of property whereby our ownership over it cannot be complained about by others.

Although the regime of SO does not allow harms towards others, there is an exception. Cohen suggests that the harm within market competition is permissible (Cohen, 1995: 228), though he seems to be reluctant to define what he considers as harm is. For instance, some people might consider X's waving-fist-action as a potential rather than an actual harm and, therefore, Y could consequently take some pre-emptive actions or even self-defense against X

(since Y would incur a greater risk of damage by doing nothing) with which subsequently, Y might physically hurt X. In other words, one might harm others if he foresees a relative risk in doing nothing, though such a risk would not be transformed from a potential into an actual event afterwards. Such action might be similar with words, or even ranting, which is considered by most people as having the potential to harm. Yet, it depends on ourselves whether or not to let some words or rants hurt us. Therefore, such action is not easily defined as harming unless we take its implication into account. Yet, the nature of one action is not merely defined by its implication though the implication might affect the overall consideration of the action itself. If a consequence of X's waving-fist-action towards the tip of Y's nose is that Y punches X, it does not mean that waving a fist towards the tip of someone's nose is generally a harming action. Rather, Y could argue that his punch is simply an immediate response to X's action.

Therefore, Cohen hesitates whether telling truth or lies within a market competition could be considered as harm or not. Yet, we could argue that if a seller tells the truth about the poor quality of another seller's products, its full implication is not wholly decided by the action of telling the truth. The potential buyer has autonomy to decide whether or not to believe that information. The customer might check whether the information is completely true or false and afterwards they could independently decide who to buy from. Moreover, the customer's final decision might inflict financial loss on the second seller, but there are intermediary phases between the first seller's action of telling the truth or lying and the second seller's possible financial loss. The phases are the buyer's willingness to recheck the information and his autonomy (to decide) to buy from whom. Whatever the potential buyer's decision is, it does not decide the nature of telling truth or lies within a market competition. Therefore, this might address Cohen's hesitation as to whether telling the truths or lies within market competition could be considered as harming others or not.

Furthermore, Cohen also thinks that SO, as a concept, is not consistent with redistributive taxation because it forces workers to share the result of their working time with the poor, infirm individuals or unproductive people. Some liberals think that the worst off members of society should achieve the benefits through current political and economic structures, thereby justifying social and economic inequalities. They suggest the activities of different productive individuals should also benefit all people, especially those who are the least advantaged individuals within a society. Therefore, everyone is supposed to be both the producer and consumer of social cooperation. Yet, the next question is about how to justly divide the fruit of that cooperation, especially for those who do not produce anything at all. The difference principle, according to some liberals, does not force someone to assist others, but the principle could work, according to Cohen, if and only if all individuals are productive. According to him, the liberals' difference principle dismisses the unproductive individuals who do not make any contribution to the overall social product. Therefore, the difference principle does not provide any scheme for them since they cannot cooperate with the society. In addition, the liberal criterion for reciprocal benefit are, according to Cohen, also too weak since some of the most talented individuals might achieve more benefits by withdrawing themselves from a society based on the difference principle (Cohen, 1995: 224-5). In short, a liberal redistribution of resources, which is commanded by the difference principle, is not consistent with SO for its direction to order some productive individuals to support some unproductive people.

Libertarians still condone tax in a limited way. They conceive taxing some people for the sake of their own self-interests such as security issues. For example, paying police officers and national defense are justified, but not because of their talents, nor for the interest of others'

welfare. In contrast with the libertarian approach, a contractarian might conceive taxing people for their talents, based on the notion of rent, <sup>6</sup> because some individuals are arbitrarily conferred by nature with those special talents. Since they are benefited by those talents, other individuals have some claims over the profits of exercising their talents. Yet, Cohen refutes this by distinguishing between factor rent and producer surplus.

