

initial external resource equality, given Marxism's strong opposition to inequality of access to means of production.³¹ Accordingly, the Marxist is hoist with his own petard. The principle he implicitly relies on to establish the claim that the worker is exploited here operates to subvert that very claim. Let e = in any capitalist relationship the worker is unjustly exploited, and let s be the self-ownership thesis. The Marxist's account of e (his condemnation of the capitalist as a thief) shows that he is committed to s , and, if I am right in my reflection on the case of the infirm capitalist, there is no way of asserting e without affirming s . But the case of the cleanly generated capitalist relationship shows that s disproves e . So, if e is true, s is true; but, if s is true, e is false. And that is a *reductio ad absurdum* of the Marxist claim that propertyless workers are, as such, exploited.

Liberals, by contrast, experience no difficulty with the case of cleanly generated capitalist relationships. They do not need to say that they are exploitative, but they are also not disabled from saying that they are. If, for certain reasons, liberals want to condemn (some) clean capitalist relationships, no commitment to self-ownership obstructs them. According to Ronald Dworkin, or so I would interpret him, clean capitalist relationships are not unjust when they come about wholly because people of comparable material endowment and personal capacity have different preferences; but they are probably unjust when and because they reflect differences of talent. The latter statement contradicts the self-ownership thesis.

The way Marxists get hoist with their own petard in the matter of cleanly generated capitalist relationships is a consequence of a failed attempt on their part to hoist the bourgeois defence of capitalism with its own petard. Marxists have always relished the idea of exposing capitalism in the light of bourgeois ideology itself. They would like to show that only a false account of capitalism can make it pass muster under its own justifying ideology. They try to condemn capitalism on the ground that it violates self-ownership, or bourgeois liberty: the labour contract, they say, is *fictio juris*, for it conceals a relationship substantially similar to the one

³¹ An egalitarian might reject initial external resource equality on the ground that resources need to be differentially distributed to compensate for talent differences. But that ground of rejection of resource equality requires denial of the tenet derived from the thesis of self-ownership, that people are entitled to the differential rewards which (uncompensated for) talent differences produce, and is therefore unavailable to Marxists. (There is more to be said about how, precisely, the Marxian condemnation of unequal access to means of production is related to the Marxian condemnation of extraction of surplus product: see Chapter 8 below.)

between lord and serf. But, however true that may be for the case of a worker dispossessed of resources from the start, it has no purchase against cleanly generated capitalist relationships, and there is enough cleanliness in actually existing capitalism to discommode a critique of it which rests on the bourgeois self-ownership principle. (Banks will advance capital to people who are manifestly endowed with entrepreneurial talent even when they can put up only modest collateral.)

Because they lack the disabling commitment to self-ownership which burdens Marxists, contemporary liberal philosophers do not find libertarians like Nozick challenging. Their attitude to him was expressed in the title of Thomas Nagel's review of *Anarchy, State, and Utopia*: 'Libertarianism Without Foundations'. Liberals are unimpressed by what they regard as Nozick's unargued affirmation of self-ownership rights. Marxists find it difficult to dismiss Nozick as readily as liberals do, since they tend themselves to use self-ownership in a foundational way.

Since the liberals I have named find Nozick undisturbing, they show surprise at how seriously people like myself and Jon Elster and John Roemer and Philippe Van Parijs take him. They think that, being to their left, we should find Nozick even less disturbing. But I think that we find him more disturbing because of the particular way in which we are to the left of the liberals. We are to their left because of our attitude to the capitalist relationship, but that attitude turns out to be sustainable in its pristine form only if self-ownership is affirmed. (Not if and only if, since if it is affirmed, then the Marxist attitude to capitalism is not sustainable, for the reasons given in my discussion of clean capitalist relationships.)

One thing that might follow from all this is that the liberals, through being less vulnerable to the libertarian challenge, are therefore also less well placed to appreciate its force. Because they have no belief of their own in self-ownership to exorcize, the decisive encounter with libertarianism must be joined by us rather than by them. And, in my view, Dworkin, Nagel and Rawls do not take Nozick seriously enough to do what is necessary to defeat his position.³² Through serious confrontation with Nozick, Marxists may hope not only to refute him³³ but also, thereby, to

³² Relevant failures by liberals to take self-ownership seriously are discussed in section 9 of Chapter 4 above and in sections 3 and 5 of Chapter 9 below.

³³ One way of undermining Nozick's case for self-ownership is to distinguish carefully between the idea of self-ownership and the idea of freedom: see Chapter 4, section 6 above, and Chapter 10, section 3 below. Being more prone than egalitarian liberals are to confuse these two ideas, Marxists are also more strongly motivated than they are to expose the roots of that confusion.

reach a deeper characterization of their own conception of justice than the one associated with undiscriminating use of the traditional idea of exploitation.³⁴

³⁴ In 'Self-Ownership, Reciprocity, and Exploitation, or: Why Marxists Shouldn't be Afraid of Robert Nozick', Paul Warren mounts a comprehensive critique of the article. Predecessor of this chapter. He argues against my claim that (1) the Marxist conception of exploitation leans in the direction of the principle of self-ownership, and, independently, against my distinct claim that (2) the principle of self-ownership is inconsistent with Marxist distributive egalitarianism. I am unconvinced by each of Warren's criticisms, and I note with satisfaction that, at his fn. 20, he comes close to acknowledging that they are inconsistent with one another. I am more impressed by the positive part of Warren's article, which defends a *marxist* notion of capitalist exploitation on the basis of a certain norm of reciprocity.

7. Marx and Locke on land and labour

... labour makes the far greatest part of the value of things we enjoy in this world. And the ground which produces the materials is scarce to be reckoned in as any, or at most but a very small, part of it ... (John Locke, *Second Treatise of Government*)

1. We have seen that the axial distinction between self-ownership and world-ownership generates three views about the powers of nature and the powers of people. The views differ according as they do or do not encourage an egalitarian approach to the substances and capacities of nature on the one hand, and to the powers of people to modify nature on the other.

There are, first, those who defend an egalitarian approach to both natural resources and human labour. They argue that talented people are merely lucky to be so, and that, to counter the unjustly unequalizing influence of that luck, not only what nature produces but also the product of the powers of people should be distributed according to principles of equality (of, perhaps, in the two cases, appropriately different kinds). John Rawls and Ronald Dworkin are leading exponents of this position.

Others, however, such as Robert Nozick, oppose egalitarianism with respect to both human and non-human productive capacity. Nozick claims that, to avoid endorsement of the slavery which he thinks implicit in an egalitarian attitude to people's powers, each person must control his own powers and their products. He holds, moreover, that people exercise their powers legitimately when they gather to themselves virtually unrestricted amounts of unowned natural resources. That legitimate gathering justifies a skewed distribution of resources, the inequality of which is increased by the fact that Nozick's individuals are entitled not

¹ See, especially, section 1 of Chapter 5 above.

only to what they have themselves taken, but also to the takings of others which come to them by way of trade or gift.

It is possible, finally, to attempt an intermediate course, in which a Nozickian principle of self-ownership is conjoined with an egalitarian regime over the resources of nature only. In Chapters 3-6, I have commented on that third approach, which might be called *partial egalitarianism*, to contrast it with the comprehensive egalitarianism of Rawls and Dworkin on the one hand, and the comprehensive anti-egalitarianism of Nozick on the other. I have asked how far one can go, in the direction of some sort of final equality of condition, on the basis of an egalitarianism of external resources which concedes each person's sovereignty over herself.

My interest in partial egalitarianism reflects a left-wing political sympathy. It is good strategy for a socialist to postpone engagement against the beguiling idea that each individual should decide what is to be done with his own person and powers. Leftists should proceed, initially, as partial egalitarianism does, by rejecting only that part of right-wing thinking which is relatively easy to reject, namely, its cavalier treatment of external resources, which so readily become, in right-wing thinking, unequal private property. In the end, so we have seen, socialists will have to place some limits on people's claims to self-ownership, since they will not otherwise be able to secure as much equality of condition² as they believe to be justified. But I believe that they can move far further in the direction of equality of condition from a merely partial egalitarian starting point than many seem to think. For many suppose that the first thing socialists must do is deny self-ownership, and that the debate between left and right is primarily about the rights individuals have over themselves, against the claims of other people. That way of posing the key political question is too kind to the right: it leaves the right's weak side out of consideration.

2. In this chapter I expound and criticize a pair of arguments, which derive from John Locke's *Second Treatise of Government*, and which threaten to undermine the hope that some support for equality of condition might come from an egalitarianism of worldly resources alone. But, before I turn to Locke, I want to describe an anomaly in Marxist views about distributive justice, which must be removed if Marxists are to avert the threat of Locke's arguments.

² Or, indeed, as much freedom and autonomy: see Chapter 10, section 3 below.

As everybody knows, Marxists believe in the labour theory of value, or, at any rate, fully orthodox Marxists believe in it, and they are the Marxists about whom I shall speak here. Such Marxists believe that the value of commodities is entirely due to the labour required for their production. And, because of their allegiance to the labour theory, Marxists must assert, and they do in fact assert, that the raw worldly resources to which labour is applied neither possess value, since labour did not create them, nor themselves create value, since they are not themselves labour. Marxists maintain, moreover, that profit on capital comes from exploitation of labour. Capitalists exploit workers when they appropriate part of the value which only the labour of workers can produce.

Yet when Marxists indicate how workers come to be exploited by capitalists, as opposed to what that exploitation consists in, they suddenly assign extreme importance to natural resources, as I now proceed to explain.

Slaves are exploited because they do not own their labour power, and serfs are exploited because they do not own all of it,³ but wage-workers, who do own their labour power,⁴ are exploited only because they own no means of production. They must therefore sell their labour power to capitalists, on adverse terms. Now most means of production are not raw natural resources, but products of labour, such as tools, machines, and already worked, or at least extracted, materials. But, since means of production which are not themselves natural resources are the product, in the end, of natural resources and labour power, 'the two primary creators of wealth',⁵ and, since workers under capitalism do not lack ownership of their own labour power, it must, ultimately, in the Marxist view, be their lack of ownership of natural resources which accounts for their vulnerability to exploitation by capitalists.

In conformity with that line of thought, Marx is emphatic that the answer to the question, how workers come to be exploited, lies in facts about natural resources alone. His commitment to that answer shows up in his discussion of what he calls 'the secret of primitive accumulation', which reveals how exploiting capital came into being. Marx disparages

³ See my *Karl Marx's Theory of History*, p. 65.

⁴ It suffices here that they enjoy that ownership as a matter of formal legal fact, even if, because they own no means of production, they are in effect as lacking in self-ownership as serfs are: see Chapter 6, section 2 above.

⁵ Marx, *Capital*, Vol. I, p. 752. Marx identifies those 'creators' as 'labour-power and land' (or, *ibid.*, as 'man and nature'), and he explains at *ibid.*, p. 758 that 'land' means, economically speaking, all the objects of labour furnished by nature without human intervention.

the apologetic story in which it was a result of the industry and saving of a 'diligent, intelligent, and, above all, frugal elite'.⁶ If that account were true, then a provident use of self-owned labour power, in the context of an initial equality of external resources, would have created capital. But, according to Marx, the truth is that capital came into being when and because exploitable labour did, as a consequence of the resource dispossession of pre-capitalist peasants. The expropriation of the peasant from the soil was the basis of the whole process.⁷ Soil, however, is a natural resource, and it follows that, according to Marx, it was a critical loss of natural resources that generated the proletarian. (To be sure, only virgin soil is a natural resource in the strict sense required in this chapter, but it was not because his soil was cultivated that the peasant was exposed to exploitation when it was taken from him.)

It might be objected that, even if lack of land brought the proletariat into being, what they now signify lack are not raw resources but the means of production characteristic of established capitalism. And it is indeed true that, were they provided with those means, then exploitation would cease. But it does not follow that they need those advanced means to escape the necessity of contracting with capitalists. In Marx's account, they sell their labour power to capitalists because otherwise they die, and, if they need existing means of production to live well, a rudier resource provision might nevertheless suffice for them to avoid starvation. It is no doubt for this reason that Marx wrote, in a sentence whose topic was 'present-day' capitalism, and not its origin, that 'the monopoly of land is even the basis of the monopoly of capital'.⁸

But the objector could argue that the growth of population which capitalist productivity made possible means that there is no longer enough land per person for each to survive on the basis, initially, or raw resources alone. Yet, even if that is true, it is of questionable relevance in a discussion of the implications of Marx's account of the basis of exploitation. It is, moreover, a controversial claim, when, as might be thought appropriate, the land endowment of the whole planet is taken into account. But suppose that it is indeed both true and relevant that contemporary workers would, because of their numbers, need relatively sophisticated means of production to escape exploitation. Then why did their forebears not furnish them with them, or with the wherewithal to make them? Not, of course, because they lacked the necessary labour

power, but because they, in turn, lacked means of production, having been furnished with none by their forebears, who were themselves similarly deprived: and so on, backwards in time. By reiterating that impeccably Marxist explanation of each proletarian generation's lack of means of production we arrive at an original loss of natural resources as the ultimate cause of the exploitability of today's proletariat.

Now there is an (at least) apparent tension here, between the extreme importance imputed to the distribution of worldly resources in the Marxist diagnosis of the root cause of exploitation, and the total unimportance of worldly resources in the Marxist account of the source of value. If raw worldly resources do not create or possess value, why should it matter that workers were deprived of them?

3. The Marxist diagnosis of the origin of exploitation is congenial to a policy of egalitarian redistribution. But the claim with which it is uneasily conjoined, to wit, that labour is the sole source of value, can be made to serve inequalitarian ends, and such are the ends which, we shall find, something like a labour theory of value is made to serve by John Locke.

To see how the falsehood of the proposition that labour creates value is encouraging from an egalitarian point of view, let us imagine that nature offers all its resources to us in the form of final consumption goods which there is no need to alter by labour. Suppose, that is, that anything physical which anybody wants comes from nature as a very ripe apple does when it falls from the tree or to a hungry person's lap. Under those benign conditions, labour would not be creating any value, and an equal distribution of worldly resources would tend to foster the final equality of condition which Marxists favour.⁹ But in the real world the things we desire depend, in part, for their desirable qualities on labour. Hence, given that people are differentially good at labouring, we have here the makings of a justification of inequality of reward and circumstance, under which more redounds to the more productive and their chosen beneficiaries. Inequality of condition is harder to defend on the hypothesis that, or to the extent that, labour is *not* responsible for the value of commodities. In virtue of the comparative appeal of the self-ownership thesis, which

⁶ *Capital*, Vol. I, pp. 873-4. ⁷ *Ibid.*, p. 876.
⁸ *The Critique of the Gotha Programme*, p. 321.

⁹ Not everyone thinks, as I do, that Marxists are egalitarians. A good case for the proposition that Marx himself was not an egalitarian is made by Allen Wood in his 'Marx and Equality'. For pretty conclusive argument to the contrary, however, see Norman Geras, 'The Controversy About Marx and Justice', in his *Literature of Reason*.

endorses the naturally unequal distribution of personal powers, and the comparative lack of appeal of a similarly unequal distribution of natural resources and energy, the claim people make to the fruits of their labour is the strongest possible basis for inequality of distribution.¹⁰

There is, then, a danger of discrepancy between Marxism's egalitarianism and Marxism's depreciation of the rôle of non-labour inputs in the formation of value. To sustain their egalitarianism, orthodox Marxists must distinguish their position from a Locke-like one which asserts both the pre-eminent place of labour in value creation and the labourer's right to his labour and hence to its products.

There are, in principle, two ways out of this dilemma. The first is to reduce the significance of labour in the account of value creation. But that means giving up the labour theory of value, and, therefore, extinguishting orthodox Marxism. The other, and seemingly more eligible, way out is to deny the labourer's claim to his product. This path seems more open, but two obstacles lie upon it. The first is that, if Marxists deny that the worker has a right to his product, they must then explain why they nevertheless think he counts as exploited, yet they do not usually offer any such alternative explanation.¹¹ And the second obstacle is that Marxists are, for political reasons, reluctant forthrightly to deny the principle of self-ownership, since they would lose allies if they did so. One expression of that reluctance is the Marxist attachment to the diagnosis of the cause of exploitation which I described in the last section. When Marxists trace exploitation to the producers' dispossession of worldly resources, they account for it without denying self-ownership, and they thereby attract left-libertarian (that is, partial egalitarian) support to the anti-capitalist

¹⁰ Consider a fantasy world in which nature contributes nothing to human satisfaction, and which is therefore relevantly opposite in character to the labourless one figured in the above paragraph. In this second imaginary world, people float in space, and all necessary and luxury services take the form of other people touching them in various ways. For simplicity, suppose that all get the same satisfactions, in the same degree, from the same touchings: this is not a world of different strokes for different folks. But it is a world of different strokes from different folks. For although utility functions are identical, talent endowments (capacities to touch well) are not. Under self-ownership of talent, gifted touchers will get more stroking by others than they have to dish out, since the stroking they provide is of such rare quality, and there will consequently be enormous inequality in the distribution of what people care about, which is, on the positive side, the strokes they get, and, on the negative, the effort of stroking others. This inequality cannot be traced to unequal division of non-human resources, since no such resources are in play here. It is far more difficult to object to inequality in this world than it is to object to it in the labourless world described above.

¹¹ For a modest attempt at one see my 'Labour Theory of Value and the Concept of Exploitation', in *History, Labour, and Freedom*, p. 230 fn. 37.

cause.¹² But if I am right, Marxists can retain their distinctive account of value creation, and yet be egalitarians, only if they assert more difference between themselves and left-wing libertarians than they have found it convenient to do.

4. But now I must deal with an objection which informed partisans of Marxist economics would be eager to press. They would complain that, in the foregoing discussion, I rode roughshod over a crucial distinction, the distinction, namely, between (what Marxists call) *exchange-value* and *use-value*. The first, exchange-value, is the power of a thing to exchange against other things on the market, the measure of its power to do so being given by the number of things of any other kind for which it will exchange.¹³ And exchange-value is different from use-value, which is the power of a thing to satisfy human desire, whether directly or indirectly. A thing satisfies desire indirectly when, for example, it is used to produce another thing which satisfies desire directly, in the sense that, to satisfy desire, that other thing need only be consumed. The term 'use-value' denotes, moreover, not only such a power, but also anything that has such a power, for it is a Marxian verbal convention that whatever *has* a use-value is a use-value. Hence anything which contributes to the satisfaction of desire is a use-value, and so, for example, a tract of fertile land both has and is a use-value, since it may be used to produce a use-valuable crop.

