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Self-Ownership and Freedom: Reasons for Maintaining a Traditional Connection

Abstract: In this paper I present and analyze the classical libertarian thesis according to which there is an intimate connection between humans' right to self-ownership and their freedom, and I provide some reasons for preserving this traditional connection against its egalitarian contesters, represented by Gerald Allan Cohen. The principle states that humans have a right of property over their persons and powers, and any interference with this right is equivalent to a violation of their freedom. This is the reason why an egalitarian thinker like Cohen tries to reject the principle and its connection with freedom in order to legitimate redistribution of property in the benefit of the underprivileged: he argues that the principle itself (and particularly Robert Nozick's version of it) has no special relation with freedom and lacks any real significance for political philosophy. I will reject his argumentation and evidenciate that the traditional connection still stands and the principle is indeed useful. In the last section I will formulate what I believe to be a more robust justification of it and offer some suggestions about the central role it could play in a general explanation of social and political legitimacy and normativity.

Keywords: self-ownership, freedom, right, redistribution, human agency

1. The traditional connection between self-ownership and freedom

One of the most important ideas defended by liberal and libertarian political thinkers is the principle of self-ownership, according to which every human has a sovereign right of ownership over his/her

person and all things, powers and abilities associated with it, which include body, labor, faculties, abilities, talents and so on. In their view, this is a natural right that human beings have which is not socially derived and is therefore inviolable: no social or political arrangement can deny or disrespect it. Moreover, this principle is closely connected with the principle of human freedom and autonomy: because the individual is the only rightful titleholder of this right of self-ownership, it means that no other man is justified to impose his will and restrict that individual's liberty.

The philosopher who is usually credited with the first clear formulation of the principle of self-ownership and its connection with freedom is John Locke. In the fifth chapter of his *Second Treatise of Government* (section 27) he states:

“Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, is properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others” (Locke 1980, 19).

We notice that, in Locke's opinion, the right of property over his own person is directly linked with freedom, but also with the justice and legitimacy of people's actions and decisions that may affect the liberty of others. As he mentions in the section 17 of the same work, the man who will be able to get other man into his absolute power without his consent would use him as he pleases and transform him into a slave. The desire to be free from such a force is made legitimate by the right of self-property and self-preservation, because if he took away the freedom he “must necessarily be supposed to have a design to take away everything else, that freedom being the foundation of all the rest” (Locke 1980, 14-15). Hence, Locke thinks that this type of authority should be considered as illegitimate and tyrannical: a dangerous form of theft that will put the thief in a state of war with his victim.

The connection between self-ownership and freedom is the core idea of many contemporary liberal and libertarian views, from the

moderate liberal view of John Rawls, to the more radical libertarian conception of Robert Nozick. Rawls supported the idea that basic institutions of a society are just if they are designed in accordance with two principles of justice: equality in basic rights and liberties, and inequality in distribution of goods, as long as they will be in the benefits of all people (including the most underprivileged) and are attached to positions and offices open to all (Rawls 1999, 53). These principles are established in a special situation called “original position” in which people are under the “veil of ignorance”: they do not know the specific positions they will hold in the society. The relevant thesis for our investigation is the fact that he sustains the priority of basic rights and liberties over any principle of distribution: “The priority of liberty (the priority of the first principle over the second) means that a basic liberty can be limited or denied only for the sake of one or more other basic liberties, and never for a greater public good understood as a greater net sum of social and economic advantages for society as a whole” (Rawls 2001, 111). In other words, although he permits a type of redistribution (his support for inequality is compatible with redistribution in favor of the most disadvantaged), no redistribution principle could be labeled as just as long as it will violate basic rights and liberties.

The idea of the special status of basic rights and liberties (but in a more radical manner, which excludes any type of non-voluntary redistribution) is supported by Robert Nozick in the development of his theory of entitlement presented in his book *Anarchy, State and Utopia*. I will refer to some of his most important statements in the next sections where I will present Gerard Allan Cohen’s opposition to the traditional connection and particularly to Nozick’s version of it.

2. The socialist view regarding the conflict between self-ownership and equality

In his book *Self-Ownership, Freedom and Equality*, Gerald Allan Cohen argues against the libertarian principle of self-ownership and its traditional connection with political freedom. Moreover, although he recognizes his commitment to Marxism, he also criticizes the Marxist endorsement of the principle of self-ownership which is manifest in the condemnation of exploitation.