Factor rent is any payment to a factor above what is needed to keep that factor working at its current level and such payment reflects the scarcity of a factor. For example a Lionel Messi as an inelastic scarcity or the demand of certain professions, such as brain surgeries or geologists, in a period of time as an elastic scarcity. Insofar as another soccer player cannot be upgraded up to the quality of Messi, a factor rent can exist. However, it is up to him whether to continue his career as a soccer player or not, especially when, for instance, he believes that the amount of tax burdens him heavily (Cohen, 1995: 217-8). In contrast, his producer surplus refers to a higher payment than his minimum price to encourage him to play soccer. Another term for this is, according to Cohen, a “reservation price.” On the one hand, a contractarian might conceive that taxing such talent is legitimate because they presume the tax would not lessen the supply of the factor. <sup>7</sup> On the other hand, Cohen perceives it could be true if the factor rent is quantified below or coincides with the producer surplus (Cohen, 1995: 218). If Messi does not want to play soccer any more, he might work as a coach, therefore his factor rent might be similar or even lower compared to his producer surplus. On the contrary, if Messi loves to play soccer more than anything else, therefore it is possible to tax him more because it would not stop him from playing it. In addition, factor rent might reflect the price for persuading Messi.

### **III. Discussion**

It is interesting to note that France's Junior Minister of Budget, Jerome Cahuzac, slams Zlatan Ibrahimovic's 14 million euro net salary with soccer club Paris Saint Germain. Cahuzac calls this an indecent wage in the context of France's economic crisis. Furthermore, the government will charge those who earn more than one million to pay a progressive 75% tax rate because of the crisis (RFI, 2012). Such progressive tax coheres with Cohen's distinction between producer surplus and factor rent since Ibrahimovic has not stopped playing soccer in France (yet) though his 75% tax is paid by the club. Therefore, contractarians' views that redistributive tax coheres with SO are supposed to recognize not only producer surplus but also factor rent.

All in all, Cohen establishes the coherency of Self-Ownership (SO) by drawing some distinctions with other concepts and replying to some critiques of it. In addition, he also conceives “a serious problem would, however, arise if for some reason (I cannot think of one) permissible harming uses of fully owned objects turned out to be a poor guide to permissible harming uses of fully self-owned personal powers” (Cohen, 1995: 228). In other words, the exercise of permissible harm by using one's property might turn out to be an unhelpful guide to allowably harm one's SO. For example, two boxers fight in a sport competition. Boxer X should tumble boxer Y for the sake of the trophy, provided that every physical damage that he creates on Y is in accordance with the rules. X knocks down Y with his own fist and boxing gloves as his properties and since both boxers consent to do a fight, therefore X is permitted to use his properties to harm Y. Although this obviously happens in a sport competition, one might argue that a sport competition is also a part of market competition.

Nevertheless, the obscurity of what is to be considered as harm is not clearly reflected in the concept of SO. Some people could argue that harming means reducing someone else's well-

being, but since the measures are not completely agreed, thus the definition of harm remains unclear. Yet, there could be three different extensions of allowable harms which are tolerated by the concept of SO. First of all, strictly speaking, the result of transformation (from permissible harming by using things into permissible harming to SO) should not be out of the frame of the market competition. For instance, since self-seeking is authorized by SO (Cohen, 1995: 237), therefore my right over my money allows me to bubble the financial market in order to increase my benefits and possibly harm other market participants.

Secondly, broadly speaking, allowable harm could be tolerated for the sake of, let us say, an institutional-defense. Imagine Matt King, (George Clooney) in the film *The Descendants*, who is cheated on by his wife. A combination of wrongdoing, anger, and resentment might be a good trigger for self-seeking, in the sense of putting his feelings before his rational thought. Now, most men would expect King to strike the guy because he does wrong to King. Furthermore, punching the guy would hypothetically stop the guy seducing King's wife in the future. In contrast, if King does not punch him, the guy could perceive that King is reluctant to defend his marriage and therefore he still has the chance to seduce King's wife. In other words, SO could consistently permit harms for the sake of institutional-defense such as a marriage.

Thirdly, the permissible harms might also exist outside the market and the general competitions. Think about a pregnant woman who is the victim of a rape. Since SO categorizes person-hood as its criterion, either proponents or opponents of SO need to consider whether or not the infant could be categorized as a person. Person-hood generally consists of mental features (such as beliefs, memories, preferences, and the capability of rational thought) and physical continuity (Olson, 2012). In other words, a foetus could not be categorized as a person. Yet, suppose that non-libertarian individuals succeed in contending that a foetus could be considered as a person or indeed a seven month baby inside the womb attracts viability, 8 thereby justifying the different moral account between an abortion in the sense of killing it and the ejection in the sense of a premature delivery.