Now the Marxist critic would remind me that the labour theory of value is a theory of exchange-value only. The theory does not pretend to explain why a commodity has the amount of use-value it does, but only why it exchanges against a certain number of other use-values on the market. The labour theory's answer to that question is that market exchange ratios are, in the final analysis, a function of the amounts of labour required to produce commodities. And while Marx did say that labour alone creates

¹² For characterizations of partial egalitarianism and left libertarianism, see, respectively, p. 166 above and pp. 118-19 of Chapter 5. Another expression of Marxist reluctance to reject the principle of self-ownership is the Marxist account of communism: see Chapter 5, section 3.

¹³ I here give Marx's initial definition of exchange-value, as we find it in the opening pages of Vol. I of *Capital*. Later, he implicitly and cheekily redefines it, in terms of labour time, and thereby turns what was supposed to be the *explanans* of exchange-value into a combined *explanans/explanandum*, a manoeuvre that renders the labour theory of value tautologous. Under the original definition of exchange-value, virgin land would possess some, but it loses it under the tautologizing redefinition. (Marx's illicit definitional transition is discussed at pp. 221-6 of my 'Labour Theory of Value and the Concept of Exploitation', in *History, Labour, and Freedom*. See also pp. 325-8 of my 'More on Exploitation and the Labour Theory of Value'.)

exchange-value, he amply acknowledged that land, or nature, contributes to use-value, and he was contemptuous of socialists who denied that truth. He criticized the German socialists for opening their Gotha Programme of 1874 with the declaration that 'labour is the source of all wealth and all culture', and admonished them that 'nature is just as much the source of use-values as labour' is.¹⁴ Labour alone produces exchange-value, but nothing has exchange-value unless it has use-value; and, since natural resources are needed to produce use-value, they are a presupposition of the creation of exchange-value, even though they do not themselves have or create any. Thereby, so my Marxist critic would conclude, the seeming tension of which I spoke at the end of section 2 is dissipated. The worker's lack of worldly resources sets the scene for his exploitation, even though exploitation is expropriation of exchange-value, and worldly resources neither possess nor create exchange-value. One can affirm both that labour is the source of all (exchange-) value and that because of their immense use-value, inequality of natural resources is fateful and unjustified. Consequently, one can affirm the labour theory of value but also protest against the resource dispossession from which workers suffer. That answers the question at the end of section 2. And the dilemma constructed at the end of section 3 may also, now, be avoided. One can affirm the labour theory of value and yet call for egalitarian redistribution, without denying the principle of self-ownership, by emphasizing the importance of natural resources in the generation of use-value.

5. But this solution to the problems for orthodox Marxism which I raised in sections 2 and 3 will not work: the reminder that the labour theory is a theory of exchange-value is of no avail in the present context. For, as I have argued elsewhere,¹⁵ the notion that labour creates exchange-value carries ideological weight only because it is confused with the distinct claim that Marxists officially deny, namely, that labour is the sole creator of the use-valuable product itself. It is only because Marxists (and also their opponents) conflate those two ideas that they are able to suppose that the labour theory of value is a suitable basis for raising a charge of exploitation against capitalists.

¹⁴ *The Critique of the Gotha Programme*, p. 319. Marx interestingly here fails to mention non-natural means of production as a third source of use-value. This confirms the approach of section 2 above, in which such means are treated as deriving from the ultimate factors of production, which are land and labour.

¹⁵ See 'The Labour Theory of Value and the Concept of Exploitation', in *History, Labour, and Freedom*, pp. 214-32.

To see how the conflation arises, notice, to begin with, that sentences like 'labour creates exchange-value' provide a merely metaphorical rendering of the labour theory of value. What the labour theory literally says is that the exchange-value of a commodity varies directly and uniformly with the amount of labour time required to produce commodities of its kind under currently standard conditions of production, and inversely and uniformly with the amount of labour time currently required to produce commodities of other kinds. That statement does not imply that labour creates anything. It is the amounts of labour time that would now be required to produce things, a certain set of counterfactual magnitudes, and not any actual sweating toil, which accounts for how much exchange-value things have, if the labour theory of value is true. The past history of a commodity, and, hence, how much labour was spent on it, or even whether any labour was spent on it, have strictly nothing to do with how much exchange-value it has. A commodity has a lot of exchange-value if a lot of labour would be required to replicate it, even if the commodity fell from the sky and therefore has no labour 'embodied' in it at all.

What was required in the past, and still more what happened in the past – these facts are irrelevant to how much exchange-value a commodity has, if the labour theory of value is true. But they are not epistemically irrelevant. For, since technical conditions change relatively slowly, the labour time required to produce something in the recent past is usually a good guide to the labour time required to produce it now. Typical past actual labour time is, moreover, the best guide to how much labour time was necessary in the past. Thereby what did occur, the labour actually spent, becomes a good index of what is now required, and, therefore, a good index of the exchange-value of the commodity. But it does not follow that, in any sense of 'creates', it creates the exchange-value of the commodity.

The creation metaphor widely used¹⁶ to convey the labour theory of value makes people think that the theory says that workers produce something, and, since the most obvious candidate for something produced by workers is the physical product, the labour theory of value is, in the end, confused with the idea that the workers create the product itself. It is, moreover, only because of that confusion that the labour theory attracts ideological

¹⁶ For example, by Marx. For a list of his uses of the metaphor, see 'The Labour Theory of Value and the Concept of Exploitation', in *History, Labour, and Freedom*, p. 216 fn. 14.

interest. It has none when it is clearly and distinctly conceived. For real ideological interest lies in claims about the creation of the use-valuable thing in which exchange-value inheres.

To see that this is so, suppose, by way of thought-experiment, that something other than counter-factual labour 'creates' exchange-value, in the very sense in which, in the labour theory, counter-factual labour 'creates' it. (I place scare-quotes around 'creates' in contexts where its use is, at best, metaphorical.) Imagine, in particular, that the magnitude of every commodity's exchange value is wholly determined by the extent and intensity of desire for it, and that we can therefore say that desire, not labour, 'creates' exchange-value.¹⁷ But imagine, too, that labour creates the product itself, out of in all senses worthless raw materials, or – the product being a pure service – out of none. Do we now lose our inclination (supposing, of course, that a belief in the labour theory of value induced one in us) to sympathize with the labourer's claim to the product, and, hence, to its exchange-value, even though we are no longer supposing that labour 'creates' that exchange-value? I do not think that we do. The worker continues to look exploited if he creates the exchange-valuable thing and does not get all the exchange-value of the thing he creates. What matters, ideologically, is what creates that thing, or so transforms it that it has (more) exchange-value,¹⁸ not what makes things of its sort have the amount of exchange-value they do, which is what the labour theory of value is really supposed to explain.

If I am right, the labour theory fulfils its ideological function only when it is mistaken for a theory that labour alone creates the product itself. But the latter theory is both false and hard to reconcile with the extreme importance (see section 2 above) assigned to non-labour resources in the Marxian diagnosis of what enables capitalists to exploit workers. It is because worldly resources *do* contribute to the creation of the product that they enjoy the importance they have in that diagnosis. The distinction between 'creating' exchange-value and creating the use-valuable product

¹⁷ That desire 'creates' exchange-value may be untrue, but it is not an absurd supposition when, as here, it is the supposition that facts about desire, and not facts about socially necessary labour time, determine exchange-value ratios. The reader who finds absurd the idea that desire 'creates' exchange-value is probably himself confusing exchange-value 'creation' with product creation, and therefore confusing the idea that desire 'creates' exchange-value with the magical idea that it (really) creates the desired product.

¹⁸ Whatever creates a valuable thing or enhances the value of a thing in *that* sense creates (some of) its value, but that is not the sense of 'creates value' in which labour is supposed to create value in the labour theory of value: see my 'Labour Theory of Value and the Concept of Exploitation', in *History, Labour, and Freedom*, pp. 232–3.

therefore provides no escape from the dilemma in which I sought to place orthodox Marxists at the end of section 3.

6. Recall that the third approach to distributive justice, partial egalitarianism (see section 1 above), does not restrict people's rights in their own powers, nor, therefore, in the fruits of the exercise of those powers. It follows that the third approach will not enable much movement in the direction of equality of condition if one can say that the things people want are largely the product of human labour, as opposed to of non-human resources. And that, to turn now to Locke, is precisely what he says. He claims that labour is responsible for virtually all of the use-value¹⁹ of what human beings want or need, while natural resources are responsible for virtually none of it.

Some typical embodiments of Locke's claim:

... labour makes the far greatest part of the value of things we enjoy in this world. And the ground which produces the materials is scarce to be reckoned in as any, or at most but a very small part of it...

'Tis labour, then, which puts the greatest part of value upon land, without which it would scarcely be worth anything... Nature and the earth furnished only the most worthless materials, as in themselves.²⁰

Uncultivated land creates virtually no value, and, Locke infers, it therefore possesses virtually no value. It is 'scarcely... worth anything', since it 'furnish(es) the most worthless materials' only.

Locke repeatedly emphasizes the claims that labour creates almost all of the value of things and that natural resources have almost no value. Clearly, then, he thought something pretty important followed from them. But it is not so clear what he thought the important conclusion was. I shall presently describe two conclusions which might be thought to follow from Locke's contrast between the contributions of land and labour. Each conclusion has been attributed to him by commentators. I shall not try to say which of them he really drew himself, partly because my

¹⁹ Locke uses the word 'value' when he makes this claim, but, as I argue in section 7 below, the claim concerns use-value, since, for Locke, 'the intrinsic value of things... depends only on their usefulness to the life of man' (*Second Treatise on Government*, para. 37). Elsewhere, Locke contrasts 'intrinsic' and 'marketable value', that being his way of anticipating the Marxian 'use-value'/'exchange-value' distinction: see *Some Considerations*. In the rest of this chapter, I use 'value' to mean 'use-value', in conformity with Locke's *Second Treatise* practice.

²⁰ *Second Treatise of Government*, Chapter V, paras. 42 and 43, and see, too, paras. 36, 37, 40, and 41. Further references to Locke's two *Treatises of Government* will be by *Treatise* and para. number.

philosophical interest in Locke is not so historical as that, but also because, when I come to criticize Locke, I shall focus, for the most part, on his premiss that labour creates virtually all value, and what plainly was his argument for it, rather than on what, not equally plainly, his inference from it was.

One conclusion which Locke has been thought to draw from the premiss that labour creates virtually all of the value of things is that no one should object very strongly to currently existing inequality, since it largely descends from people's exercise of their self-owned powers and subsequent disposal of what they created by using them. And the other conclusion is that the original formation of private property in unowned external things was justified by the fact that those things were nearly valueless before their labouring appropriators envalued them: appropriators gathered nothing worth mentioning when they established exclusive control over tracts of natural resources.

So we find in Locke, or attributed to Locke, a pair of arguments, with a common premiss. The common premiss is that labour is responsible for virtually all the value of what we use and consume. The conclusion of one argument, which I shall call the value/appropriation argument, is that a person who labours on unowned natural resources becomes, thereby, their legitimate owner. And the conclusion of the other argument, here called the value/inequality argument, is that inequality in distribution is justified, since, or to the extent that, it reflects unequal value-creating applications of labour. I am sure that Locke wanted to draw one or other of these conclusions, or both of them, or conclusions similar to them, from his premiss that labour creates nearly all value, since it is otherwise impossible to explain the importance which he attached to that premiss.

The common premiss of the value/appropriation and value/inequality arguments should not be identified with another, and more famous, Lockean claim. That different claim is that, when one labours on something, one mixes one's labour with it, thereby placing within it something one owns. Locke uses the labour mixture claim as a premiss to justify the original formation of private property out of what nobody privately owns. By mixing what he owns, to wit, his labour, with something unowned, the labouring appropriator becomes the legitimate owner of the resulting mixture, since he alone has any right to any of it.²¹

Let us call that the 'labour mixture argument'. Note now that the labour

²¹ I apologize for reproducing, in the next two paragraphs, material that also appears at pp. 108-9 of Chapter 4 above: unfortunately, these points are needed in both places.

mixture argument is different from the value/appropriation argument, whose conclusion it shares. The value argument for legitimate appropriation has a different rationale from the argument for labour mixture, although many (and sometimes, perhaps, Locke)²² are prone to confuse the two. It is easy to confuse them, since it is (at least standardly) by labouring on something that you enhance its value, and perhaps your action on it should count as labour only if it does enhance its value. Nevertheless, in the logic of the labour mixture argument, it is labour itself, and not value-creation, which justifies the claim to private property. If you own what you laboured on because your own labour is in it, then you do not own it because you have enhanced its value, even if nothing deserves to be called 'labour' unless it creates value. And, for the value/appropriation argument, it is the conferring of value as such, not the labour by which it is conferred, that is essential. If you magically enhanced something's value without labouring, but say, by wishing that it were more valuable,²³ then you would be entitled to whatever the value argument justifies you in having, even though you had not performed any labour.

Locke's principal labour mixture paragraphs in Chapter V of his *Second Treatise of Government* do not, in my view, invoke the consideration that labour enhances the value of that to which it is applied.²⁴ And Karl Olivecrona may be right that when, in later paragraphs of the chapter, Locke does bring value enhancement to the fore, he is not there trying to defend the initial appropriation of private property, but, instead,

²² Locke's most explicitly 'labour mixture' paragraph is II: 27:

Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, hath by this labour something annexed to it, that excludes the common right of other Men.

I think what gets 'annexed' (or, in II: 28, 'added') to nature is labour, not value, but if it is value, then Locke is confusing the two arguments. Better evidence that he confuses them is II: 44, which, after several value-creation paragraphs (i.e., II: 40-3), reverts to the labour mixture theme, as though continuing the same discussion, and also the first sentence of II: 40, which, given what precedes and follows it, seems to represent labour's prodigious power to create value as the explanation why its mixture with things confers title on them in the labourer.

²³ Note that the magical supposition that wishing creates use-value is different from the unmagical one (see p. 174 above) that desire 'creates' exchange-value, and that the wisher would not desire what he wishes were use-valuable unless and until his wish had worked.

²⁴ The principal labour mixture paragraphs are II: 27-34. Paras 27 and 28 perhaps invoke value enhancement, but as I said in footnote 22, I do not think that they do.

advancing the differently concluding value/inequality argument.²⁵ He is purporting to justify the extensive inequality of goods that obtains now, when original appropriation has long since ceased. The justification Locke offers is that almost all of present inequality is due not to any unequal initial appropriating but to the labour which followed after initial appropriation. Locke is prepared to concede that untouched natural things have some little value, but he urges that at least 90 per cent (and probably 99 per cent) of the value of things which have been transformed by labour is due to that transforming labour,²⁶ so that, unless you would rob people of what they produced, or of what they rightfully received, directly, or at the end of a chain of transfers, from labouring producers, you cannot object to the greater part of the inequality that now prevails.

I shall show, in section 8, that Locke provides inadequate support for the premiss of the value arguments; then, in section 9, that that premiss is indefensible; and finally, in section 10, that, even if it were true, it would not sustain the conclusions that are drawn from it. But, before offering those criticisms, I must first clarify what the value-creation premiss says, and why Locke was so confident that it was true.

7. Locke's premiss is often described as a rough statement of what, since Marx, has been known as the labour theory of value. That is misleading,²⁷ since the value which Locke says is (nearly all) due to labour is not the value Marx says labour created. Locke's topic is use-value, not exchange-value. Suppose you own a quantity of wheat. Then the use-value you own is measured by the number of bushels of wheat you have, or, more

abstractly, by the amount of life and enjoyment, or 'utility', those bushels will afford, whereas their exchange-value is measured by the quantity of other commodities they would fetch on a market in equilibrium. And use-value and exchange-value can vary independently of each other: the self-same quantity of wheat, with the self-same use-value, will undergo a change in exchange-value as (equilibrium) market conditions change, and different quantities of wheat, and hence of use-value, will, under appropriately different market conditions, possess the same exchange-value.

If you read Locke with this distinction in mind, I think you will agree that his labour-praising premiss praises labour as the source of use-, not exchange-, value. Consider, for example, these excerpts from II: 37:

the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common... I have here rated the improved land very low, in making its product but as ten to one, when it is much nearer a hundred to one.

Hence land without labour is, as we saw, 'scarcely... worth anything'. But the increase in its value which is here assigned to the action of labour is an increase in its use-value. For Locke's figures have to do with the comparative physical yields, or use-values, which virgin and cultivated land produce, not with what virgin and cultivated land would respectively fetch on the market.

Notice, now, how Locke determines the contribution of labour to use-value.²⁸ He does so by comparing the yield of the land with and without labour, his tool of comparison being what I shall call 'the subtraction criterion'. It operates as follows: you subtract what the land yields without labour from what it yields with it, and then you form the fraction got by putting the result of that subtraction over what the land yields with labour. The resulting fraction, to wit,

$$\frac{\text{Amount land yields with labour minus amount it yields without it}}{\text{Amount land yields with labour}}$$

is supposed to indicate the proportion of use-value which is due to labour, with the rest, consequently, being due to land. I shall later criticize this procedure for gauging comparative contributions to use-value creation, but, for the moment, just note what it is, and that it has nothing to do with

²⁵ See Olivecrona, 'Locke's Theory of Appropriation', pp. 231-4. The relevant later Locke paragraphs are II: 40-3.

²⁶ 'I think it will be but a very modest computation to say that of the products of the earth useful to the life of man nine-tenths are the effects of labour; nay, if we will rightly estimate things as they come to our use, and cast up the several expenses about them - what in them is purely owing to nature, and what to labour - we shall find that in most of them ninety-nine hundredths are wholly to be put on the account of labour' (II: 40). II: 37 gives the same figures, and II: 43 multiplies the larger of them by ten.