In his view, Marxist and socialist philosophers should be more concerned with the problem of equality which was relatively neglected in the Marxist tradition because its followers were convinced that, while

economic equality was morally right, it was also historically inevitable. This conviction was based on two main beliefs: first, in the rise of an organized working class which will grow in number and power and will eventually change economy and society by abolishing inequality, and secondly, in the continual development of productive forces that will ultimately result in a state of abundance in which anything a person needs for an accomplished life could be taken from a common store at no cost for anyone else (Cohen 1995, 6). However, in his opinion history has contradicted these predictions. The proletariat never became the immense majority they hoped for and was divided and reduced by the technological development of capitalism to such a degree that in contemporary society there is no social group that has the four features associated with the proletariat: “1) being the producers on whom society depends, 2) being exploited, 3) being (with their families) the majority of society and 4) being in dire need” (Cohen 1995, 8). Moreover, the increase of productive forces was confronted with a resource barrier.

Therefore, Cohen is convinced that Marxist and socialist thinkers should become more concerned with securing a normative philosophical foundation for equality and with confronting the defenders of inequality. And the main reasons for a Marxist endorsement of equality have to do precisely with the falsehood of the aforementioned predictions. Equality is not an inevitable outcome of a historical process and the scarcity of resources (associated in his opinion with the “ecological crisis”) will enhance social and economic inequality. And, if there will be no progress in the aggregate accumulation of wealth, progress that could, in principle, continuously improve the conditions of those at the bottom of society even if inequality was not abolished, then the demand for equality becomes more and more legitimate (Cohen 1995, 10-11).

However, if equality does not emerge as a necessary outcome of historical evolution, and if the scarcity of the resources is indeed a problem, then, in his opinion, the defenders of socialism must support the redistribution of the existing resources and goods. But, in this attempt they have to face the aforementioned theory of the connection between self-ownership and freedom, according to which redistribution is equivalent with theft and even with tyranny because it restricts people’s liberty to do whatever they want with their persons and with their properties.

3. Robert Nozick's "Wilt Chamberlain argument"

As Cohen himself acknowledges, his struggle with the principle of self-ownership and its connection with freedom started when he heard about the famous "Wilt Chamberlain argument" (named after the legendary basketball player) developed by Robert Nozick, according to which equality can be reached only at the cost of injustice, because securing and preserving equality requires the violation of the right of self-ownership (Cohen 1995, 13). Hence, equality will necessarily entail the violation of people's freedom and will open the path for tyranny.

This argument is described in Nozick's book *Anarchy, State and Utopia*: Let's imagine that an egalitarian principle D1 is agreed upon, the principle stating that goods and bads should be equally distributed. Let's suppose further that Wilt Chamberlain the legendary basketball player is in great demand and he is a great attraction for ticket buyers, so much so that they are willing to pay a sum (say 25 cents) in a special box with his name on it only for the privilege of seeing his play. If a million people will do this he will raise a great sum (250.000 dollars) which will exceed the average income allowed by the egalitarian principle D1. Hence, the ticket buyers will agree upon another distribution principle D2: they freely give him this considerable sum of money in exchange for watching him play, and allowing for an inegalitarian distribution. But, if D1 was a just principle and the rule of freely giving your money in exchange for enjoying someone's talent is just, then the inegalitarian principle D2 is also just:

(1) "Whatever arises from a just situation by just steps is itself just" (Nozick 1974, 161-162).

Cohen reformulates the aforementioned thesis in the following form:

(2) "Whatever arises from a just situation as a result of fully voluntary transactions on the part of all the transacting agents is itself just" (Cohen 1995, 21).

So, we cannot restrain people to give their money in such a manner if they are entitled to do so, that is not without violating their freedom and autonomy.

4. Cohen's reinterpretation of the argument

Cohen's criticism against this classical connection begins with the observation that, when we evaluate if the distribution principle D2 is right, we have to consider not only the egalitarian principle D1 and the

voluntary step of choosing to give away your money to Wilt Chamberlain. We should also consider the outcome of this process: for example, maybe people would voluntarily consent to become slaves, but slavery is morally wrong, so (2) is false. And because, in his view, Nozick was ready to bite the bullet and state that voluntary slavery would be just under these circumstances, Cohen noticed that Nozick himself is inclined to admit that it would be “disturbing” if people decided to transfer their holdings to one another always on irrational or arbitrary grounds. And the affirmation he cites for *Anarchy, State and Utopia* is this:

“... it must be granted that were people’s reasons for transferring some of their holdings to others always irrational and arbitrary, we would find this disturbing... We feel more comfortable upholding the justice of an entitlement system if most of the transfers under it are done for reasons” (Nozick 1974, 159).