On the one hand, they might argue that an abortion would be inconsistent with the libertarian notion of the right not to be killed, but on the other hand an ejection – which is similar with the seven months premature delivery – could be consistent with the libertarian notion of the right not to be killed. Thereby, achieving a kind of win-win solution between the mother who is reluctant to have a baby and the foetus' right not to be killed under the regime of SO. However, they need to recognize that the mother has full SO for not wasting her time up to seven months pregnancy for ejecting the foetus. Indeed, under the regime of SO, she has more liberty for aborting or killing the foetus. In contrast with the account of personality, non-libertarian individuals might also rhetorically argue by asking: how come libertarians prefer to conceive the right to live merely as the right not to be killed rather than the right, for instance, to be fed or to be born into the world? Moreover, another version of the right to live is the right to access something in order to sustain life (Brown and Fehige, 2012). In other words, non-libertarians might insist that the foetus has the right to access, for instance, nutrition from the mother. They might also emphasize the notion of living organisms and individuals to be considered by libertarians. Nevertheless, the notion of personality should exist before libertarians fulfil the foetus' right not to be killed and before considering living organisms and individuals. Therefore, either an abortion or an ejection could be justified under the regime of SO. If non-libertarian individuals consider it as a type of harm, libertarians may replay that it is a justified harm. In short, a justified harm could happen outside the market and the general competition without dissatisfying either the concept or the principle of SO.

## **Objections**

One libertarian critique to the concept comes from Narveson who emphasizes that people possess rather than own themselves. Possessing means a fact of holding a property while owning means a moral or legal holding over a property. For instance, if one drives a BMW, it certainly means he possesses it for certain period of time, but it does not imply that he legally and morally owns it since he might be a thief. Narveson furthermore gives an example that the mind directs the body while the body responds to the mind. If some part of the body does not respond to the mind, therefore it is merely biologically packaged to the people. Such possession is, according to Narveson, *de facto*. At this point, Narveson seems to emphasize that possession is simply a matter of fact while, in contrast, ownership is rather a matter of morality or legality. The reason is because he conceives the idea of ownership as a subset of liberty (in the sense of the right to do and the right to have). If selves include something that could be owned, ownership is therefore no longer a subset but rather is identical with liberty itself (Narveson, 1998:7-9). Nevertheless, Narveson does not specifically criticize Cohen's apprehension of the concept of SO. Besides Narveson, Waldron specifically reckons that the idea of 'owning one's action'—as the implication of SO—is problematic because “...since actions are dated events, it is quite incoherent to talk of ownership rights in them after they have been performed; and it is even more incoherent to think that the ownership of one's past actions (whatever that means) is somehow imperiled by certain ways of dealing with external objects” (Waldron, 1990: 398). It means that he partially rejects the concept of SO but he also dismisses the fact that there is ownership rights in one's performed actions as is honored in, for instance, The Oscars. In this counter-opinion, one might state that we could not honor someone's achievements without recognizing that his actions belong to him.

In contrast, a refutation of the above argument is that an actor just does actions in a movie and therefore he might get an Oscar. Nevertheless, it does not reject the structure of ownership in the movie where, for instance, sponsors, directors, producers, and actors jointly own the movie but then the actors achieve the Oscar individually as well as there being specific category for directors, animators and other components in a movie. In short, insofar as there is joint ownership over a movie and the compensation for mixing our labour with the movie is achieved individually, therefore an action could be owned by one. If such criticism is not sound, therefore we need another critique of the concept as we will discuss below.

## **IV. Conclusion**

In sum, Cohen generally refutes the thesis of SO in two ways. First of all, he tightly restricts the meaning of slavery, whereas libertarians usually widen it. By doing that, he admits that the meaning of slavery might be similar with non-contractual obligations in a certain limited context. Secondly, he proposes joint-world ownership (JWO) as the only way to annul the negative consequence of SO, though JWO is an independent concept.