²⁷ The frequency of the misleading description is no doubt due to 'the emotional appeal' of the labour theory of value, which 'has induced some historians to interpret as many authors as possible' as proponents of it: Joseph Schumpeter, *A History of Economic Analysis*, p. 98. See, for example, Richard Aaron, *Locke*, p. 280; John Gough, *John Locke's Political Philosophy*, p. 81; George Sabine, *A History of Political Theory*, p. 528. John Dunn (*Locke*, p. 44) says that 'the tangled history of the labour theory of value ever since, in the justification and rejection of capitalist production, was already foreshadowed in the ambiguities of the theory which he [Locke] fashioned'. That is strictly wrong, since Locke did not fashion *that* theory. But Dunn is nevertheless substantially right, to the extent that the theory of value typically enters the debates to which he refers in the misread, ideologically motivated, form described in section 5 above.

²⁸ See, in particular, II: 40, 42, 43.

exchange-value. Land which produces one-tenth without labour of what it would produce with it is not consequently going to fetch, on the market, one-tenth in its virgin state of what it would fetch if it were cultivated.

Since Locke's *explanandum* is use-value, his is not the *explanandum* of the Marxian labour theory, exchange-value. But the *explanans* in Locke's theory is also not the same as the labour-theoretical *explanans*, since, in the labour theory, exchange-value is a positive linear function of labour time,²⁹ and labour time plays no comparable role in Locke's theory. And that is because the amount of a thing's use-value could not conceivably be imagined to co-vary in a simple way with the labour time required to produce it, even by someone who thought that its use-value was entirely due to labour. As Karl Marx saw, Locke's *explanans* is 'concrete labour', which is to say labour considered in its concrete form of ploughing, sowing and so forth, not, as Marx put it, labour 'as a quantum'.³⁰

To see how labour times play no essential role in Locke's theory, suppose that every piece of land within a given economy is of the same fertility, and that an economy-wide deterioration in fertility, affecting every piece equally, now supervenes. Both before and after the deterioration one acre of the land would yield one bushel of corn per day without labour and a maximum of ten with it, but three hours a day was required to make it yield its maximum ten bushels when the land was good and six hours after it has deteriorated. Then the yield of the cultivated land would not have more value for Locke in stage two than it had in stage one, and that is because the use-value of its yield would have remained the same, even though, on labour-theoretical premises, its exchange-value would, *ceteris paribus*, have risen.

A simple proof that Locke's is not a labour theory of value in the Marxian sense is that he says only that almost all of the value of the product is due to labour. But that point aside, he was not a Marxian labour theorist, for the two reasons rehearsed above.

The second of those reasons was that Locke's *explanans* of value is not the amount of labour time required to produce the product. Yet he does emphasize how prodigious is the amount of labour that goes into elementary consumption goods, reminding us that

'is not barely the ploughman's pains, the reaper's and thresher's toil and the baker's sweat, is to be counted into the bread we eat; the labour of those who broke the oxen, who dug and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils, which are a vast number, requisite to the corn, from its being seed to be sown to its being made bread, must all be charged on the account of labour, and received as an effect of that. Nature and the earth furnished only the almost worthless materials as in themselves. (II. 43)

Still, the extensive labour catalogued here is not here measured in the relevant Marxian way, as a quantity of undifferentiated labour time with which exchange-value might be thought to vary. Locke's point is rather that a great deal of variously concrete labour is needed to get consumable bread from an almost worthless natural starting point. It is, moreover, not entirely clear how Locke's catalogue is supposed to serve his own purpose, which is to affirm that labour is the source of (almost all) use-value. For his reason for saying that unworked materials are worthless would apply even if only very little labour were needed to transform them into something worthwhile. The application of the subtraction procedure for determining labour's contribution requires no information about the amount of labour, in any sense, that has been spent. (A speculation about Locke's motive for nevertheless emphasizing labour's amount is offered in the following section: see footnote 33 below.)

Finally, a remark about Marx. As I observed earlier (p. 180), he knew that Locke was not propounding a labour theory of exchange-value. But the passage in which Marx expresses that insight is also interesting for another reason. Having observed that, for Locke, 'labour gives things almost all their value', Marx then adds this partly curious gloss:

value here is equivalent to use-value, and labour is taken as concrete labour, not as a quantum; but the measuring of exchange-value by labour is in reality based on the fact that the labourer creates use-value.³¹

The curious part follows the semicolon. Almost certainly, Marx is there stating something he believes to be true, rather than merely something he believes Locke thought true. But then Marx's statement is curious, for how could he think that labour's creation of use-value was the basis for 'the measuring of exchange-value by labour' (alone) when, as he knew (see p. 172 above), land too creates use-value? A Marxist might reply that creating use-value is but a necessary condition of a factor's being a measure of exchange-value. But then what further relevant condition does

²⁹ The qualifications which need to be put on that statement to cope with the complexities addressed in Volume III of *Capital* are not relevant here.

³⁰ *Theories of Surplus Value*, Vol. I, p. 366. On the difference between concrete and abstract labour see my *Karl Marx's Theory of History*, p. 101.

³¹ *Theories of Surplus Value*, Vol. I, p. 366.

labour, and not also land, satisfy?³² To answer that question, one must say more than merely: that it is labour.

8. My main criticism of Locke's value arguments is an objection to the basis on which he asserts their premiss, which is the premiss that labour is responsible for almost all of what the land yields. He establishes that premiss on the basis of his subtraction criterion (see p. 179 above).

Consider a piece of cultivated land which yields ten times as much crop as it did before it was cultivated. Is it true, for the reason Locke gave, and with the sense that he attached to the following statement, that labour is responsible for 90 per cent of the crop of the cultivated land? In its intended sense, the statement contrasts the contribution of labour with that of the land itself, which here would be 10 per cent of the crop: the point of the statement is to depreciate the contribution of land itself to use-value.

In my view, the desired statement is not true in the required contrastive sense for the reason Locke gave, since that reason, to wit, Locke's subtraction criterion, is unacceptable. One ground for saying that it is unacceptable is that it has intuitively unacceptable consequences. Another ground is that it generates a logical contradiction.

To see that the subtraction criterion has intuitively unacceptable consequences, suppose that only one hour a year of labour is required to draw a hundred bushels of wheat per year from a field which produces only a single bushel per year spontaneously. Or, to take a more realistic example, suppose that just one hour of digging creates a well which yields a thousand gallons of water a year, where before there was only a measly annual ten-gallon trickle. It would surely be wrong to infer, from the fact that the digging *raised* the water yield from ten to a thousand gallons, that the digging is responsible for 99 per cent of the water yielded by, and, hence, of the use-value produced by, the dug land, while the land itself is responsible for only 1 per cent of it.³³

As Locke recognized, land frequently produces consumables without

any labour having been applied to it. Contrast the hide of a cow, which produces no shoes, and not merely very few, when no tanning and cutting and shaping of it goes on. Must we therefore say that land which is, spontaneously, modestly productive, makes some small contribution to the use-value of the bread baked from its wheat, whereas cowhide makes none to the use-value of shoes? The contrast is absurd, but it is forced upon us by Locke's subtraction criterion.

Locke's criterion fails because the *difference* application of a factor makes to output, its marginal contribution, cannot be treated as its contribution to that output *by contrast* with the contribution of other factors. But it is just such a contrast that Locke needs, so that he can upvalue the contribution of labour and devalue the contribution of land. He needs, in other words, to pass from the unexceptionable premiss of the following argument to its invalidly derived conclusion. It will often be true that:

(1) The application of labour makes virgin land produce ten times what it did before.

But it does not follow that, in such a case:

(2) Labour produces 90 per cent of the product of applying it to virgin land.

No one can think such an argument valid once he gets its premiss and conclusion distinguished from each other in his mind, but that sometimes takes effort, since many sentences can be used to express either its premiss or its conclusion, and thereby the argument can acquire an appearance of validity. One might think that (2) follows from (1) because one inattentively uses such a sentence as 'the additional output of 90 per cent is due to labour' to express now (1) and now (2).

Some claim that the fallacy exposed above is too simple to attribute to a thinker of Locke's stature. They say that I have not captured the intuitive power of his reply to the egalitarian, which is that the goods the latter would redistribute are so largely due to labour that redistribution of them would violate rightful claims in them. But I think that the intuitive power of that reply depends entirely on its ambiguity. It is true in sense (1), but polemically interesting only in sense (2). Unless we represent Locke as confusing (1) and (2), or as unjustifiably inferring (2) from (1), we cannot explain why he lays so much emphasis on (1): (1) serves no labour-praising and land-diminishing polemical purpose when (2) is neither derived from it nor confused with it.

I said that Locke's criterion for determining relative contributions to

³² For several attempts to distinguish in a Marx-supporting way between labour and land see Nancy Holmstrom, 'Marx and Cohet on the Labour Theory of Value', pp. 300-2. But see, too, my 'More on Exploitation and the Labour Theory of Value', p. 327, on why, in my view, all of her attempts fail.

³³ Perhaps Locke emphasizes how extensive labour's contribution is in II: 32 (see p. 181 above) to still the sort of doubt I have here raised about the consequences of his criterion, and of which he may have been obscurely aware. But his catalogue will not silence that doubt, if only because, as the well example shows, a lot of labour is not always required to draw extensive consumables from spontaneously unfruitful land.

use-value not only has unintuitive consequences, but also leads to a contradiction. On that criterion, if a piece of land is cropless without labour, but yields a crop with it, then labour is responsible for all of that crop, and land is responsible for none of it. But, although the land is entirely cropless without labour, it is equally true that the labour, the ploughing and harrowing and so on, would yield no crop on infertile land. The value of the following fraction, is consequently, 100 per cent:

$$\frac{\text{Amount labour yields with land minus amount it yields without it}}{\text{Amount labour yields with land}}$$

Then, on a natural generalization of Locke's procedure, we should have to add conclusions (5) and (6) to the ones he draws, which are (3) and (4):

- (3) Labour is responsible for all of the crop.
- (4) Land is responsible for none of the crop.
- (5) Land is responsible for all of the crop.
- (6) Labour is responsible for none of the crop.

This set of sentences fails to award the palm to labour. But, beyond that, it also entails a manifest contradiction. For, even if (3) and (5) are somehow consistent with each other, (3) and (6) (and (4) and (5)) are certainly not. If there exists a defensible criterion for assigning relative contributions to output of labour on the one hand and the original properties of the soil on the other, then it is not Locke's.

For my part, I doubt that there exists such a criterion, and I must therefore distinguish what some economists might think would supply such a criterion from the sort of criterion that I do not think exists. Economists call the problem of rewarding co-operating factors of production *the value allocation problem*. An early solution to that problem was provided by Lloyd-Shapley. He laid down seemingly plausible axiomatic constraints on any solution, and he proved that the only procedure consistent with them was to allocate to each factor the average of its marginal contributions in all possible orders in which the factors might be combined with one another.³⁴

Now the reason why I nevertheless say that there is no criterion which should replace Locke's unacceptable one is that, while Locke seeks, in the

end, to answer something like the Shapley allocation question, his criterion is, immediately, not of how to allocate portions of what is produced to factors, in the sense of rewarding them, but of how to diagnose what different factors contribute to the product (in order, on that basis, to do some appropriate rewarding). In short, Locke goes from (i) facts about marginal contributions, to (ii) claims about comparative physical contributions, to (iii) conclusions about rewards. His argument says, roughly, that, since land without labour produces hardly anything, and land with labour produces an enormous amount, labour contributes vastly more to output than land does, and labour should, accordingly, be appropriately rewarded. There is nothing in Shapley which corresponds to the second stage of this argument. He proceeds directly, by dint of his axioms, from (i) to (iii), and thereby, unlike Locke, refrains from addressing what may be a pseudo-question. I am confident that Locke affirms (ii), since he starts with (i) and ends with (iii), and I do not see how he could otherwise think that he has traversed the distance between them. He certainly did not anticipate Shapley's axioms, which have, by the way, distinctly non-Lockean distributional consequences.³⁵

To conclude, if J. R. Ewing, or Donna Krebs, produces a well yielding one thousand barrels of oil per day after five minutes' excavation, then we cannot infer, on the Lockean ground that no oil comes without digging, that his or her labour, *as opposed to the land*, is responsible for all of that oil. That conclusion is unavailable, not only because it is absurd so to praise so mere a whiff of labour, but also because, by the same Lockean token, labour is responsible for *none* of the oil, since a digger on oil-less land produces no oil: the digger cannot be both responsible for all of the oil and responsible for none of it.³⁷

³⁴ Something like it, because Locke's question is explicitly normative, whereas the Shapley value is presented as an answer to the question of what rewards owners of factors should expect, as a matter of fact, to get from co-operation. Shapley's answer to that question might nevertheless be treated as an answer to the corresponding normative question of what it would be appropriate for them to get, as sovereign owners of the factors they supply.

³⁵ Suppose that some land yields one gallon of water without labour and ten gallons with it. Since it is also true that labour yields no water without land, the Shapley value assigns 5.5 gallons to the land and 4.5 gallons to labour.

³⁷ (i) According to Israel Kirzner, there is no vexing problem about the original appropriation of valuable resources, since resources are valueless, and even, 'in the relevant sense', non-existent, until appropriators perceive the uses to which they can be put, and thereby endow them with value. An argument similar to the foregoing one against Locke might also apply against Kirzner's bizarre, since perception that a resource could be used thus and so would yield nothing if the resource lacked the properties that made the perception correct. See Kirzner's 'Entrepreneurship, Entitlement, and Economic Justice', especially pp. 400-7.

³⁴ The 'Shapley value' is explained in Lloyd Shapley, 'A Value for N-person Games', pp. 307-17. A brief exposition of Shapley's solution and of subsequent work developing out of it will be found in Martin Shubik, *Game Theory in the Social Sciences*, pp. 180ff.

9. So Locke's defence of his premiss, that labour is responsible for nearly all of the use-value of things, is unacceptable. And the premiss is, moreover, indefensible, even if my suspicion that it answers a pseudo-question is unfounded.

I say that it is indefensible for two reasons. The first is that I do not see how one might try to defend it other than on Locke's unacceptable basis: what else could lead one to think that it is true? But my second reason for saying that it is indefensible is more positive. If Locke is right, then land in general has nearly no use-value. Well, consider some land which Locke would regard as particularly friendly to his case, because it yields nothing without labour, though very much with it. One could not say of such land that it has virtually no use-value, let alone, as Locke's criterion would have it, none at all. One could not say that, precisely because the land yields so much *with* labour. Its use-value cannot be considered trivial, since it has a prodigious power to satisfy human desire, in virtue of how it reacts when labour is applied to it.

10. But even if we were to accept Locke's indefensible – and, perhaps, meaningless – premiss, we should still be able to resist the conclusions he is supposed to have derived from it, which are that original appropriation and/or currently existing inequality are justified. For even if land never produced anything without labour, so that, Locke here being assumed to be right, labour was responsible for all the use-value drawn from the land, the landowner would not thereby be justified in taking all of the land's fruit, on the supposition that he or relevantly connected predecessors had performed all the labour on it. For that inference ignores the consideration that not everyone might have had an equivalent opportunity to labour on land, because there was no land left to labour on, or because the land left to labour on was less good than what the more fortunate laboured on.³⁸

(ii) In the examples used above, a single labourer applies himself to the land, so there is no problem of disaggregating the contributions of a plurality of interdependent labourers. For that problem, see Amartya Sen's critique of Locke-like defences of inequality by reference to differential productive contribution, in Sen's 'Just Dessert' and 'The Moral Standing of the Market', pp. 14–17. Note, by the way, that a critique of an argument for rewarding productive contribution which turns on the collective nature of labour does not defeat the claims of productively discrete collectives to all of what they produce, however it should be divided among the individuals within them.

(iii) For ingenious, but, in my view, unsuccessful, criticism of sections 6 through 8 of this chapter, see Andrew Williams, 'Cohen on Locke, Land and Labour'. To see why I say it is ingenious, read it. To see why I say it is unsuccessful, read an unpublished reply by me that I will supply on request, together with Andrew Williams' response to that reply.

³⁸ This rejection of the Lockean inference might be thought inconsistent with my criticism of orthodox Marxism in section 2, for I there imply that, since land is needed for production,

It is generally thought³⁹ that, when Locke advanced his labour mixture argument (see p. 176 above), he made it a condition of the power of labour to create title in land that the labourer leave 'enough and as good' land for others to labour on. To cope with the consideration just mentioned, something similar would have to be added to the value creation premiss, in both of its uses. But then both of the arguments based on it would fail, since enough and as good has not in fact been left for others.

To that complaint of opportunity denied, Robert Nozick has responded that no grievance results, since the landless are no worse off than they would have been had the appropriated land remained unowned. But in focusing only on how the landless in a fully appropriated world would have fared in a wholly unappropriated one, Nozick suppresses other pertinent questions, such as how they would have fared had they, or their forbears, had the opportunity to do some appropriating, and his response therefore fails to allay the grievance here envisaged.⁴⁰

This is the right place to comment on a brilliant Lockean argument for private property, which exploits labour's creative powers in a quite different way from the arguments discussed above. I mean Locke's contention that the improving cultivator

who appropriates land to himself by his labour does not lessen but increase the common stock of mankind . . . he that encloses land, and has a greater plenty of the conveniences of life from ten acres than he could have had from a hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of a hundred lying in common.⁴¹

This argument has the virtue that it requires no claim that the cultivator is responsible for 90 per cent of what he draws from nature. The cultivator's gift to 'the common stock' is not, I think, the surplus provision he produces on his own ten acres,⁴² all of which he might himself consume,

it must have use-value. But there is, in fact, no inconsistency. I am saying that the necessity of land for production defeats the Lockean inference even if (what I am sure is false) the fact that land is needed does not prove that it has use-value.

³⁹ But see, for impressive, and, in my view, nearly convincing, dissent, Jeremy Waldron, 'Enough and As Good Left for Others', which is criticized by Thomas Baldwin at p. 21 of his 'Tully, Locke, and Land'.

⁴⁰ For Nozick's position on the grievances of non-appropriators see *Anarchy, State, and Utopia*, pp. 175–82. For criticism of Nozick's position, see Chapter 3 above, especially sections 3–6.

⁴¹ II: 37. This passage did not appear in the original composition of the *Treatise*. Locke added it years later. See the remarks by Laslett at p. 336 of his edition of the text.