Hence, in Cohen’s view, Nozick concedes that the transfers must be reasonable and intelligible and that the outcome does matter. And he does that by giving weight not to Nozick’s entitling and justice-giving process, but to the outcome, that should be labelled as just or unjust in itself or in accordance with some process-independent standards of distributive justice.

So, Cohen reformulates the thesis (2) in the following form:

(3) “Whatever arises from a just situation as a result of fully voluntary transactions which all the transacting agents would still have agreed to if they had known what the results of so transacting were to be is itself just” (Cohen 1995, 23).

In my opinion, Cohen’s reinterpretation of Nozick’s principle in the form of thesis (3) is not as accurate as he declares. We have to notice that Nozick concedes only that irrational or arbitrary transfers of goods would be “disturbing”, but he never said that these transfers would be unjust. Hence, I do not believe that Nozick would concede to the reinterpretation of his thesis (1) in the form of thesis (3). If people voluntarily decided to give away their money, then no injustice has been committed. Cohen’s reinterpretation is based on the fact that he emphasizes the abovementioned affirmation that Nozick made, but chooses to ignore the rest of the passage which states:

“This does not mean necessarily that all deserve the holdings they receive. It means only that there is a purpose or point to someone’s transferring a holding to one person rather than to another; that usually

we can see what the transferrer thinks he is gaining, what cause he thinks he is serving, what goals he thinks he's helping to achieve, and so forth. Since in a capitalist society people often transfer holdings to others in accordance with how much they perceive these other benefiting them, the fabric constituted by the individual transactions and transfers is largely reasonable and intelligible" (Nozick 1974, 159).

In other words he reinterprets Nozick's *descriptive account* regarding people's *typical* reasons to transfer their holdings to others (the descriptive nature of the account is demonstrated by the use of expressions like: "usually we can see", "in a capitalist society people often transfer", "is largely reasonable and intelligible" and so on) as a *normative account* about the standards that we must take into consideration when we evaluate the justice of voluntary transfers:

"Yet we should surely also be disturbed if we can indeed see what the agent *thinks* he is gaining, but we know that what he *will* gain is not that, but something he thinks less valuable; or that what results is not only the gain he expects but also unforeseen consequences which render negative the net value, according to his preferences and standards, of the transaction. We should not be content if what he *thinks* he is getting is good, but what he actually gets is bad, by his own lights. I shall assume that Nozick would accept this plausible extension of his concession. It is hard to see how he could resist it" (Cohen 1995, 23).

Notice the fact that, in this passage, Cohen uses the expressions "we should" and "we should not", which are specific to a normative account, expressions never used by Nozick in his statements. Therefore I am convinced that Nozick would not accept this reinterpretation of his argumentation.

5. Is justice in the outcome anyway?

I believe that the argumentation of the previous section proves that Cohen's reinterpretation of Nozick's argument is not accurate. Nonetheless, Cohen could claim that the main problem is not if his interpretation of Nozick's line of reasons is exact or not. He could say that the main issue is the soundness of his argument according to which the outcome matters anyway for establishing the justice of voluntary transactions.

However, even if we are letting aside the problem of the incorrect interpretation, there is another and more serious problem that Cohen's reply has to face. I believe that he cannot claim that the injustice resides

in the outcome itself without begging the question against Nozick: he should offer an argument in order to support the statement that the outcome is unjust.

His line of argument suggests that the injustice has to do with the fact that the presumably voluntary step from D1 to D2 is not so voluntary after all if the transacting agents would not make the same choice if they had known the results. In other words, one's free choice is not authentically free if one does not really know what one has chosen: "Of each person who agrees to a transaction we may ask: *would he have agreed to it had he known what its outcome would be?* Since the answer may be negative, it is far from evident that transactional justice, as described, transmits justice to its results" (Cohen 1995, 23).