We can conclude that Cohen's distinction of Self-Ownership (SO) as the concept and the thesis is arguably plausible but its plausibility depends on what the concept and the thesis are. Having explored the distinction of SO as a concept and as a thesis, this paper concludes that, on the one hand, the concept fails to recognize that the notion of control is much more fundamental rather than the notion of owning selves.

Indeed, we still could control ourselves without owning it either fully or partly but not vice versa. On the other hand, although Cohen corrects the meaning of slavery which is excessively

used by libertarians and he partially rejects the thesis by establishing the notion of non-contractual obligations. His reasoning as regards of the thesis is circular. Hence, Cohen's distinction is plausible in the sense that the concept could not be falsified and the thesis seems to be partially true. Nevertheless, its plausibility is limited by the potential damage from the inherent incoherency within the concept and the unnecessary bridging within the thesis of Self-Ownership (SO).

### References

- Arneson, Richard J. (2011). *Side Constraints, Lockean Individual Rights, and the Moral Basis of Libertarianism*. In *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*, edited by Ralf M. Bader and John Meadowcroft, 15-37. Cambridge: Cambridge University Press.
- Blackburn, Simon. (1994). *The Oxford Dictionary of Philosophy*. Oxford: Oxford University Press
- Brown, James Robert and Fehige, Yiftach. (2011). "*Thought Experiments*". *The Stanford Encyclopedia of Philosophy*; available [online] <http://plato.stanford.edu/archives/fall2011/entries/thoughtexperiment/>; [19 July 2012].
- Cohen, G. A. (1995). *Self-ownership, Freedom, and Equality*. Oxford: Oxford University Press.
- Graves, Elizabeth E. (1971). *"The Ever-Victorious Buffalo: How the Minangkabau of Indonesia solved their "colonial question."* Ph.D., University of Wisconsin.
- Hegel, G. W. F. (1991). *Elements of the Philosophy of Right*. Edited by Allen W. Wood, translated by H. B. Nisbet. Cambridge: Cambridge University Press.
- Jeske, Diane. (1996). "Libertarianism, Self-Ownership, and Motherhood." *Social Theory and Practice* 22: 137-160.
- Miller, Jr., Fred D. (1995). *Nature, Justice, and Rights in Aristotle's Politics*. Oxford: Clarendon Press.
- Narveson, Jan. (1998). Libertarianism Vs. Marxism: Reflections on G. A. Cohen's SO, Freedom and Equality. *The Journal of Ethics* 2: 1-26.
- Nozick, Robert. (1974). *Anarchy, State, and Utopia*. New York: Basic Books.
- Olson, Eric T. (2010). *Personal Identity*. *The Stanford Encyclopedia of Philosophy*; available [online] <http://plato.stanford.edu/archives/win2010/entries/identity-personal/>; [19 July 2012].
- Steiner, Hillel. (2000). *Original Rights and Just Redistribution (1994)*. In *Left-libertarianism and Its Critics*, edited by Peter Vallentyne and Hiller Steiner. 74-121. Hampshire: Palgrave.
- \_\_\_\_\_. (2006). "Self-ownership and Conscription." In *The Egalitarian Conscience: Essays in honour of G. A. Cohen*, edited by Christine Sypnowich, 88-101. Oxford: Oxford University Press.
- Vallentyne, Peter. (2011). *Nozick's libertarian theory of justice*. In *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*, edited by Ralf M. Bader and John Meadowcroft, 145-167. Cambridge: Cambridge University Press.
- \_\_\_\_\_. (2012). *Libertarianism*. *The Stanford Encyclopedia of Philosophy*. available [online] <http://plato.stanford.edu/archives/spr2012/entries/libertarianism/>; [1 August 2012].
- Waldron, Jeremy. (1990). *The Right to Private Property*. Oxford: Clarendon Press.
- Wenar, Leif. (2011). *Rights*. *The Stanford Encyclopedia of Philosophy*; [Online] <http://plato.stanford.edu/archives/fall2011/entries/rights/>; [9 October 2012].