⁴² Though see the Spain example near the end of II: 36, which suggests that Locke may mean, rather oddly, what I think he does not mean.

but the bounty of nature on the ninety acres he is able to vacate for the use of the rest of mankind, because of his productivity on the ten he privatizes. And the argument does justify private property, at any rate if people own their own powers and therefore owe no fruit of them to others, since, on that assumption, this privatizer only benefits the rest of mankind when he retires to his own plot: they now have an additional ninety acres to reap the fruit of. But the argument justifies private property only as long as appropriation generates an expanding common for the privately untended to forage on, and it therefore fails to justify actual private property in the real and fully appropriated world. To justify private property in a fully appropriated world in which some do not own any, something like Nozick's move would be needed, but that move, as I have said, fails.

11. I expressed uncertainty (see section 6 above) about what conclusion(s) Locke hoped to draw from his premises that labour created (nearly all) value, but I also expressed confidence that he thought that something important followed from it in favour of private property and/or inequality. I believe, moreover, that he thought that what followed favoured private property and/or inequality both in the pre-governmental state of nature and in society under government. James Tully's interpretation of Chapter V of the *Second Treatise* would, if correct, create difficulty for that understanding of Locke, and I must therefore explain why I reject Tully's interpretation of Locke.

According to Tully, Locke does not seek to justify property which is truly private, either in the state of nature or under government. What God gives to men in common undergoes what Tully calls 'individuation', but not full privatization. And one reason why Tully's Locke refuses to endorse fully private property is that such property entitlements would militate against the welfare of the community. But both (a) Tully's attribution to Locke of welfarist intentions, and (b) his denial that individuated property is private seem to me to depend on misuse of Locke's texts.

(a) Some of the material offered by Tully in defence of the first thesis gives it no support whatever. He refers to II: 39 to sustain his statement that 'it is the duty of governments to organize the community's possessions and strength for the public good', but nothing in II: 39 bears on that issue.⁴³

⁴³ A *Discourse on Property*, p. 170. Here is the whole of II: 39: 'And thus, without supposing any private dominion, and property in Adam, over all the world, exclusive of all other

He cites II: 50 to show that the community's laws must 'confine the possession of land' so that everyone can enjoy it.⁴⁴ whereas all II: 50 says to the point is that 'in governments the laws regulate the right of property, and the possession of land is determined by positive constitutions'. And he invokes II: 135 in justification of the amazing claim, about which II: 135 says nothing,⁴⁵ that, for Locke, 'government is required to constitute a new order of social relations which will bring the actions of men once again in line with God's intentions'.

Tully thinks that the actions of men fell out of line with God's intentions in the state of nature, when the introduction of money disrupted naturally ordered relations by facilitating a development of inequality which would have been impossible or unlikely before money appeared.⁴⁶ Yet it is not, as Tully groundlessly says, the wealthy themselves who – for Tully's Locke, unjustifiably – 'claim to be entitled to their enlarged possessions'⁴⁷ in the texts he cites, but John Locke who presents that claim for them. According to Locke, the accumulator of monetary wealth 'invade[s] not the right of others', since 'the exceeding of the bounds of his just property' lies not 'in the largeness of his possession', but in 'the perishing of anything uselessly in it' (II: 46), and money does not perish.

In the *First Treatise* (I: 42) Locke imposes on those who have more than they need a duty to give to those who are in want, and we might reasonably suppose that a Lockean government would enforce that duty.⁴⁸ But there is little reference to a duty of charity in the *Second Treatise*, notwithstanding Tully's straining efforts to show the contrary, some of which I now expose.

Citing II: 37, Tully says:

if a case of need arises then, *ipso facto*, one man's individual right is overridden by another's claim, and the goods become his property. By failing to hand over the goods, the proprietor invades the share now belonging to the needy and is liable to punishment.⁴⁹

men, which no way can be proved, nor any ones property be made out from it, but supposing the world given as it was to the children of men in common, we see how labour could make men distinct titles to several parcels of it, for their private uses; wherein there could be no doubt of right, no room for quarrel.'

⁴⁴ Tully, *Discourse*, p. 152.

⁴⁵ *Ibid.*, p. 154. II: 135 is too long to reproduce here, so the reader is invited to verify my allegation for herself.

⁴⁶ Tully, p. 154.

⁴⁷ *Ibid.*, p. 152.

⁴⁸ For an argument that it would, see Waldron, *The Right to Private Property*, p. 241.

⁴⁹ *Ibid.*, p. 132.

This twists what II: 37 says. It says nothing about needy people. It does say that if a man takes more than he can use, so that some of it spoils, then he invades 'his neighbour's share', but he invades it *whether or not his neighbour is needy*. It is not as though a person is allowed to keep fruit which he cannot use unless and until 'a case of need arises'.⁵⁰ Rather, he is not supposed to have it at all. He has no presumptive right to it which someone else's need might, as in I: 42, override.

The duty of charity laid down in I: 42 might be called a duty of the abundantly endowed to *preserve* others, but I have not found a duty to preserve others, in the I: 42 sense, imposed on the well endowed, or on anyone else, in the *Second Treatise*. Hence I do not agree with Tully when he cites II: 6 in support of 'a natural duty of each man to preserve himself, and, *ceteris paribus*, others'.⁵¹ In fact, II: 6 forbids people to harm others, or to deprive them of what they have produced for themselves, but it does not, as Tully's gloss on it suggests, lay down that, having succeeded in preserving himself, a person is obliged to set about working for the preservation of others, should such activity now be necessary and possible.⁵² Note that not even I: 42 obliges a person to labour for the sake of anyone else's preservation.

Tully quotes from II: 149⁵³ in further supposed support of a 'natural duty to engage in the end-directed activity of preserving man', but no duty of the individual to preserve anyone but himself is mentioned in II: 149.⁵⁴ And when Tully points to II: 11, in which Locke speaks of 'the right he [man] has of preserving all mankind',⁵⁵ he refrains from mentioning that the said right is here exercised solely in preventing or deterring others from killing people. Locke is here grounding a right to

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 62.

⁵² The most Tully-supporting clause of II: 6 reads as follows, 'he being every one': 'when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind', but the sentence concludes as follows: 'and may not unless it be to do justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, Liberty, Health, Limb or Goods of another'. I do not think the 'and' at the beginning of that concluding segment is an ordinary conjunction, but one that introduces a clause in apposition to what went before, in order to specify what is here meant by preserving the rest of mankind. I think it is because 'and' is here used to introduce an apposition that, unlike what precedes it, what follows it is not italicized.

⁵³ Tully, *Discourse*, p. 62.

⁵⁴ To be sure, there is a reference to 'the preservation of the Community' in the first sentence of II: 149, but the duty to achieve it lies on the legislative, in execution of the trust reposed in it. It does not follow that anyone ever has a duty, independently of contract or fiduciary relationship, to preserve anyone.

⁵⁵ Tully, *Discourse*, p. 62.

punish aggressors against oneself and others, not addressing himself to need and to the preservation of needy people.

Although the *First Treatise* might be taken to imply that the duty of charity is to be enforced by government, I do not agree with Tully that it 'attributes to Filmer the theory that property in land is independent of social functions and admonishes that it is the "most specious thing"'.⁵⁶ For the thing Locke here calls 'most specious' is the idea that if one man (e.g. Adam) were the legitimate proprietor of the whole world, he would have a consequent right to starve everyone else into submission to him. It hardly follows that Locke would think it similarly specious to deny social functions to property where it was distributed with less extravagant inequity.

Tully also cites the *Essays on the Law of Nature* to support his claim that Locke 'finds a theory of property which is not conditional upon the performance of social functions as an "absurdity"'.⁵⁷ But what Locke there declares to be an 'absurdity' is not some theory of property, but a theory of morally correct motivation according to which

it would be unlawful for a man to renounce his own rights or to impart benefits to another without a definite hope of reward... to grant or give anything to a friend, incur expenses on his behalf, or in any other manner do him a favour out of pure kindness.

Locke is denying that 'the rightness of a course of action be derived from expediency', not affirming that property rights are conditional on social service. He urges that, if it were wrong for a man to act against his own selfish interest, then, absurdly, it would be wrong for him to 'renounce his own rights' for the sake of a friend. The words I just quoted imply that, for Locke, property rights include, as one might expect, the right not to give away what one owns (on which a kind man will not always insist). Hence, far from sustaining Tully's eccentric interpretation, the *Essays* passage actually contradicts it.

(b) So much against Tully's attribution to Lockean texts of welfarist intentions which are not to be found in them. I turn to the connected issue distinguished at p. 188 above, to wit, Tully's denial that the legitimate 'individuation' of what God gives to men in common amounts to the formation of private property.

According to Tully, what most commentators have thought was private property in Locke is, in fact, 'exclusive property within positive

⁵⁶ Tully, *Discourse*, p. 99, quoting I: 41.

⁵⁷ *Ibid.*, p. 103, citing Locke, *Essays on the Law of Nature*, pp. 213-15.

community'. The individuation of the world 'does not dissolve, but merely realises property in common'. This is supposed to be demonstrated by II: 26, in which, comments Tully, an agent with an exclusive right still remains "a tenant in common".⁵⁸

But that comment is a misuse of II: 26. The agent in II: 26 is an Indian who has established an exclusive right in some fruit or venison. The fruit did belong to mankind in common, but, once the Indian has appropriated it, it no longer does: the common property in the fruit is entirely 'dissolved'. What he remains 'a tenant in common of' is the land itself, over no part of which, however, does he have any exclusive right, and Locke's point in II: 26 is that private property is so unavoidable that even a tenant in common must privatize the fruit of the common to get any benefit from it. The individuation of land itself arises only later, at II: 32, where Locke says 'it is plain, that property in that too is acquired', as property is acquired in venison and fruit, with full private right. The idea that individuation 'does not dissolve, but merely realises property in common' is entirely without foundation.

Continuing his advocacy of 'exclusive property within positive community', Tully makes curious and unjustified use of paragraphs 28 and 35 of the *Second Treatise*:

Locke is quite explicit in saying that his model is the English Common. 'We see in Commons, which remain so by compact, that 'tis the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use' (2. 28, cf. 2. 35).⁵⁹

Now, as II: 35 makes clear, a common by compact is, by contrast with a common in the state of nature, one whose parts may not be privatized: the compact is an agreement that the land will remain held in common. All that one can privatize here is the fruit of the common, not the land itself, and Locke's point in II: 28 is that *even* when the land is held in common by compact, something must be privatized for it to be of any use. So II: 28 supports the idea that individuation 'realises property in common', just as little as the Indian example in II: 26 does.

Tully's 'cf. 2. 35' is, moreover, hard to construe. II: 35 adverts to the impossibility of privatizing the land of a 'common by compact', but points out that 'it is quite otherwise' for commons lacking in legislated status.⁶⁰ Where the common is natural you can take land, but you thereby cancel common ownership of the part you take. Where the common is by

compact, you can take only fruit, thereby dissolving the common ownership of that fruit. The formula favoured by Tully, of 'exclusive property within positive community', is in no case satisfied, and I do not understand why he refers us to II: 35.

12. In my conventional perception of Locke, he holds that men enter political community in order to secure their lives and their possessions, both of which are at risk in the state of nature.⁶¹ Now it is obviously, because necessarily, the very lives which they had in the state of nature, and not, *per impossibile*, some freshly distributed ones, which come under communal protection once men enter political society. And I believe, with most commentators, and against Tully, that, although it is not equally necessary, it is equally true that, for Locke, the possessions men enjoy in society are, initially, the very possessions which belonged to them in the state of nature, and which they had aimed to make more safe: they do not enter community in order to have some or other secure possessions, but in order to secure the possessions they already precariously enjoyed. In the paragraphs bearing on this issue Locke's language does not distinguish between preservation of life and preservation of property in the way it would if there were not between the two preservations the similarity on which I am here insisting.

In Tully's different view of Locke, once government is established, 'all the possessions a man has in the state of nature . . . become possessions of the community',⁶² which determines the members' use of them. But Tully's interpretation confuses possession, or ownership, with political rule. When people join the community, they submit *themselves* to its rule, and, as Locke makes plain (II: 120), they must, on pain of contradiction, submit their property to its rule too. But it no more follows from the community's rule over a person's possessions that they now 'belong to the community' than it does from its rule over him that he belongs to it, in the relevant parallel sense of being its slave. The community does not own his goods any more than it owns his person. To be sure, it enacts and enforces rules of criminal and civil law, to which his property and person are now subject, and both are consequently more secure than they are in the pre-political condition, since the pre-political law of nature is both indeterminate in detail and hard to enforce (II: 136). One may therefore say, as Locke does, that government 'regulates' (II: 50, 139) property, but

⁵⁸ Tully, *Discourse*, p. 105.

⁵⁹ *Ibid.*, pp. 124–5. ⁶⁰ Cf. II: 32–4.

⁶¹ See, e.g., II: 123ff., 138.

⁶² Tully, *Discourse*, p. 164. ⁶³ *Ibid.*

it hardly follows that 'the distribution of property' is 'in the hands of government'.⁶⁴ Its distribution is, temporally speaking, pre-politically grounded, and, speaking in terms of justifying principle, sub-politically grounded. That is why II: 138 emphasizes – on Tully's account, unintelligibly – that the legislature 'cannot take from any man any part of his property without his own consent': if the legislature distributed property in the first place, it could surely redistribute it, when circumstances have changed, on whatever basis underlay the original distribution.⁶⁵

When Locke writes that men, 'by compact and agreement, settled the property which labour and industry began' (II: 45), the natural reading of his words is that it was the very property which each compactor had gathered as a result of his own labour (or that of relevantly connected others) which was now to be 'settled': it was rendered secure, by being placed within a political framework. On Tully's alternative reading, the pre-politically well endowed would, improbably, have agreed to a dispossession which reduced them to equal standing with the pre-politically indigent. Commenting on II: 45, he tells us that, for Locke, 'property in political society is a creation of that society',⁶⁶ but there is no warrant there, or elsewhere, for this assertion, or for Tully's extravagant conclusion that 'community ownership of all possessions is the logical consequence of the premisses of Locke's theory in the *Two Treatises*'. It is no more entailed by Locke's premisses than community ownership of individuals is.

⁶⁴ *Ibid.*, p. 171, emphasis added. In another place ('A Reply to Waldron and Baldwin', p. 37), Tully invokes the authority of John Dunn, who writes that, once government is formed, 'property now is what the legal rules specify' ('Consent in the Political Theory of John Locke', p. 140). But Dunn's statement does not entail that legal rules decide property's distribution. For pretty conclusive evidence that Locke distinguishes between the power to regulate property and the power to decide who owns it, see the first sentence of II: 139.

⁶⁵ Cf., on this and related matters, Jeremy Waldron's decisive 'Locke, Tully and the Regulation of Property', pp. 98–106, or the revised version of that text at pp. 232–41 of *The Right to Private Property*.

⁶⁶ Tully, *Discourse*, p. 98. Compare the comments at p. 165 on II: 136, 138, which seem to me to be similarly incorrect, albeit less demonstrably so.

8. Exploitation in Marx: what makes it unjust?

... the money owner now strides in front as capitalist, the possessor of labour-power follows as his labourer. The one with an air of importance, smirking, intent on business; the other, timid and holding back, like one who is bringing his own hide to market and has nothing to expect but – a hiding. (Karl Marx, *Capital*)

1. In the standard Marxist account of capitalist exploitation, workers are constrained by their propertylessness to sell their labour power to capitalists, who own all the means of production. Workers are thereby forced both to submit to capitalists' directives and to yield some of what they produce to them: the workers keep part of what they produce, and the capitalists take the rest (the surplus product), for no return.

Now, there exists a debate about whether or not Marx regarded capitalist exploitation as *unjust*. Some think it obvious that he did believe it to be unjust, and others think that he patently did not. I shall not pursue that debate here. Here I take for granted, what I have argued for elsewhere, that Marx did think that capitalist exploitation was unjust.¹

That being given, let us return to the standard account of exploitation,² sketched a moment ago, in order to ask: where, precisely, did Marx think that the injustice of exploitation lay? For notice that three logically distinct things occur in the Marxist account of exploitation, each of which carries a redolence of injustice. One is that (1) workers are at the short end of an unequal distribution of means of production. A second is that (2) they are forced to work as others direct them to. And a third is that (3) they are

¹ See my review of Allen Wood, *Karl Marx*; and, for an (in my view) sound and comprehensive treatment of the issue, see Norman Geras, 'The Controversy About Marx and Justice', in his *Literature of Revolution*.

² I shall often, as I do here, use 'exploitation' to mean 'capitalist exploitation'. Exploitations characterizing other modes of production play no role in this chapter.

forced to yield surplus product to others. (In the standard story, (1) causes each of (2) and (3).)

As I said, these are logically independent features of the workers' condition. Logically, there could be any one of them without the other two, and any two without the third. If workers lacking means of production choose to die, then only (1) is true. Or, if workers have less or worse means of production than capitalists, rather than none, and they choose to work *attentively*,³ because that makes sense in material terms, or in a spirit of defiance, because they hate exploitation more than they do poverty, then, again, only (1) is true. If, by contrast, workers are equitably endowed with means of production but forced to work at gunpoint by oppressors who reap nothing from their labour (maybe the workers are forced to break up rocks), then only (2) is true. And if workers are equitably endowed with means of production, and work for themselves, but others then take, by force, part of what they produce, then only (3) is true. (One can also compose cases where only (1) and (2), (2) and (3), and (1) and (3) are, respectively, true.)

Let us now ask: *which* of these features makes or make (for it might be more than one of them) exploitation unjust, not so much according to Marx, but, more broadly, within a Marxist outlook? The question is not (directly) about Marx's mind. Canonically put, it is this: *if the story of capitalist exploitation is the one Marx tells (and which I summarized in the first paragraph of this chapter), then where, precisely, does the injustice lie (on independently reasonable views about justice)?*

Now, in each of two recent chapters of this book, I discussed the Marxist account of exploitation, and I protested, in each, against a relationship that I discerned between that account and the thesis of self-ownership. I said, in Chapter 5 (see, in particular, its first two sections), that Marxists seek to represent exploitation as unjust without rejecting the thesis of self-ownership (and I argued that you cannot represent it as unjust without rejecting that thesis). In Chapter 6 I went further. I accused Marxists of implicitly affirming the thesis of self-ownership in their account of exploitation (with grave consequences for the coherence of that account: see sections 2, 3 and 8 of that chapter).