Nevertheless, this response would make the freedom of the choice *dependent* on the correctness of the decision, rendering the scope of freedom unacceptably narrow, and making the conditions for an authentic free choice implausibly strong: people would not be able to choose something if they were not convinced that it is the right and profitable thing to do and if they did not take into consideration all the relevant reasons for supporting or rejecting that choice. Moreover, some people (if not all) would never qualify as capable of exercising the freedom of choice since they would lack the necessary abilities for this kind of complex calculus of opportunities. And, as a consequence, they would be better off not exercising their freedom at all and letting others (experts, for example) decide for them.

Furthermore, if indeed the exercise of our freedom in an arbitrary manner would be labelled as *unjust*, than such an arbitrary manifestation of will would be seen not only as irrational and unwise, but also as potentially dangerous or morally wrong and consequently could be significantly constrained or even prohibited. For example, this would happen if people could "choose" only after a council of experts gave them the approval or the laws prescribed in advance all the permissible courses of action. And Cohen allows precisely for this type of scenario when he presents his example of a society without money in which all the courses of action that are free to be followed without interference are laid down by the law:

"The difference between money and those endowments implies, I shall argue, that lack of money is (a form of) lack of freedom, in the favoured sense, where it is taken to be absence of interference. To see this, begin by imagining a society without money, in which courses of action available to people, courses they are free to follow without interference, are laid down by the law. The law says what each sort of person, or even

each particular person, may and may not do without interference, and each person is issued with a set of tickets detailing what she is allowed to do” (Cohen 1995, 58).

It should be noted that the aforementioned scenario is not something that Cohen explicitly recommends, but is surely one that he accepts. As an additional argument we can mention the fact that he repeatedly claims that we can restrict the liberty of the few for the sake of the liberty of the many or that the removal of certain freedoms can be in the interest of freedom itself (Cohen 1995, 31, 32). And, the law or the council of “liberty experts”, which will specify precisely what kinds of choices are allowed, will perform just that optimizing task: they will enhance general freedom at the cost of sacrificing the freedom of the few.

However, I believe we have to ask if this is really freedom at all: how can the general freedom increase when a small group of people (experts or legislators) decide what each member of society can and cannot choose? In which sense are individuals more free if somebody else exercises their freedom for them? Who will be the agents that will still possess freedom since virtually all ordinary citizens will lack any authentic option? Can ordinary people be considered as more free in this scenario than in the one in which they were able to make their own choices? In my opinion it is evident that the answers must be negative. Nevertheless, as I will argue in the next sections, this counterintuitive vision regarding freedom is precisely what Cohen defends against what he calls the libertarian “rights definition of freedom” (attributed to Nozick).

I will return to this problem later, after outlining Cohen’s line of reason that laid him to his “lack of interference theory of freedom”. For now I will say just that the commonsensical solution for preventing the aforementioned scenarios to happen is to grant people the possibility to exercise their freedom even in situations in which they lack relevant knowledge and abilities in order to achieve the epistemically right solution. We should also grant them the possibility to make personal and even unwise decisions concerning voluntary transfers of their holdings. In my opinion, by doing that we are giving meaning and content to “human freedom”, a freedom specific to the kind of beings that we are: creatures that have limited capacities (in their rationality, morality, powers, aptitudes for action and so on), but are nevertheless capable of free choice. We are free although we are not absolutely wise and all-powerful.

But now let’s return to the question mentioned in the title of this section: is justice in the outcome anyway? If the outcome is examined in itself, then the answer should clearly be negative. The injustice cannot be

located in the outcome understood a simple fact: for example that Chamberlain has with 250 000 dollars more than ordinary citizens. This fact could be labelled as unjust only in relation with some outcome-independent standard of justice like the principles D1, D2 (or other distribution rules). Yet, these are normative standards which are not derivable from the simple fact represented by the outcome of a transaction.

To be sure, I believe that Cohen's concern with the outcomes of the voluntary transactions is partially justified, but only if we understand it in the light of the principle of autonomy. As I mentioned above, the outcome is unacceptable only if it is arrived at by means of an unjust transaction. And a transaction is unjust only if the choice was not as voluntary as the agents have thought: they were the victims of fraud or they were constrained to make that choice. However, in both cases the problem is in the non-voluntary character of the choice, not in the outcome. Hence, the principle (1) indicated by Nozick still stands, even if we concede that sometimes it is hard to establish the line between free and constrained transactions. This line does exist and we can indicate clear examples of free choices and of restricted choices.

But, Cohen could reply that sometimes outcomes are so bad that they must be labelled as unacceptable, as it is the case with voluntary slavery. The first observation will be, in my opinion, that he greatly overestimates the dangers that reside in the outcome itself. And the reason for this is Cohen's suspicion regarding free choice and its capacity for representing the foundation for a theory of entitlement. Because, if we analyze even the extreme case of voluntary slavery we should note that its voluntary character not only greatly reduces the dangers associated with slavery, but makes it virtually impossible. As Nozick states: "Some things individuals may choose for themselves no one may choose for another" (Nozick 1974, 331). Hence, people who made that choice could not be forced to remain slaves, therefore, in a sense, they were never actual slaves. Similarly, voluntary transactions of assets will not usually lead to unacceptable and irreversible results.

Secondly, and more importantly, as I mentioned above, the outcomes could not be labelled as bad in themselves, but in relation with a principle of social justice: they are bad in the sense that some injustice has been committed or has occurred in another way that requires rectification. But if this is right, then Cohen cannot sustain that justice is in the outcome without landing in circularity (similar to the one he believes is affecting Nozick's definition of freedom, which will be presented in section 7 of this paper): he will explain the injustice in terms

of an unacceptable outcome, and will say that the outcome is unacceptable because of its injustice. Therefore, he would have to provide an outcome-independent account of justice.

6. Cohen's connection between economic and political inequality and the need for redistribution

Another response Cohen explicitly formulates has to do with the fact that, in his opinion, inequality in the distribution of goods brings with it inequality in the distribution of power:

“Among the reasons for limiting how much an individual may hold regardless of how he came to hold it, is to prevent him from acquiring, through his holdings, an unacceptable amount of power: the Chamberlain transaction looks less harmless when we focus on that consideration” (Cohen 1995, 25).

And this inequality of power could have the result of changing the character of a society and opening the path for class division and political domination:

“But the case before us is a society of equality in danger of losing its essential character. Reflective people would have to consider not only the joy of watching Chamberlain and its immediate money price but also the fact, which socialists say that they would deplore, that their society would be set on the road to class division” (Cohen 1995, 25-26).

Moreover, although he acknowledges that in our real capitalist societies people do not really care who gets the money they pay for obtaining the desired goods, he claims that they *should* care, and that the “common unconcern is irrational”. People *should* care how their payments help to increase Chamberlain's power. Therefore a “democratically authorized taxation system” designed to limit that power would be legitimate, because in his opinion, “a person's effective share depends on what he can do with what he has, and that depends not only on how much he has but on what others have and on how what others have is distributed” (Cohen 1995, 26-27).

We notice how, once again, Cohen shifts from a *descriptive* to a *normative* account: even if real people are not concerned with who gets their money, they have to be and they have to restrict those transactions

which will result in economic inequalities which will be accompanied, in the end, by political inequalities.

Another objection he has to face is the classical libertarian one stating that, in Cohen's scenario, talented people will be less motivated and willing to use their talents in the benefit of others. If they will not get anything for their supplementary and high quality contribution (based on the natural inequality in the distribution of talents) then they will abstain from working, playing, creating and so on.

It is interesting and puzzling that Cohen is aware of this objection, but his only reply is the following: "Whether Wilt would then still play is a further question on which I shall not comment, except to say that anyone who thinks it obvious that he would not play misunderstands human nature, or basketball, or both" (Cohen 1995, 26). Hence, practically, Cohen refuses to address the main objection formulated by libertarians in order to oppose any attempt to trade self-ownership and freedom of using your talent as you please for the price of distributive equality.

In his only sketch of an answer Cohen speaks about "understanding human nature" in a correct manner. And he presents his view regarding the right manner of understanding human nature when he opposes the capitalist conception, according to which people value freedom more than equality, to the "socialist conception" of human nature: "In the contrary socialist conception, people have and may develop further a (non-instrumental) desire for community, a relish of cooperation, and an aversion to being on either side of a master/servant relationship" (Cohen 1995, 29). But this is a paradigmatic circular argument (*petitio principii*): he begs the question against Nozick by stating that people will agree to the loss of freedom for the price of equality because it is their nature to do so. Moreover, he adds that Nozick does not argue that the socialist conception regarding human nature is unsound, using also a classical *ad ignorantiam* argument: if Nozick didn't prove that socialist view is unsound, then it probably is sound.