That Marxists fail to reject self-ownership and that they actually affirm it: those are, of course, mutually consistent claims. But the premisses of my arguments for the two claims appear to be inconsistent with one another. For, in Chapter 5, I treated the injustice of exploitation as lying

³ For further comment on this case, see section 4 below.

fundamentally, according to Marx, in the unequal distribution of means of production (distinguished as feature (1) above) that generates the surplus extraction, whereas, in Chapter 6, I treated the injustice of exploitation as (again, for Marx) fundamentally a matter of the extraction of the surplus itself (feature (3)): I did not present it as a secondary injustice deriving from a maldistribution of resources which is the primary injustice. In this chapter, I shall briefly recall the apparently contrasting treatments, show why they seem inconsistent, attempt to arbitrate between them, and then criticize some formulations of John Roemer which relate to my theme.⁴

2. In Chapter 5 I said that, in the Marxist critique of capitalist injustice, the exploitation of workers by capitalists derives entirely from the fact that workers lack access to physical productive resources. Here the Marxist charge is that the badly off suffer injustice in the left libertarian sense that they do not get their fair share of the external world (a charge, I noted, that requires no rejection or modification of the thesis of self-ownership). But in Chapter 6 the prime site of injustice appears to shift from the pre-production asset distribution to the forced extraction of product itself, from feature (1) (see p. 195 above) to feature (3). I do not say in Chapter 6 that Marxists think that the extraction is unjust because of what enables or induces it (the pre-production distribution), but because it involves what Marx called 'the theft of another person's labour time' (and this charge, I argued, requires affirmation of the thesis of self-ownership).

So I seem to say, in Chapter 5, that, for Marx, the initial unequal asset distribution is unjust, and that the consequent flow of product from worker to capitalist is unjust for *that reason*. Yet, in Chapter 6, the emphasis shifts to the forced product flow itself, that being treated as the essential injustice for Marx, so that the asset distribution counts as unjust precisely because it gives rise to such a flow. And these accounts of the matter look inconsistent with one another. Can it be true both that the extraction is unjust because it reflects an unjust distribution and that the asset distribution is unjust because it generates that unjust extraction? The answer, I believe, is 'yes', when the two 'because's in that question are appropriately and differently interpreted: that is what I hope to show.

It is often helpful, when faced, as we are here, with a conundrum, to model it in another area of thought where we can expect fewer prejudices

⁴ The attentive reader may have noted that feature (2) (see p. 195 above) thereby falls out of view here. That is appropriate, since it is not germane to exploitation as such: see Chapter 6, p. 147 above.

to interfere with perception. So here is a relevant partial analogy to our problem. Suppose that whoever is in a position to do so distributes guns unequally, that is, to some people but not to everybody, and that guns enable those who have them to engage in highway robbery. Suppose that equal distribution of guns would have meant no highway robbery, because of mutual deterrence, and suppose also that the only relevant use of guns is to commit or deter highway robbery. Nobody cares about how elegant guns are, for example. They are valuable only as a means of destruction and threat.

Before we reflect further on the gun example, let me say why I have modelled it as I have. Distribution of guns is meant to parallel distribution of means of production, robbing parallels forcible extraction of a surplus, and the important requirement that people care about guns only as means of effecting or preventing highway robbery matches a stipulation we should make about means of production, to wit, that no one cares about them except as means of production. This means, for example, that no landowner wants to use (part of) his land as a private park, and no seed-corn can be eaten instead of being sown. That is, of course, false, but I am sure that its falsehood is irrelevant to the question of where the basic injustice lies in exploitation: no such fungibility in means of production, such possibility of their use as means not of production but of consumption, is required in Marx's story.

We can say this about the guns. We can say that highway robbery is unjust⁵ and that an unequal distribution of guns is unjust. And we can say that the unequal distribution of guns is unjust because it enables highway robbery, meaning thereby that the gun inequality owes its injustice to what it enables: it counts as unjust because of the injustice (highway robbery) that it facilitates.

By contrast, it would be wrong to say that highway robbery owes its injustice to the unjust distribution of guns which makes it possible. What makes highway robbery unjust is simply that it is a forced unreciprocated transfer of money to the robber (by contrast with an unreciprocated transfer which is not unjust because it is a gift, and a forced reciprocal transfer the puzzling question of the justice of which need not be confronted here). Highway robbery is unjust because it is a transfer of money for the *wrong reason* (to wit, in this case, the victim's fear that the highwayman will kill him).

⁵ Except, perhaps, in Robin-Hood-type cases where robbery rectifies injustice and might therefore be thought not unjust: we can set aside such cases here.

The maldistribution of guns is not *normatively* fundamental, even though transfer of money is unjust when and because it is effected by such means as gun threat. That fact does not make the maldistribution of guns normatively fundamental, for it is wrong only because of the unjust transfer that it enables, despite the fact that, where such maldistribution occurs, it is *causally* fundamental in the explanation of the possibility and the occurrence of unjust transfers. Even if gun maldistribution were the only possible cause of wrongful money extraction, that maldistribution would remain a normatively secondary (though causally primary) wrong.

Return now to the Marxist context. As long as we distinguish between causal and normative fundamentals, we can indeed say, to revert to the formulation under challenge (see p. 197 above), *both* that the extraction is unjust because it reflects an unjust distribution *and* that the asset distribution is unjust because it generates that unjust extraction. In parallel with the robbery example, the correct things to say about exploitation in Marxism are as follows. First, forced extraction of a surplus is wrong because of what it is, and not because it inherits the wrong of something else. Second, on our reasonable assumption that the sole purpose of means of production is to make product, a distribution of means of production is unjust only if and because it enables an unjust transfer of product. Finally, and in proper analogy with the gun example, the fact that the transfer of product is unjust when and because it is enabled by maldistribution of (this time) means of production does not make that maldistribution normatively fundamental. To think so is to confuse causal and normative fundamentality.

A transfer of product is unjust if and only if it occurs for the *wrong reason*. If an unreciprocated product transfer reflects nothing but different (unmanipulated) preferences in a straightforward way,⁶ the transfer is not unjust. But it is unjust when and because it is caused by an unequal asset endowment, an unequal asset endowment which is unjust because it induces a wrongful, because forced, and not, for example, preference-based, flow. So we can say both that the extraction is unjust because it comes from an unequal (and therefore unjust) asset distribution, and that the latter is unjust because it generates an unjust extraction. *The flow is unjust because it reflects an unjust division of resources which is unjust because it tends to produce precisely such a flow.*

Articulation of the basis of the two conjuncts of the foregoing sentence shows that their joint affirmation generates no inconsistency or circle:

⁶ As in the example from Roemer described at p. 205 below.

- (i) The worker (*W*) is exploited by the capitalist (*C*), since *C* gets some of what *W* produces (for no return) by virtue of differential ownership of means of production, and where that causes *C* to get some of what *W* produces, *C*'s getting it is unjust.
- (ii) Unequal distribution of means of production is unjust because it causes the unjustly unreciprocal transfer described in (i)

Many would accept the distinction I shall now draw between descriptive and normative features, and this and the next paragraph are not addressed to those who reject it, since there can be no attempt here to defend that distinction in general terms. A feature is descriptive if and only if affirming that a thing has it entails no judgement of value, whereas value judgements are entailed when normative features are predicated. Descriptive features of exploitation are that it is a forced and unreciprocated flow, and a descriptive feature of the pre-production asset distribution is that it is unequal. It is a normative feature of each (according to Marxists) that it is unjust.

The normative/descriptive distinction enables a reasonably precise statement of what is due to what in the present domain: the descriptive features of the flow are due to the descriptive features of the pre-production distribution; the normative feature of the flow is due to its descriptive features (and therefore, by transitivity, to the descriptive features of the pre-production distribution); and the normative feature of the pre-production distribution is due to the normative feature of the flow it enables. In a word (or two), the transfer in exploitation is unjust because of the nature (the descriptive features) of its cause, and that cause counts as unjust, has that normative feature, because what it causes is unjust.

For further clarification, let us distinguish three topics of assessment: an unequal asset distribution, its tendency to induce a forced product flow, and a forced product flow. My view is that the normatively fundamental injustice is such a flow, even though it counts as unjustly exploitative because it is caused by an unequal asset distribution. That distribution is unjust because of its tendency to induce a forced product flow, and that tendency makes the distribution unjust because the realization of the tendency is unjust.⁷

⁷ Further clarification of that tripartite statement is available in section 3, which some non-philosophers will find tedious. (Some philosophers may find it even more tedious.)

3. I claim that an unjust distribution of means of production owes its injustice to the injustice of the surplus extraction that such a distribution facilitates. Some will be moved to resist that claim on the ground that an unjust distribution of means of production is *intrinsically* unjust, unjust, that is, no matter what its actual effects are. I agree with the latter statement, but I do not think that it refutes my claim that injustice in a distribution of means of production is secondary.

Different senses of 'intrinsic', 'intrinsically' (etc.) need to be distinguished here. The relevant pre-production distributive injustice is indeed intrinsic to that distribution in the first sense of 'intrinsic' that I shall introduce. But I shall also introduce a second sense of 'intrinsic' in which injustice is not intrinsic to the pre-production distribution: the derivative status of its injustice is related to the latter's not being intrinsic to it in that second sense.

I have said that, if *y* is unjust because it enables or tends to produce *x* and *x* is unjust,⁸ then *y*'s injustice derives from *x*'s (even when *x* counts as unjust only when *y* produces it). Now, in one sense of 'intrinsically', a good or evil is intrinsically so if it is so apart from its effects. And, in that sense, an unequal distribution of means of production is indeed intrinsically unjust, even though its injustice is not primary but secondary, normatively speaking. Such a distribution is intrinsically unjust because its injustice resides in its *disposition* to produce a certain effect, a disposition which might not be activated. Its injustice does not depend on any effect that it *actually* produces, and it is, therefore, independent of whatever its actual effects may be.

Consider an instructive partial analogy. The intention to do something wrong is bad apart from its effects, and, in particular, even if no wrong act ensues from it (because the agent changes his mind, because his plan is thwarted, etc.). And doing something wrong, too, is bad apart from any (further) effects it may have. Both, thus, are, in the stated sense, intrinsically wrong, yet one may nevertheless think⁹ that doing wrong is the primary bad here, that intending to do wrong is bad because of what it is an intention to do (whereas doing wrong is not bad because it issues from a bad intention (even if it does not count as *doing* wrong unless it so issues)).

⁸ Note that 'and *x* is unjust' comes within the scope of 'because' here: *x*'s injustice must be part of the explanation of *y*'s injustice for the forthcoming consequent to follow.

⁹ Some may think otherwise: the issue is a contested one, on which I need not take a stand here. What matters here is the logical co-tenability of intentions can be wrong apart from their effects' and 'wrong intentions are wrong because of what they are intentions to do'.

Analogously, an initially unequal distribution of means of production is unjust, apart from what its actual effects are, and, therefore, it is (in the stated sense) intrinsically unjust: it is unjust because of its tendency to cause injustice, which tendency is intrinsic to it, in the sense that it has that tendency whatever the actual effects of the tendency may be. But the injustice of the distribution nevertheless remains normatively derivative: the core generative injustice is forced unreciprocated transfer itself.

I allow, then, that a maldistribution of means of production is intrinsically unjust (unjust, that is, apart from its consequences), but I also say that *such a distribution is unjust because of what it causes* (and that it is therefore derivatively unjust). That sounds contradictory, so I must clarify the meaning which I attach to the phrase 'what it causes' in the italicized claim. 'What it causes' means, here, not what it has caused, is causing, or will cause, but, instead, what it *tends* to cause. A maldistribution of means of production is indeed unjust because of what it causes, because, that is, of a tendency inherent in it. Accordingly, it is intrinsically (though derivatively) unjust, because it is unjust no matter what its actual consequences are.

Up to now, a normative property of x has qualified as 'intrinsic' just in case x has it independently of the actual effects of x . A tougher condition for 'intrinsic' adds that the relevant normative property must be had non-rationally, that is, no matter how other things are.

To illustrate. A given batch of TNT is explosive whether or not it actually explodes. On our initial definition of 'intrinsic', its explosiveness is therefore an intrinsic property of the TNT. Yet one might say that the batch of TNT would not be explosive if it were placed on a planet that lacked oxygen, and, for that reason, one might deny that it is intrinsically explosive. In short, one might add to the conditions of ' x is intrinsically f ' that x be f regardless not only of its effects but, more generally, of its relations to other things in the world.

A bad intention (which, we continue to suppose, is bad because of the badness of the action it is an intention to perform) remains bad no matter what happens in the world. Such an intention is intrinsically bad even in our second and stronger sense of 'intrinsic'. For its object, being an intentional (or 'intentional') object in the technical sense, does not vary with variations in the world. Nor, therefore, is the answer to whether or not an intention is bad exposed to such variation.

By contrast, and analogously with the TNT case, something can be bad because of its tendency *as things are*, a tendency it would lose if things were different. So, for example, an unequal distribution of means of production

might be thought unjust if it is to people of identical preference orderings and talents, but just if to people who differ in those respects and where the inequality of the means of production distribution is appropriately compensating. Injustice of a distribution of means of production is, then, intrinsic in the first of the two senses of 'intrinsic' that I defined, but not in the second and stronger one. Its injustice depends on how other things stand, and, in particular, on whether other things so stand that the means of production distribution enables an unjust appropriation of surplus product.

4. I have thus far supposed that the characteristic effect of unequal distribution of means of production is to force some to produce for others. I have operated under this supposition because that is how Marx conceived economic injustice, and my question (see p. 196 above) has been: if this is the story of economic injustice, then where, precisely, does the injustice lie?

The injustice generated by maldistribution of means of production may, however, be described in more general terms, in terms, that is, of the leisure-and-income sets available to differently endowed (with means of production) agents, whether or not some extract product from others. Under some conditions, for example, an inequitable distribution of means of production will mean not that A is exploited by B but that A works harder than B for the same product, or gets less product for the same labour input.

Such a case was noted at p. 196 above, but I have not explored it, for two reasons. First, the case falls outside the Marxist frame within which my discussion is placed. Second, the interesting question that poses itself with respect to the non-exploitation case is structurally analogous to the one that has occupied us: it therefore does not require independent investigation. That question is: is the central injustice the means of production distribution or the skewed result it tends to produce? And the answer to it is: the normatively generative injustice is the final distribution, its propensity to produce which derivatively makes the causally generative injustice unjust.

5. An example in Volume I of *Capital* that I cited in footnote 11 of Chapter 5 shows that Marx was himself firmly against rooting the injustice of exploitation in the injustice of an *initial* unequal distribution of means of production. For, in Marx's example, there is an unjust flow without an initial unjust external asset distribution. Everyone starts out equal in

external assets, but, by dint of (so Marx is willing to suppose) 'his own labour and that of his forefathers', A's assets are so improved that he is now in a position to exploit B, who, we can further suppose, allowed his external assets to decay. (Marx seems to have meant that a generation or two passes by before exploitation begins. Let us, however, delete the 'forefathers' and treat the example as intra-generational, to forestall unhelpful objections.)

Because, in this example, there is an unjust flow without an unjust initial asset distribution, the injustice of the flow is not a function of any such initial distribution, and this confirms that the injustice of such initial distributions is a function, for Marx, of the injustice of the exploitative flow which they enable. But even if exploitative flow were, as the Marxian example shows that it is not, causally impossible without an initial skewed distribution of means of production, then, so we have seen, the latter would remain a (causally primary but) normatively derivative injustice.

6. John Roemer has argued, using ingenious examples of a sort that would not have occurred to Marx, that *not all unequal product flow on the market is unjust, and, indeed, that such a flow is unjust only if it reflects an unjust initial asset distribution*. Roemer infers that the issue of flow is uninteresting, and that Marxists are therefore wrong to focus on it.¹⁰ But I think that, although Roemer's premiss (the italicized statement) is substantially true,¹² it follows neither that unreciprocated flow is normatively uninteresting nor that (as Roemer also thinks) the normatively fundamental injustice is the asset maldistribution: so Roemer is wrong on two counts. I shall expound Roemer's position and then spell out why I believe it to be incorrect.

Now, I said that¹¹ we can agree with Roemer that all unjust exploitative flow requires an initial unjust distribution. And that seems to conflict with what Marx says about the special example discussed in section 5 above. But, if we readily agree with Marx about that example, then, so I suggest, that is because we suppose that there are certain assets unmentioned

¹⁰ 'On the market' here, establishes a contrast with directly forced extraction (e.g. at gun-point), fraud, etc.

¹¹ He replies negatively to the title question of his essay 'Should Marxists be Interested in Exploitation?', which is my target here. (I do not ask whether Roemer's positions in that essay are consistent with what he says elsewhere.)

¹² It is false only because ignorance and accident can affect the upshot of market transactions (see subsection 2c of Chapter 2 above). But it is convenient to forget about ignorance and accident here.

¹³ Setting aside special cases: see footnote 12.

by Marx which are initially, and perhaps also continuingly, unequally distributed, to wit the intangible assets of talent and foresight that can undermine an initial equality in external assets. Roemer would say that, in the *Capital* example, thus elaborated, the initial situation is unjust, and I would agree. It is unjust because the external asset distribution should compensate for, not facilitate the natural consequences of, the unequal intangible asset distribution. If, through some degree of commitment to self-ownership, we flinch from saying that, then it is hard to see how we can regard the *Capital* case, at any rate in the intra-generational form that I imposed on it, as one of unjust exploitation.

Now, Roemer says that an unequal flow, which is what he means by 'exploitation' in the article I am discussing, is not unjust when it does not reflect an unjust asset distribution. And, being free of commitment to self-ownership, Roemer treats an initial asset distribution as just only if it can be judged equal when both external and intangible assets (talent) are taken into account. Consider now this Roemeresque example: X and Y are equal in talent and in external assets but they have different preferences, and, in particular, different income/leisure trade-offs. X is a basker and Y is a workaholic. So X lets Y work on X's means of production after Y has finished working on his own. Y works ten hours, five on his own and five on X's means of production, and some of Y's product, say, $2\frac{1}{2}$ hours worth, goes to X.¹⁴ We can agree with Roemer that there is nothing unjust here. There is nothing unjust because (although there is extraction) there is no unjust extraction.¹⁵

Such examples establish Roemer's premiss, which is that unequal flow is not, as such, unjust. But his conclusion from that premiss, which is that unequal asset distribution, not exploitative flow, is the (normatively) fundamental injustice, does not, in my view, follow. If that conclusion followed, then the reasoning in section 2 of this chapter would have been mistaken.

The reason why Roemer's conclusion does not follow is that it remains possible, and plausible, for all that his premiss (unequal flow is not, as such, unjust) is true, that it is the unequal flow that is unjust, when it reflects an unjustly unequal asset distribution, which distribution is unjust precisely

¹⁴ These means of production conk out if they are used for more than five hours a day.

¹⁵ The extraction reflects nothing but different preferences. But, contrary to what Roemer says at p. 272 of 'Should Marxists ...?', it is false that unjust exploitation can never occur on the basis of different preferences. For a splendid counter-example to that generalization, see the Appendix in 'The Relation between Self-Interest and Justice in Contractarian Ethics', by Christopher Morris.

because it enables an unjustly equal flow so that, pace Roemer, the latter injustice is normatively fundamental. After all, what else is unfair about the distribution, on the legitimate assumption¹⁶ that all people care about in means of production is that they are means of production? It is absurd to advise us to be interested in asset distribution as opposed to flow of product when it is flow of product that makes asset distribution interesting!

The Marxian position is that, since labour and labour alone creates the product, and since (differential) ownership of means of production enables non-labourers to obtain some of what labour creates, just because they own means of production, their ownership of means of production is morally illegitimate. Here, indeed, is a great crux dividing Marxist from bourgeois thought. For Marxists say, in effect, that since labour produces the product and private owners of capital appropriate part of it, private capital is morally illegitimate and workers are exploited; and bourgeois thinkers say, in effect, that since private capital is morally legitimate, workers are not exploited, despite the fact that they produce the product and part of it redounds to capital.

I nail my colours to the formulation italicized two paragraphs back. I therefore part company with Roemer when he declares that

exploitation theory . . . does not provide a proper model or account of Marxian moral sentiments: the proper Marxian claim, I think, is for equality in the distribution of productive assets, not for the elimination of exploitation.¹⁷

(where, as always in Roemer's paper, exploitation just means unequal flow). Roemer neglects to consider what the point of equality of distribution of productive assets is, if that point is not to make an unjust flow impossible. If, as Roemer insists, 'the proper Marxian claim . . . is for equality in the distribution of productive assets', then that is because such a distribution makes (unjust) exploitation impossible, and, that being so, it is entirely inappropriate to contrast the quoted 'claim' with the one that Roemer seeks to degrade. The bottom line must include preventing unjust treatment of some by others: it cannot be (only) preventing what enables such treatment to occur.

Entering another's house is not wrong when you have its owner's permission and he has given you a key, but it is wrong when you have no such permission and you use a gun to enter it. Yet it does not follow that what is wrong when you use a gun to enter is not that you enter but that you use a gun, in this case, merely as it happens, to enter. *The entering is*

wrong because it is by means of a gun and the possession of guns is wrong precisely because they enable wrongful entry: wrongful entry is the normatively generative (though causally secondary) wrong here.

Analogously: Roemer is right that (defining 'exploitation', here, as unequal flow, not as unjust flow) exploitation is not by nature unjust. But exploitation, and not unequal means of production, is, in its unjust form, the central and normatively generative injustice, even though it is not always an injustice.

Consider, again, the highwayman. It is not in general an injustice that a cheque is signed. It is an injustice when it is signed because a highwayman threatens the signer with death if she does not sign. An injustice then occurs over and above that of the highwayman's having and threatening with his gun, since the victim might have chosen to die instead of signing. That this counts as an injustice because of the gun (cheque-signing is not in general unjust) manifestly does not prevent it from being unjust; and, so I have argued, it also does not prevent gun inequality from being merely secondarily unjust: gun inequality is unjust because it enables unjust transfers, such as highway robbery, to occur. And, similarly, although 'the injustice of an exploitative allocation depends upon the injustice of the initial distribution',¹⁸ what makes the latter unjust is its propensity to generate the primary injustice, an exploitative allocation.

In my solution to the conundrum introduced at p. 197, I say that the asset distribution is unjust because it enables or makes possible an unjust flow. I do not say that it necessitates such a flow, since I am aware that, for various reasons (for example, a concern for her own dignity), a poorly endowed worker might prefer extreme poverty to working for a capitalist, and a philanthropic capitalist could distribute the whole product to his workers (and remain a capitalist only because he loves making decisions about investment and so on). Simplifying matters¹⁹ like the economist he is, such cases are ruled out by Roemer's assumptions, under which people maximize utility and find utility in income and leisure alone. On those axioms, the asset distribution necessitates a certain flow, so that process or flow disappears from view as irrelevant precisely because it is, as it were, squeezed into the asset distribution itself, by virtue of the stated ruling assumptions. That is why Roemer can say 'that the existence of exploitation [in the standard circumstances on which Marxists focus -

¹⁶ See p. 198 above.

¹⁷ 'Should Marxists . . .?', pp. 274-5.

¹⁸ Roemer, *Free to Lose*, p. 57.

¹⁹ Which is permissible in relation to many economic problems and disastrous in relation to many ethical problems, such as the one to which this chapter is devoted.

GAC] is equivalent to inequality in distribution of initial assets'.²⁰ The two are indeed equivalent, within Roemer's constraining frame, but they are otherwise quite different, and their specially constructed equivalence is a poor reason for concluding that exploitation is not the primary injustice.²¹

²⁰ 'Should Marxists . . .?', p. 274, emphasis added.

²¹ Contrast the last-mentioned Roemerian argument with the one I confronted in section 3 above. The latter ran as follows:

(Unjust) inequality need not cause exploitation.
 ∴ (Unjust) asset inequality is intrinsically unjust.
 ∴ (Unjust) asset equality is not merely derivatively unjust.

Roemer's goes thus:

(Unjust) asset inequality must cause exploitation.
 ∴ (Unjust) asset inequality is not merely derivatively unjust.

The premiss and the first inference of the section 3 argument are correct, but its second inference is not. The premiss of Roemer's argument is only artificially true. I believe, moreover, that its inference is incorrect, but that somewhat refined claim has not been argued for above.

9. Self-ownership: delineating the concept

To every Individuall in nature is given an individual property by nature, not to be invaded or usurped by any: for everyone as he is himselfe, so he has a self propriety, else could he not be himselfe . . . Every man by nature being a King, Priest and Prophet in his owne naturall circuit and compasse. (Richard Overton, *An Arrow Against all Tyrants*)

. . . every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his. (John Locke, *Second Treatise of Government*)

Man can neither be inherited, sold, nor be made the object of a gift; he can be no one else's property because he is his own property. (Johann Gottlieb Fichte, *A Discourse on the Reclamation of the Freedom of Thought from the Princes of Europe, who have hitherto Suppressed it*)

1. In Chapters 3–7 I studied the implications of the thesis of self-ownership for the question of the justice of the distribution of goods of all kinds. With respect to that general question of distributive justice, principles about the ownership of the physical world have a bearing no smaller than that of principles about who owns whose powers. But, over the course of this chapter and the next, I abstract so far as possible from the world-ownership side of the problem of distribution, in order to focus on the concept, and the thesis, of self-ownership itself.

The concept of self-ownership is not identical with the thesis of self-ownership: the latter might be false, while the former, being a concept, cannot be false, save where 'false' is used, floridly, to mean incoherent, or inconsistent, or irredeemably vague, or irremediably indeterminate. It should not be necessary to lay emphasis on the distinction between the concept and the thesis, but my polemical experience shows that it is wise to do so. For, in the resistance and criticism that greeted the publication of the articles on self-ownership which form the basis of Chapters 3–7 of this

book, not all commentators distinguished their confidence that the thesis of self-ownership is false from a conviction that the very concept of self-ownership is confused. In conformity with that propensity to conflate the two issues, some mistook my insistence on the coherence of the concept of self-ownership, as such, as a concept, as a form of approval of the thesis of self-ownership.¹

The present chapter unfolds as follows: in section 2 I confront the claim that the concept of self-ownership is incoherent, or, as an argument from Kant has it, self-contradictory. In section 3 I argue against the view, expressed by Ronald Dworkin, that the concept is too indeterminate to serve any purpose in political philosophy. Section 4 takes up and, I think, defeats the claim of David Gauthier that self-ownership is consistent with redistributive taxation (of, in particular, market rent), and section 5 argues against a related Rawlsian claim, that such taxation does not force some to help others. Section 6 comments on the complex relationship between the concept of self-ownership and the harming/not helping distinction.

2. Some philosophers think that the phrase 'self-ownership' purports to conjoin semantic elements that cannot be united in the required way. If they are right, self-ownership is just a would-be concept, like the would-be concept of a green number, or (Wittgenstein's example) the would-be concept of its being 5 o'clock on the sun. There is nothing wrong with the phrases '5 o'clock' and 'on the sun', but the phrase that results when they are concatenated relates to no coherent concept. And some say that while one may, similarly, speak of persons, and of ownership, it does not follow, and is false, that one may speak of self-ownership, of a person owning the person that she is.

But what is there in the content of the concepts of ownership and personhood that might disqualify the concept of self-ownership? Persons and their powers can be controlled, among others by themselves, and there is surely always an answer to the question, with respect to anything that can be controlled, who has the right to control it? – even if that answer is: no one.² The thesis of self-ownership says that the answer to all such questions about persons and their powers is: the person herself. Why should that answer be judged incoherent?

¹ There is, for example, no textual basis for Alan Ryan's attribution to me of the claim 'that anyone who minds very much about liberty is committed to the idea that we are self-owning creatures' (Review of Jonathan Wolff, Robert Nozick, p. 155). Cf. footnote 23 below.
² Which is the answer suggested by Joseph Raz for certain questions bearing on the issue of self-ownership: see Chapter 10, section 2, below.

The claim that the concept of self-ownership is incoherent comes in a number of versions, but they are variations on a theme of Kant that I shall look at in a moment. First, though, I remind the reader of a point already made (see Chapter 3, p. 68 above), that 'self-ownership' does not denote the ownership of a self. I do not myself believe, as some appear to do, that there exist selves, as opposed to persons, who shave themselves, criticize themselves, and (so some think) own themselves. But whether or not there exist selves,³ when a person shaves or criticizes himself, he no more performs those operations on some deeply inner thing called a 'self' than a self-starting engine does something to an especially intimate part of itself when it gets itself to go.

We do not say that a person owns some deeply inner thing when we say that he owns himself. To say that A enjoys self-ownership is just to say that A owns A: 'self', here, signifies a reflexive relation. I see nothing in the concept of ownership which (like fatherhood) excludes a reflexive instance of it. Anyone who purports to see in the concept something that excludes its reflexive use must say what that is.

Immanuel Kant rose to that challenge, when he argued that the would-be concept of self-ownership was an impossible concept, because self-contradictory. It is ironical that Kant made such an argument, in the light of Robert Nozick's view that Kant's prohibition against using a person merely as a means supports the principle of self-ownership. I show (at Chapter 10, section 4 below) that, contrary to what Nozick thinks, Kant's doctrine about means and ends does not support the principle of self-ownership, but I am with Nozick and against Kant on the issue of whether the very concept of self-ownership is coherent.

Kant said:

Man cannot dispose over himself because he is not a thing; he is not his own property; to say that he is would be self-contradictory; for insofar as he is a person he is a Subject in whom the ownership of things can be vested, and if he were his own property, he would be a thing over which he could have ownership. But a person cannot be a property and so cannot be a thing which can be owned, for it is impossible to be a person and a thing, the proprietor and the property.⁴

There might be more than one argument embedded in this jumble of statements (which derive from students' lecture notes), but, however that

³ As opposed to minds, some of whose recesses are remote.

⁴ *Lectures on Ethics*, p. 165. (Note the contrast between what Kant says and the doctrine in the excerpt from Fichte at the head of this chapter.)

may be, I doubt that an argument better than the following can be extracted from them:

Man is a person.

Nothing can be both a person and a thing.

∴ Man is not a thing.

But

Only things can be owned.

∴ Man cannot be owned.

∴ Man cannot own himself.⁵

That is a valid argument, with three premisses. I need not challenge either of the first two premisses. But the third premiss ('Only things can be owned') is entirely question-begging in the present context: nothing argued here shows that only things (where, by the second premiss, persons are not a subset of things) can be owned, to one who does not already accept that persons cannot own themselves. Kant's argument therefore fails to establish that self-ownership is self-contradictory.

In propounding the foregoing argument, Kant is trying to pull a normative rabbit out of a conceptual hat. For the ulterior purpose of his argument is to show that it is morally unacceptable for human beings to sell parts of themselves, engage in prostitution, etc. Kant's idea is that, since self-ownership is incoherent, acting as though one owned one's parts and powers is immoral.

Kant no doubt has another argument for the latter conclusion, which does not depend on conceptual *legerdemain*. It is this: human beings are ends-in-themselves, and parts of ends-in-themselves ought not to be sold for gain. Therefore (whether or not the very concept of self-ownership is self-contradictory) acting as though one owned one's parts and powers is immoral. Whatever one thinks of that different argument, it does not

⁵ You might think that, contrary to my representation of him, Kant is relying on the idea that what owns and what is owned could not be identical, which is different from the idea that man is of the wrong metaphysical type to be an item that is owned. But, unlike the premisses that I have featured, this different argument, from the supposed irreflexivity of the ownership relation, allows that *others* might own a man, and Kant clearly means his argument to exclude that too.

Again, you might think that Kant is objecting only to the phrase 'self-ownership', and its cognates, that he has no objection to persons' having the *rights* associated with self-ownership by those who are not allergic to the phrase. But that is a misinterpretation, since the whole point of Kant's demonstration is to show that 'Man cannot dispose over himself' as those rights would license: he argues, in the surrounding context, against prostitution, sale of parts of one's body, etc.

impugn the conceptual coherence of self-ownership, which is what has been at issue in this section.

3. Some think that the concept of self-ownership is vitiated not by incoherence but by indeterminacy. Ronald Dworkin objected,⁶ in just such terms, to my use of the concept of self-ownership to identify libertarianism. He said that the principle of self-ownership is too indeterminate to pick out a distinct position in political philosophy. He reasoned as follows: to own something is to enjoy some or other set of rights with respect to that thing. But one might envisage a number of importantly different sets of rights over themselves and their own powers in virtue of which we could say of people that they are self-owners. The principle of self-ownership therefore lacks determinate content.

The premisses of this sceptical argument do not appear to me to sustain its conclusion. They do not show that the principle of self-ownership legislates indeterminately. For one thing, they do not refute the hypothesis, which I hereby propose, that the principle achieves determinacy through its requirement that *everyone* enjoys *full* self-ownership rights. It might indeed make no determinate sense to say, in the abstract, that Jones owns himself. But when one stipulates that *each* person has *full* private property in himself, then the constraints of universality and fullness combine to disqualify some sets of rights as possible denotations of 'self-ownership', and, on the hypothesis proposed here, only one set of rights survives, with which self-ownership can then be (uniquely) identified.

In the present proposal, the stipulation that self-ownership confers the fullest right a person (logically) can have over herself provided that each other person also has just such a right⁷ generates a procedure for determining the content of self-ownership. Determinacy might be achieved through the identification of a set of rights *S* which is such that every person can have them over herself and where *S* confers fuller rights over

⁶ He put the objection I go on to describe at a seminar in Oxford in the summer of 1986. Compare Richard Arneson, 'Lockean Self-Ownership', p. 54: 'The idea of self-ownership is not nearly so determinate as competing conceptions of justice, such as act-utilitarianism or Rawls's principles of justice....'

⁷ It should go without saying, even though many have said this in past misplaced criticism of me, that one could construct a concept of self-ownership less ample in the rights it confers than the maximal concept which I seek to construct here: Judith Thomson's well-considered concept of self-ownership as 'first property' (see Chapter 8 of *The Realm of Rights*) is a case in point. But I seek a maximal concept because, as the informed reader will, I am sure, agree, that is the concept to which libertarians are attached. That one might use the term 'self-ownership' to denote something less extravagant is here beside the point.

herself than any other set of universally enjoyable rights does. Dworkin's premisses do not show that there is no such set.

Self-ownership, one might say, is the principle which, in a phrase of Dworkin's, allows 'differences in ability' to 'produce income differences in a *laissez-faire* economy among people with the same ambitions'.⁸ *Laissez-faire* economies vary in their rules of operation, but that is not a reason for condemning the unexplicated idea of a *laissez-faire* economy (which Dworkin uses) as hopelessly indeterminate. And, while the idea of a person's ownership of himself might indeed be capable of different interpretations (perhaps the hypothesis discussed in the foregoing two paragraphs is misconceived), it is no less determinate than the unexplicated idea of his ownership of other resources, to which Dworkin has qualunqually helped himself in his own writing.⁹ I do not think that it is harder to say what rights I have if I own myself than it is to say what rights I have if I own a knife, or a tract of land, or a horse, or a slave. Those ownerships are different, in all kinds of ways, but that is because knives, tracts, horses and human beings differ in ways that induce different ownership structures when they enter the relation of ownership, not because a different concept of ownership applies in each case. And the case of slave ownership is particularly instructive, since it affords a way of introducing the concept of self-ownership that I used at p. 68 of Chapter 3 above: to own oneself is to enjoy with respect to oneself all those rights which a slaveowner has over a complete chattel slave.

Return to the procedure for constructing a list of self-ownership rights laid out two paragraphs back. Perhaps no set of rights meets the condition the procedure defines. Consider a possibly parallel case. If we stipulate that every piece of land is maximally owned by some person, we can infer that no one has rights of way on others' land, but there is no similarly obvious inference available with respect to what sort of structures (of, say, a light-obstructing kind) each of the full owners can erect on her land. The requirement of universal maximal land-ownership may not settle that. And universal maximal person-ownership might be similarly indeterminate. But, in all cases of ownership, the requirements of universality and maximality will generate core rights that are indisputable. The residual

⁸ 'Equality of Resources', p. 311.