Therefore, we must notice that Cohen doesn't provide any answer to the libertarian objection, other than affirming his faith in the socialist conception regarding human nature. So, after he shifted from the descriptive account (that he admits is right) regarding contemporary capitalist society and its people who accept the inequality of income associated with the natural inequality of talents, to a normative account, which states that they should not accept it, *he shifts back again* to his own descriptive account regarding human nature, according to which people are beings animated by the desire for community, cooperation and

equality. Hence, he shifts back and forth for the sake of his own argumentation by trying to resist Nozick's description with undefended normative arguments, and to contradict libertarian normative arguments with a highly controversial description of human nature.

But let us ignore once again these significant problems of Cohen's argumentation and return to his main statement mentioned in this section according to which allowing unrestricted voluntary transactions would result in a society characterized by class division and domination, therefore people's freedom to do what they please with their property should be restricted precisely because it will have the effect of increasing social and political inequality and will ultimately restrict the freedom of many others (third parties to the transaction). So, as I mentioned before, he thinks that we have to "restrict the liberty of few for the sake of the liberty of many" (Cohen 1995, 31) or "to restrict freedom in order to expand it" (Cohen 1995, 32). This seems to be a very strange line of reasoning indeed, but let us investigate if there is something justifying it in Cohen's view.

An obvious question he has to answer is what could possibly justify restricting even one individual's freedom for the sake of others? If humans are conceived in a Kantian way as ends that should never be treated only as means, if they are inviolable, as Nozick states, then on what basis could we restrict their freedom? A possible answer could be that there are other entities which should be treated as ends in themselves, "social entities", as Nozick calls them (Nozick 1974, 32-33), and they should be protected even at the cost of restricting the liberty of individuals. However, Cohen does not advance this kind of theory. Instead, he thinks that a defender of redistribution does not have to believe in a social entity. He admits that people do not form trans-individual entities, and that they are separate beings, but also believes that is no argument against redistribution (Cohen 1995, 33).

In my opinion, once again, Cohen gives this argument an interpretation that favours his own line of reasoning. The most significant part of Nozick's argument is not the fact that humans are separate beings, but the fact that they are inviolable and so is their freedom to do what they want with their property. And this is relevant to the problem of redistribution. Because the special moral status of human beings which makes them ends and not means gives them exclusive entitlement over their bodies, powers, abilities and legally owned assets. They have this right by birth and nature and no one can dispute it without rejecting the idea that people are ends in themselves and inviolable.

7. Legal freedom versus actual freedom. Cohen's argument for the circularity of the "rights definition of freedom"

Cohen's strategy to avoid challenging individual's special moral status is to sustain that it is not sufficient to legally prescribe people's right to freedom; you also have to take the necessary measures in order to provide them the right social environment, the opportunities and the powers to exercise this freedom. He illustrates this aspect by referring to the situation of a very poor proletarian who is forced to work for a capitalist in order not to starve, even if he has the legal possibility to choose his working place. His situation is presumably the effect of others voluntarily choosing to do what they want with their assets.

In Nozick's opinion this proletarian is not forced to work for the capitalist (this choice is not non-voluntary) as long as the others who made their choices had the right to do so:

"A person's choice among differing degrees of unpalatable alternatives is not rendered nonvoluntary by the fact that others voluntarily chose and acted within their rights in a way that did not provide him with a more palatable alternative. (...) Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did" (Nozick 1974, 262-263).

This is what Cohen calls "the rights definition of freedom", opposed to his "lack of interference" definition of freedom (Cohen 1995, 58-59). This is the theory he tries to reject, because he understands that the result of his dispute with Nozick and other libertarians depends on the justification of this distinction between two types of economic and political arrangements that restrict people's opportunities for exercising their freedom: those resulted from legitimate choices and those resulted from illegitimate choices. Therefore, he tries to argue that the distinction is not relevant because lawful and unlawful choices alike could affect other people's capacity to exercise their freedom. And he illustrates his view with a pair of examples: The first example presents farmer Fred who owns a portion of land across which villager Victor has a right to pass. Let's suppose further that Fred illegitimately erects an insurmountable fence around the land, forcing Victor to use another route. The second example presents farmer Gilles whose land is crossed by villager William not in virtue of a right, but because is tolerated by Giles. In a similar

manner, Giles erects an insurmountable fence, forcing William to use another route.