⁹ See *ibid.*, p. 283. Dworkin later defended a maximal freedom of use of personally owned resources. Whether or not he was right in his normative claim that that is how equally distributed resources should be owned, applying the concept of maximal freedom of use to the case of self-ownership raises no difficulty not also raised by Dworkin's normative claim. (See 'The Place of Liberty', section IV.)

indeterminacies will no doubt frustrate some intellectual projects, but not, I am confident, the one in which I am engaged. For, while there might indeed be a plurality of maximal rights-sets that compete for the title of 'full self-ownership', they will not differ in ways that matter to the questions about distributive justice which dominate this book and which motivate interest in self-ownership. Universal maximal self-ownership delivers everything that we need, even if it does not deliver everything.

Thus, for example, universal maximal self-ownership ensures that my right to use my fist as I please stops at the tip of your nose, because of your rights, under universal maximal self-ownership, over your nose. True enough, if each of us had less right over his nose and more over his fist, so that each was entitled to punch the other's nose, then in no clear sense would our respective budgets of rights be smaller. But we are not looking for universal maximal rights, *tout court*, but universal maximal rights of ownership, over a particular body, by the person whose body (in the natural sense) it is, and all that, together, fixes rights over fists and noses in the stated way. This is but an elementary application to self-ownership of what we would say about private property in things. The individual's budget of rights may not shrink when he gets a right of way across the land of another who at the same time gets such a right of way across his, but private property rights in land are thereby, nevertheless, incontestably pared down.

The polemically crucial right of self-ownership is the right not to (be forced to) supply product or service to anyone. The claim that we have no such a right speaks to central questions in political philosophy, and the principle of self-ownership unambiguously confers that right. Failing to help another person cannot be construed as interfering with his right to use himself as he wishes, and not being required to help others leaves everyone with more rights over their own powers than they would otherwise have. Accordingly, the right not to supply service or product forms part of any plausible reading of the self-ownership principle.

If you think those asseverations dogmatic, consider, again, the ownership of material things, which is the proper model for the concept of self-ownership. If I am the (full) legal owner of a knife, then the state may prevent me from putting it in your back, but it may not, in the ordinary course of events, direct me to place it at your disposal, because, for example, you need it at the moment, or because you deserve it more than I do. The state can ensure that I do not use my knife aggressively, but it may not force me to use it to help you. Nor, importantly (from the point of

view of the analogy with self-ownership), may it direct me to use it to some extent on your behalf as a condition of my using it on my own behalf. The state cannot both recognize my full property in the knife and regulate my use of it on such property-ignoring bases.

Now, those principles about the ownership of knives come from the concept of ownership, not from anything special in the concept of a knife. Accordingly, if I own myself, then analogous points apply with respect to my rights in my arm, or my brain. I do not fully own them, nor, hence, myself, if someone else has a right, not based on prior agreement with me, to tell me how to use them. Nor is my full ownership of them consistent with a directive that, whenever I use them for my own benefit, I must, to a stated extent, use them to benefit others too: that is the essence of redistributive income taxation. I do not (fully) own myself if I am required to give others (part of) what I earn by applying my powers.

True enough, if a person uses an asset (for example, her talent) to generate income to pay a tax which she owes to the government, it does not follow that her ownership of that asset is prejudiced. But if a portion of her earnings from the asset is collected by the state just *because* she earns money through its use, then her ownership of the asset is indeed prejudiced: her right to the income it generates, which is a key incident in private ownership of an asset,¹⁰ is breached. There are reasons consistent with self-ownership for imposing taxes: to pay for police protection of property,¹¹ to correct for externalities, to redistribute land rent (on Georgian grounds) and so on. But a tax on earned market income as such is inconsistent with self-ownership.

I am here showing agreement with the view of Robert Nozick that differentially high taxation of the market income of unusually productive people contradicts the principle (which he affirms and I reject) that each person is the legitimate owner of his own powers, and may therefore not be forced to use them to help others, as redistributive taxation requires. Because I agree with Nozick about that, I disagree both with David Gauthier, who believes that self-ownership (which he, like Nozick, endorses) is consistent with (a certain form of) redistributive taxation, and

¹⁰ See Tony Honore, *Making Law Bind*, pp. 169–70. For more on rights to income, see section 4 below, especially pp. 220–1.

¹¹ Notice that, for all the complexities with respect to what is voluntary and what is coerced which characterize Nozick's hypothetical 'invisible-hand' construction of the legitimate state (see *Anarchy, State, and Utopia*, Part I), he does not regard voluntary individual subscription by a person to an actual state as a necessary condition of its right to tax that person.

with a Rawlsian view which denies that redistributive taxation (of the usual form) makes the better off *help* the worse off. I shall first pursue my dispute with Gauthier, and then turn to Rawls.

4. Gauthier notes that many will suppose that a person's

right to his basic endowment – his natural capacities – gives him the right to factor rent deriving from the endowment. Wayne Gretzky has the right to his unique hockey skills; he may use them as he pleases; does he not therefore have the right to the rent which they command? But his right to use his hockey skills as he pleases is not affected by the distribution of rent . . . a confiscatory tax on rent would not, and could not, affect his willingness to play hockey. Each person's right to his basic endowment is a right to the exclusive use of that endowment in market and co-operative interaction. But market interaction is not affected by the distribution of the surplus represented by rent; each person's exclusive use of his capacities is left untouched if rent is confiscated . . . The benefit represented by factor rent is part of the surplus afforded by [society considered as a single co-operative enterprise], for it arises only in social interaction.¹²

Accordingly, Gauthier favours a redistribution of rent under his principle of minimax relative concession, whose nature need not occupy us here, since what matters here is *that*, not *how*, rent is to be redistributed. Gauthier does allow that confiscating rent restricts

a particular liberty – specifically the freedom to collect factor rent. But this is no part of the freedom of a solitary being: the surplus represented by rent arises only through interaction. And so it is not a necessary part of market freedom conceived as an extension of the natural freedom enjoyed by a Robinson Crusoe.¹³

Gauthier's argument for his claim that a person's 'right to his basic endowment'¹⁴ does not give him 'the right to factor rent deriving from the endowment' conflates three distinct magnitudes. There is, first, a conflation of *factor rent* and *producer surplus*. This conflation, which I shall presently expose, is made, routinely, by economists, and, under assumptions suited to economists' purposes,¹⁵ the two magnitudes indeed become extensionally equivalent. But economists' purposes are not philosophers', and confusion between the two ideas in the context of Gauthier's argument is damaging. Each of the aforementioned magni-

¹² *Morals by Agreement*, pp. 273–4.

¹³ *Ibid.*, p. 276.

¹⁴ Which either is his right of self-ownership or (if 'endowment' covers not the whole person but just his productive capacity) is the particular self-ownership right of prime concern to questions of distributive justice: see p. 215 above.

¹⁵ Such as, for example, that persons have identical utility functions.

tudes is, moreover, different from a third one with which Gauthier identifies them: the difference between a person's market earnings and what he could get for his efforts in the absence of social interaction.

Factor rent is the difference between the price of a factor and the lower price at which it would sell if, contrary to fact, it were possible to expand its supply. Factor rent thus reflects insuperable scarcity: high-grade land commands a factor rent *when there is less of it than is demanded* and less good land cannot be brought up to the same high grade. Analogously, Gretzky's talent earns a factor rent, since no one, or too few, can produce new Gretzkys, or make themselves Gretzky-like, with a view to underselling him.

Factor rent is not the same thing as *producer surplus*, which is the difference between the price of a factor in a use to which it is allocated and the minimum price its supplier would accept for it in that use (which is sometimes called his 'reservation price'). It is true by definition that a supplier continues to supply what he otherwise does even when his producer surplus is taxed away.

Now Gauthier seems to regard it as crucial to his claim that a tax on rent is legitimate¹⁶ that imposing it would not diminish the supply of the rent-attracting service. But that is true of rent only when it happens to coincide with, or to be less than, the producer surplus afforded to the service-supplier at the rent-inclusive rate. It is true not, as Gauthier implies, of rent as such, but of producer surplus as such. Thus, if Gretzky hates playing hockey, his rent-including salary might be identical with his reservation price: it is logically possible, for all that his salary is indeed swollen with rent, that Gretzky would hang up his skates and sell insurance if he got one dollar less a year for playing hockey. Contrariwise, if Gretzky loves hockey, then it is possible that taxing much more than just the rent element in his salary would not turn him away from his current occupation.¹⁷

In any reconstruction of his argument, Gauthier would have to decide whether what is taxable, consistently with self-ownership, is rent proper or producer surplus. But, whichever of those magnitudes he might be inclined to choose, he would also have to clear up a further and more

¹⁶ That is: does not prejudice the taxed person's 'right to his basic endowment'.

¹⁷ For further severe criticism of Gauthier's doctrine on rent, see John Harsanyi's review of *Morals by Agreement*, pp. 346-8. Among other things, Harsanyi refutes Gauthier's claim that 'market interaction is not affected by the distribution of the surplus represented by rent' (see above, p. 217). Harsanyi's excellent points are unconnected with the critique of Gauthier prosecuted in this section.

serious conflation that appears in his text: between factor rent/producer surplus, and the fruit of social interaction.

For it is a crucial claim about rent/producer surplus in Gauthier's argument that it 'arises only in social interaction': it is because it arises thus that it is subject to redistribution, within the terms of Gauthier's hypothetical contractarianism. Now, I shall presently show that producer surplus (as opposed to economic rent) does not, in fact, require social interaction;¹⁸ but the important immediate point is that if its origin in social interaction is what makes rent taxable, then the floodgates have been opened very widely indeed. For it is no more true of rent than of producer surplus, and, indeed, of most consumer demand, that it is due to social interaction. It is only in virtue of social interaction that there is any demand for my service, even at its reservation price. It is only in virtue of social interaction that not only Gretzky but also the most mediocre and marginal hockey player acquires his skills.¹⁹ Gauthier rejects pure *laissez-faire* in favour of *laissez-faire* constrained by, *inter alia*,²⁰ the redistribution of rent. But the present ground of that restriction on *laissez-faire*, that the stated *redistributandum* is a result of social interaction, would justify taxing virtually all income. And even if what is to be taxed is not just *anything* that arises through social interaction, but only that part of what arises through it which exceeds what would redound to a given person in the state of nature, the taxman's take would certainly be more than it is in contemporary states that effect more redistribution than (so I suppose) Gauthier would wish to encourage or permit.

To clarify the conceptual position further, it is worth noting that, on empirically implausible but entirely coherent assumptions, the surplus-over-state-of-nature criterion for taxability might justify no taxing of Gretzky. Suppose that Gretzky's source of both sustenance and pleasure in the state of nature would have been coconuts, which he would have got by shaking certain trees until the coconuts dropped. And suppose that he would have got just so many coconuts that he is indifferent between what his life would have been in the state of nature and his life as a trained hockey player on a vast salary in contemporary society.²¹ Then

¹⁸ See p. 220 below for a possible case of producer surplus in an autarkic state of nature.

¹⁹ Daniel Hausman makes a similar point and draws devastating conclusions from it: 'Are Markets Morally Free Zones?', pp. 324-6.

²⁰ Taxation is also required, he says, to cater for externalities, and to sustain the state activities (e.g. protection of private property) required by market interaction.

²¹ This kind of comparison might seem mind-boggling, but it is essential to Gauthier's theory that it be possible. (For my own part, I find the comparison difficult epistemically, but not conceptually.)

(1) Gertzky's income in society would still contain a huge component of rent, but (2) he would be no better off in society than in the jungle, and should therefore not be taxed, on Gauthier's surplus-over-state-of-nature criterion. And all that is so whatever assumptions we make about Gertzky's producer surplus either in society or in the state of nature. (Gertzky's 'producer' surplus in the state of nature is the difference between the number of coconuts that fall as a result of his tree-shaking and the lesser number that he would regard as rendering just worthwhile the amount of effort he devotes to that shaking.)

But those are unlikely assumptions about anyone's condition in the state of nature, and, on plausible ones, Gauthier's argument would, as we have seen, when properly generalized, license much more redistribution than he would wish to allow. Yet I do not think that the premisses of Gauthier's argument, under any interpretation of them,²² justify any redistribution at all, if, as Gauthier does, one affirms a person's 'right to his basic endowment'.

I do not say the absurd thing that redistributive taxation completely removes that right. I say the banal thing that such taxation reduces it, and I say this, banal though it is, because many (not only Gauthier) implicitly deny it: Look at it this way. Suppose that I own three frying pans and you own three feather dusters, and we trade them with one another. The state then claims the right to confiscate one of my post-trade dusters and one of your post-trade pans, on the Gauthier grounds that (1) I would have accepted two dusters, and you two pans and (2) there are no dusters or pans in the state of nature. Then, although (1) and (2) are true, the state's claim trenches against our rights in what we originally owned: we have not been allowed to get what others are willing to give us for them. And the same goes, *mutatis mutandis*, when what I offer is not my frying pans but a day's use of them, which is, of course, relevantly analogous to my offering you a day's use of my talent, which is what you get when you hire me for a day. If my wage for that day, whether it be paid in dusters or in dollars, has tax docked off it for Gauthier's reasons, however good, independently considered, those reasons for taxing may be, then my rights over my talent are restricted.²³ (Suppose that whenever I scratch

my back I am required by the state to scratch someone else's. It surely follows that I lack full ownership of my hand. And the implication of non-(full) ownership survives when we suppose that if I scratch your back in return for your scratching mine, then some further scratching of the backs of third parties can be exacted by the state from each of us, after the fashion of redistributive income taxation.)

Accordingly, even if (what is not necessarily true)²⁴ 'a confiscatory tax on rent would not... affect [Gertzky's] willingness to play hockey', it does not follow that such a tax does not affect 'his right to use his hockey skills as he pleases'. It is also true that, as Gauthier contends, 'the surplus represented by rent arises only through interaction', and maybe it follows that 'it is not a necessary part of market freedom conceived as an extension of the natural freedom enjoyed by a Robinson Crusoe', but why should it follow that taxing the surplus is not a violation of a person's right to dispose of his capacities as he chooses? Persons are exclusive owners of what they own only if they are entitled to set the terms on which they will exchange what they own with one another.²⁵ Self-ownership goes with market freedom, not with 'market freedom conceived as an extension of the natural freedom enjoyed by a Robinson-Crusoe', whether or not that phrase articulates a coherent idea.

I have argued that Gauthier goes astray when he denies a person's 'right to his basic endowment' – his natural capacities – gives him the right to factor rent deriving from the endowment' (see p. 217 above). A right to

people' (*The Right to Private Property*, p. 404), where such arrangements are, as Waldron means them to be here, socially legislated. We do not have to contemplate specific social legislation to find sense in the idea that, if A fully owns X and B fully owns Y, then A and B are entitled to agree on the terms on which they will exchange those ownables. It is not true that a self-owned 'talent has to be understood as a sort of a function that takes social structures as its argument' (*Ibid.*, p. 406). The concept of a social structure (roughly, *laissez-faire*) which maximally respects the self-ownership talent is easy to understand.

Section 3 of Chapter XI of Waldron's book, from which the foregoing passages have been drawn, illustrates my complaint (see section 1 above) that some authors fail to distinguish between the concept of self-ownership and the thesis of self-ownership. Waldron presents (good) arguments against the thesis in the guise of (false) claims about the content of the concept.

²⁴ See p. 218 above: it is true only if his rent is equal to or less than his producer surplus.

²⁵ I agree here with Jan Narveson, who complains that Gauthier's view of rent constitutes a 'denial of our entitlement to make the best use we can of our natural endowment. It seems scarcely compatible with that entitlement to deprive people of whatever percentage of their incomes would leave them with an amount they would still be willing to do the same thing for' (*The Libertarian Idea*, p. 206). That is, I agree with Narveson about what the content of the stated entitlement is, but not that we have it.

²² There are six (at least abstractly) possible versions of the premisses of Gauthier's argument: they feature rent or producer surplus or surplus-over-state-of-nature or any two or all three of those.

²³ I disagree with the view of Jeremy Waldron that 'there is no sense to the idea that there is a natural phenomenon called "reaping the benefits of one's talents" which is understood apart from the social arrangements and institutions that define one's relationships to other

factor rent is an ineliminable part of a right to one's basic endowment, and, therefore, of (full) self-ownership. Now, for completeness, I want to note a further respect in which the schedule of rights assigned to people by Gauthier differs from the rights implied by full self-ownership. But this further difference between Gauthier people's rights and full self-ownership involves no distortion of the notion of a 'right to one's basic endowment', of the sort that, so I claimed, Gauthier accomplishes in his doctrine of economic rent.

The Gauthier formulation which requires attention here is the proviso which his contractors satisfy before they sit down together to agree on morals. That proviso 'prohibits worsening the situation of others except where this is necessary to avoid worsening one's own position'.²⁶ (More colloquially, an agent may harm someone only when the agent would otherwise herself suffer harm.) Gauthier remarks that 'the crucial distinction . . . is between worsening someone's situation and failing to better it, since the proviso prohibits only the former, not the latter'.²⁷ In further explanation of the proviso, it is stipulated that worsening someone's situation means, here, making it worse than it would have been had one not interacted with her.²⁸ Although Gauthier uses the indicative mood to formulate his proviso, its canonical statement should be in the subjunctive mood, since it specifies a counterfactual requirement.

Now, Gauthier's proviso does not bind all individuals in all circumstances. It binds only those individuals for whom co-operative interaction is in prospect: the proviso determines what prospective co-operators may bring to the bargaining table at which principles of co-operation will be decided. They may bring all and only those assets that are acquired without violation of the proviso. Where co-operation is not in prospect, the principle stated in the proviso does not apply.

It follows from the content of the proviso and the stated restriction on its application that Gauthier agents are in some respects more and in some respects less endowed with rights and liberties²⁹ than agents are under an unrestricted principle of full self-ownership. Gauthier people have more liberty than self-owners do because they are allowed to kill, coerce,

enslave, etc., anyone with whom they cannot profitably co-operate.³⁰ And, correlatively, they lack some rights in the state of nature that self-owners have, for the proviso vests them with rights against aggression only in those states of nature that are prelude to market and co-operative interaction. To the extent that, for whatever reason, the state of nature is going to persist, they lack those rights. Gauthier's state of nature, when it is not the threshold of society, is Hobbesian rather than Lockean, with an appropriately diminished conception of self-ownership in place, one in which each person has, in Hohfeld's senses of the terms, the liberty to do anything and the right to do nothing. (Hobbesian self-ownership is diminished, since full self-ownership requires the right and not merely the liberty to use one's parts and capacities as one pleases; that is a Hohfeldian way of expressing the conclusion of the argument about fists and noses given at p. 215 above.)

Finally, and to remind the reader of the main burden of the section that ends here, Gauthier agents lack (full) self-ownership in the social order established by the bargaining to which the proviso is prelude, for the surplus of social interaction is divided according to the principle of *minimax* relative concession, and dividing it, in that or any other redistributive way, runs against self-ownership.

5. I have argued that the principle of self-ownership forbids forcing one person to assist another. I regard redistributive taxation as other-assisting, and, therefore, as inconsistent with self-ownership. We have just reviewed – and rejected – David Gauthier's claim that, whether or not common forms of redistribution count as constrained assistance (that issue was not on the table in section 4), not all redistributive taxation violates self-ownership. What I now examine is the claim that, whether or not the redistribution mandated by John Rawls' difference principle contradicts self-ownership, that principle does not direct some to assist others. I take up this claim because some Rawlsians³¹ have resisted my view that the difference principle commands assistance.

When I speak of *Able helping Infirm*, I suppose that Able would be better off, in self-interested terms, if he left Infirm to his own meagre devices. According to my Rawlsian critics, that supposition is relevantly unsatisfied within the Rawlsian framework. They argue as follows: the

²⁶ *Morals by Agreement*, p. 203.
²⁷ *Ibid.*, p. 204.

²⁸ *Ibid.*, p. 203.

²⁹ I here invoke W. N. Hohfeld's distinction (see his *Fundamental Legal Conceptions*), which runs as follows: X has the liberty to do A if he has no duty not to do A and even if others have no duty to let him do A; and X has the right to do A if he both has no duty not to do A and others have a duty to let him do A.

³⁰ Something which he emphasizes – see, e.g., *Morals by Agreement*, p. 268. He should also have emphasized that the enslavable unfortunate has as much liberty to kill or to steal from productive co-operators as the latter have to enslave the former.

³¹ Mainly John Rawls and Joshua Cohen, in private exchanges.

theory constructed in *A Theory of Justice* is proposed for a context of mutual provision in which, although people's productive powers are different in kind and in extent, the activity of each enhances the reward available to all. Everyone is a net contributor to and a net beneficiary of social co-operation, and the question answered by principles of justice is not who should (unilaterally) help whom, and to what extent? but: how should the fruits of co-operation, a process in which everyone benefits everyone, be divided? The difference principle answers that question and does not thereby direct anyone to help anyone, in a unilateral sense. The principle gives each person more than he could secure autarkically, and what the worst off get cannot, therefore, be unambiguously described as part of the product of the powers of other people. Under the assumptions framing the Rawlsian theory, the difference principle, though contradicting *laissez-faire*, cannot be described as enjoining a distribution in which the more able help the less able:

The least advantaged are not if all goes well, the unfortunate and unlucky – objects of our charity and compassion, much less our pity – but those to whom reciprocity is owed as a matter of *political justice* among those who are free and equal citizens along with us, and who, though they control less resources, are doing their full share on terms seen by each as *mutually advantageous* and consistent with everyone's self-respect.³²

I have two replies to this attempt to show that Rawlsian justice does not direct some to assist others.

First, it has the consequence, supposing that it is sound, that *A Theory of Justice* is importantly incomplete: on the present description of the scope of that work, those who cannot benefit others, those who would gain from association with others without being able to confer advantage in return, those who indeed are 'unfortunate and unlucky', are simply not part of the Rawlsian game: the book says nothing about radically unproductive people who make no contribution to the social product. The principles of justice, being principles for dividing the benefits of co-operation, do not apply to them. Because they cannot relevantly operate, they cannot co-operate. It is obvious that John Rawls the person would favour their sustenance as a matter of right, but no such favour is justified in *A Theory of Justice*. (Rawls indeed says, in various places, that we should address the problem of radically handicapped people at a later stage. 'If we can work out a viable theory for the normal range [of human capacity], we can

³² John Rawls, 'Justice as Fairness: a Briefer Restatement', p. 127. For a lucid and friendly elaboration of the quoted Rawlsian claim, see Thomas Pogge, *Realizing Rawls*, section 5.

attempt to handle these other cases later.'³³ But I claim that they resist 'handling' as long as we stay with the contractarian standpoint of *mutual advantage*. David Hume knew that, and being, in the relevant sense, a contractarian,³⁴ he would have had to deny that justice is owed to the wholly infirm.)

One can show, secondly, that either Rawls' criterion for reciprocal benefit is too weak or his principles apply only to societies very different in composition from our own. Which of these unwelcome consequences we confront depends on whether, in comparing what an individual can obtain through social interaction to what he can get without it, in order to determine whether he is a net beneficiary of social interaction, we are to consider only what he would get in the autarkic alternative in which he withdraws completely from society; or, alternatively, and more appropriately, we are to consider the rewards he would get in all the possible withdrawing coalitions (all members of which would benefit from withdrawal) in which he would be a member.³⁵ The former criterion of reciprocal benefit is arbitrarily weak. The most talented individual in society might benefit even from a flatly equal distribution of the social product, relative to what he can produce entirely on his own, but he is nevertheless likely to get much more than what the difference principle gives him if he withdraws with a suitable set of other talented individuals. If, however, the criterion of reciprocal benefit is strengthened to allow for such coalition withdrawal, then reciprocal benefit will be consistent with the difference principle only in societies strikingly unlike the sort Rawls would want his theory to cover, societies, that is, which are comparable in size and variety to our own.³⁶

³³ 'The Basic Structure as Subject', p. 70(9). Cf. *Political Justice*, p. 20, and 'Social Unity and Primary Goods', p. 168: 'It is best to make an initial concession in the case of special health and medical needs. I put this difficult problem aside in this paper and assume that all citizens have physical and psychological capacities within a certain normal range. I do this because the first problem of justice concerns the relations between citizens who are normally active and fully cooperating members of society over a complete life.' Against this view, I believe that an appropriate starting point for reflection on justice is the problem of justifying provision to the non-contributing infirm, and that the problem of distribution among differentially contributing non-infirm people is best seen as a generalization of that first problem.

³⁴ As Gauthier shows: see his 'David Hume, Contractarian'.

³⁵ Cf. Nozick, *Anarchy, State, and Utopia*, p. 193. Barry, *Theories of Justice*, p. 243. At pp. 61–2 of 'The Basic Structure as Subject' Rawls protests against the coherence of comparisons of this kind, but I do not see how they can be avoided if one wishes to speak of 'beneficiaries of social co-operation'.

³⁶ This statement remains true even when we acknowledge indirect benefits got by the talented from the presence of less talented people, such as the enhancement of their social status.

On the plausible assumption that Rawls legislates for large societies which are indefinitely heterogeneous with respect to talent distribution, we can say that the better off get less under the difference principle than they would in some feasible society which raises each of them above his autarkic alternative. This produces the difficulty for Rawls that I have tried to expose, a difficulty identified by Gauchier when he says that if we

agree with Rawls that society is a co-operative venture for mutual advantage, we must disagree with his view that natural talents are to be considered a common asset. The two views offer antithetical conceptions of both the individual human being and society.³⁷

The root of the difficulty is that Rawls' contractualist characterization of the *problem* of justice is inconsistent with the Rawlsian *principles* of justice³⁸ (even when we set aside the problem of wholly infirm people). Rawls avoids the profoundly inegalitarian conclusions a consistent contractualist would reach only by being untrue to his own contractual starting point.³⁹

6. I argued in section 3 that Dworkin fails to show that self-ownership cannot be explicated satisfactorily under the constraints of universality and maximality: it might be true, consistently with Dworkin's premisses, that we can derive a (sufficiently) determinate schedule of self-ownership rights from the requirement that *each* person has *as much* right over herself as possible. In this section, I examine an alternative strategy for explicating self-ownership, which does not rely on the universality/maximality idea, and which is also not excluded by Dworkin's premisses.

The strategy is suggested by the proposition, defended above (see pp. 215ff.), that self-owners may not be forced to *help* others. The suggestion is that one can go further with the notion of helping, and its contrast, *harming*, that, in particular, and to a first approximation, the meaning of the principle of self-ownership is that no one may harm anyone else *and* no one may be required to *help* anyone else.

This proposal fits the structure of typical disputes between critics and supporters of self-ownership. The critic emphasizes the parlous lot of

the poorly endowed when the principle of self-ownership prevails. The supporter of the principle responds that the lot of the ill-endowed is not the fault of the well-endowed: the latter have not placed the former in their unfortunate position. The well-endowed have not harmed those who are unlucky, and it would unfairly harm the well-endowed to force them to help the less fortunate.

One may sketch two extreme views with respect to the proposed connection between self-ownership and the harming/not helping distinction. There is, first, the just suggested view that the concept of self-ownership can be explicated without remainder by reference to the harming/not helping distinction, treated as independently understood. And then there is an opposite view, according to which the notions of harming and helping are so labile that we cannot fix their senses, in the appropriate way, until we are possessed of an independently secured concept of self-ownership. I believe that both extreme views are incorrect: the harming/not helping distinction contributes to the explication of self-ownership, but it does not take us all the way.

An analysis of self-ownership in the suggested terms says: people should be free to do anything with themselves that does not harm others. Accordingly, I am never required to help others, except in cases where failing to help itself counts as harming. There may indeed be such cases, and, if there are, then they pose no problem for the suggested analysis, as it is phrased in the first sentence of this paragraph.

That analysis is, however, too simple, for a different reason, which is that universal self-ownership, intuitively understood, is plainly consistent with *some* harmings. For market competition harms losers, and market competition is the social soul of self-ownership.⁴⁰ What may be worse, it is unclear with respect to some disadvantages from which market traders sometimes suffer whether they should count as effects of harming. Does the seller harm the buyer, or just not help him, when he withholds disturbing information about the product from him?

If the initial analysis is too simple, an intermediate course might nevertheless be viable, under which self-ownership is explicated in terms of a list of forbidden harms, but formation of the list is guided by the notion of ownership in general. Since, in the attempt to complete the analysis, the

³⁷ *Morals by Agreement*, p. 221.

³⁸ I do not mean that the original position will not generate the principles Rawls says it generates. That is another matter. I mean that, if it generates those principles, then either it violates the contractual setting of the problem of justice which precedes recourse to the original position, or the principles (supposedly) generated in that position apply only to less inclusive forms of society than those to which they are meant to apply.

³⁹ For further elaboration of this claim, see my 'Limits of Contractual Equality'.

⁴⁰ Also consistent with universal self-ownership are harmings associated with legitimate punishment and self-defence. But they are legitimate in virtue of aggressors' and criminals' forfeiture of self-ownership rights: nothing similar holds for market competition harm, which therefore poses a more serious counter-example to the analysis on exhibit.

idea of self-ownership in particular would not be invoked, there is no circularity in the proposed procedure.

It is useful to remind ourselves, here, why self-ownership excludes a duty to help (save where not helping also counts as harming). If I own myself, I own my parts and powers, which are the wherewithal for helping others. Since it is in general true of ownership that I need not devote what I own to another's benefit, it is true of self-ownership that I need not devote myself to anyone else's benefit, and I therefore have no duty to help others. And the harming induced by market competition qualifies as acceptable in the light of the concept of ownership. For I harm you in market competition by selling what you might not want me to sell or by buying what you might not want me to buy, and freedom to buy and sell, and, therefore, the harmings it may occasion, are integral to the concept of ownership.

If I own something, then no one else may damage that thing without my consent. So you may not chip a piece off my clock. But you do not damage my clock if you make a better one, and thereby bring it about that no one any longer wants to buy my clock at a price that appeals to me. Analogously, although you harm me by out-competing me on the labour market, you do that without relevantly damaging my self-owned property. There are, to be sure, lots of hard questions here. Do you violate my self-ownership by telling lies that harm my reputation? What if you tell damaging truths about me? Is it appropriate to be guided, here, by the answer to the question whether you violate my ownership of my clock by telling lies or truths which diminish its attractiveness to others? And if that is indeed an appropriate guide, then what guidance does it give?

Lots of questions would require attention, but the general course of the suggested account is reasonably clear. We begin with the simple idea that each is free to do what harms no one. We then notice that some harms are permitted, and we draw on the concept of ownership in general to determine what they are. And if there are obscurities regarding what sorts of harmings of owned things count as damages which violate their owners' rights in them, then the notion of self-ownership is not to be disparaged for inheriting those obscurities. 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.

10. Self-ownership: assessing the thesis

Seizing the results of someone's labour is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. (Robert Nozick, *Anarchy, State, and Utopia*)

1. As I said in section 1 of Chapter 3, it is an initially attractive strategy, for egalitarians, to grant libertarians the premiss of self-ownership and then, by insisting on equality of raw worldly resources, to deny the libertarian conclusion that equality of condition contradicts justice. But, as I also said in Chapter 3, and as I demonstrated in Chapters 4 and 5, that strategy will not succeed, and egalitarians are therefore obliged to criticize the thesis of self-ownership itself. It is, however, difficult to criticize it in a non-question-begging way. Thus, for example, it is, in my opinion, a considerable objection to the thesis of self-ownership that no one should fare worse than others do because of bad brute luck,¹ for no luck is bruter than that of how one is born, raised and circumstanced, the good and bad results of which adhere firmly to individuals under the self-ownership principle. But the fact that it sanctions the results of luck will not move a moderately sophisticated believer in self-ownership. The conflict between the relevant principles is too basic, and too evident, for her not already to have countenanced it and (*ex hypothesi*) stood her ground.

Yet there is a way of arguing against the self-ownership principle without invoking the luck principle or any other tenets which conflict so fundamentally with self-ownership that the relevant argument might be

¹ I explore the consequences of this tenet in 'On the Currency of Egalitarian Justice'.

thought question-begging. And that is by showing that self-ownership is different from other conditions its confusion with which explains (at least) some of the favour it attracts. Such arguments do not *refute* the thesis of self-ownership: I do not think that it can be refuted. But, if the arguments are sound, they diminish the appeal of the principle, sufficiently, I am sure, to detach many people from their allegiance to it. That, at any rate, is the strategy pursued in this chapter, in which the thesis of self-ownership is at issue.

Libertarians think that, if you reject the thesis of self-ownership, then you license slavery, you restrict human autonomy, and you endorse the treatment of people as mere means. In sections 2-4 of this chapter I dispute these charges, by distinguishing self-ownership from three conditions with which the foregoing three charges confuse it: not being a slave, possessing autonomy, and not being used merely as a means. Finally, in section 5, I return to the eye transplant example which I used to motivate the thesis of self-ownership in section 1 of Chapter 3, and I argue that the example does not support the thesis.

2. The central form of rejection of the thesis of self-ownership is in the affirmation of non-contractual obligations to serve other people. According to Robert Nozick, principles that impose non-contractual obligations 'institute (partial) ownership by others of people and their actions and labour. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in other people'.² I take the quoted passage to be an *argument* against the obligation-imposing principles, rather than a characterization of them which even their proponents can be expected to accept. The argument I discern exploits an aversion to property rights in other people, which is to say, an aversion to slavery, an aversion that need not reflect an antecedent commitment to the principle of self-ownership itself. The purpose of the argument is to convert non-believers in self-ownership by showing them that rejection of self-ownership is tantamount to endorsement of slavery. The polemically operative sequence in the argument runs, I think as follows:

- (1) If X is non-contractually obliged to do A for Y, then Y has a right of disposal over X's labour of the sort that a slave-owner has.

² *Anarchy, State, and Utopia*, p. 172, and see, further, the associated passage which forms the epigraph of this chapter.

- (2) If Y has a right of disposal over X's labour of the sort that a slave-owner has, then X is, *pro tanto*, Y's slave.

- (3) It is morally intolerable for anyone to be, in any degree, another's slave. Therefore

- (4) It is morally intolerable for X to be non-contractually obliged to do A for Y.

The argument, as reconstructed above, is valid. Accordingly, opposition to it must fix on one or more of its three premisses. A clever person might find subtle reasons for rejecting premiss (2) – but I do not think that it would be profitable to speculate about that. The interesting premisses are (1) and (3), and I shall begin with (3), since what I have to say about (1) is rather complicated, and what I have to say about (3) is not.

An objection to (3) might be developed as follows. Consider, for a moment, a condition different from (though also partly similar to) slavery, to wit, the condition of imprisonment. Suppose that you are an innocent person and that I forcibly detain you in a room for five minutes. Then, indeed, I forcibly detain you, albeit for only five minutes. Now, whether or not such brief detention should qualify as short-term imprisonment, whether or not to call it 'imprisonment' would be a preposterous exaggeration, there is a massive *normative* difference between this brief detention and life-long imprisonment. Brief detention of an innocent person might be justified by, for example, temporary needs of social order, even if life-long imprisonment of an innocent person could never be justified. And, similarly, even if premiss (1) in the argument under examination is true, so that redistributive taxation does mean, as Nozick insists, slavery-like forced labour, a limited dose of forced labour is massively different, normatively, from the life-long forced labour that characterizes a slave.³

I turn, now, to premiss (1), and to a way of resisting Nozick's argument that was put to me by Joseph Raz. Raz argued that, when X is non-contractually obliged to Y, it does not follow that anyone has a slave-owner-like right to dispose over X's labour.⁴ Raz resisted (1) by pressing

³ Thomas Scanlon makes what is in effect this objection to Nozick at 'Liberty, Contract and Contribution', p. 66 fn. 8.

⁴ My exposition of Raz's argument together with responses to it and associated rejoinders generates sufficient complexity to warrant the following overview of what lies ahead. I begin with Raz's argument that, as my obligation to help my mother shows, an obligation of A does not entail a slave-holder-like right over A on the part of some B. Objection: the example is of the wrong sort, since my obligation to my mother is not enforceable. Reply: even if the state enforces the stated obligation, it remains true that no one has a slave-holder-like right over me. Broader objection to Raz: I am sufficiently like a slave in having