In Cohen's opinion there is really no relevant difference between the two examples, because the result is the same: "William is no less forced to change his route than Victor is" (Cohen 1995, 36). As long as freedom is affected both by lawful and unlawful transactions, then libertarians could not maintain their aura as defenders of freedom: "... it should now be clear that 'libertarian' capitalism sacrifices liberty to capitalism, a truth its advocates are able to deny only because they are prepared to abuse the language of freedom" (Cohen 1995, 37).

Moreover, in his view, the "rights definition of freedom" is also either circular or flawed. To explain why he invites us to presuppose, as Nozick does, that rightful interference with someone's action does not restrict freedom. But, then we cannot sustain (without further ado) that interference with private property is wrong because it restricts freedom. This statement will be right only if we presuppose that the "rights definition of freedom" is correct, which will not constitute what he calls "a rights neutral account of freedom". In other words, if he doesn't take for granted the "rights definition of freedom", then even the libertarian has to concede that "it is equally obvious that the protection of private property diminishes the freedom of non-owners, to avoid which consequences they adopt a rights definition of the concept" (Cohen 1995, 60).

Although his intricate line of reason is not easy to follow, I believe that his main idea is the following: if libertarians want to provide a definition that won't beg the question against the authors who do not accept the "rights definition of freedom", then they have to provide an independent explanation of why the interference with someone's right reduces his freedom, because otherwise their argumentation will be circular. You cannot say that you are not free only if someone prevents you from doing what you have the right to do, and in the same time to explain that interference with your freedom is bad because it violates your right, that is not without landing inside an argumentation circle: lack of freedom is explained as interference with a right, and interference with a right as lack of freedom. Then, in order to prevent the problem of circularity libertarians have to appeal to a different definition of freedom: for example Cohen's own definition stating that freedom is equivalent with lack of interference with peoples' options (in general). But, in this case they will operate simultaneously with two different definitions which will render their conception defective because "they define freedom in two incompatible ways" (Cohen 1995, 60). Moreover, as a consequence,

they will have to admit that all kinds of interferences are relevant and have the potential to diminish freedom: even the protection of property diminishes the freedom of non-owners.

Nevertheless, as Cohen himself recognizes, the libertarian (in general and Nozick in particular) has a way out of this circle, and that way out is precisely to use the principle of self-ownership in explaining freedom: “The possible way out is the principle of self-ownership, which says that each person is the rightful owner of his own person and powers, and therefore of what he can get from others by placing himself at their service” (Cohen 1995, 65). Obviously, Cohen investigates this argument only in order to reject it. I will refer to his criticism and I will offer some additional reasons for maintaining this connection between self-ownership and freedom. But, first, I will analyze in the next section Cohen’s alternative explanation of freedom in terms of “lack of interference” and I will argue that it faces more serious objections than the ones he mentions against the libertarian account.

8. Objections against the theory of freedom as “lack of interference”

The main idea behind his alternative explanation of freedom is that all interferences matter because they all reduce freedom: “In the course of that argument, I supposed that to prevent someone from doing something that he wants to do is to make him, in that respect, unfree: I am *pro tanto* unfree *whenever* someone interferes with my actions, *whether or not I have the right to perform them, and whether or not my obstructor has a right to interfere with me*” (Cohen 1995, 59).

In analyzing his explanation let us return to the argument that there is no real difference between lawful and unlawful interferences and to his examples with the two pairs of farmers and villagers: Fred – Victor and Giles – William. First, I think we should agree with Cohen that in both examples there is a decrease in each villager’s choices and opportunities for action. Therefore, we should also admit, in opposition with the aforementioned affirmation of Nozick, that there is also a decrease in the voluntary character of the two farmers’ decision to change the route, as a result of other men’s decision.

On the other hand, there is a very significant difference between the two examples: while Victor has a right and a legal claim against Fred’s action, William has none against Giles’ action. So, if authorities have a right to arbitrate and solve the legal conflict between Fred and

Victor, they have no such right in the other case: in the first example their intervention is justified on the base of a pre-existing and independent right, while in the second example it would be arbitrary and unjustified. And, if this is true, it makes all the difference for the problem of redistribution: you cannot redistribute some assets that are already in someone's property, without infringing upon that man's right. It is not the same thing to talk about an interference with one's freedom when another person is responsible for violating his comprehensible and socially recognized right and to talk about an interference for which no man is responsible.

Moreover, I believe that Cohen's rejection of the distinction between lawful and unlawful actions that resulted in the restriction of freedom has a significant effect on the conceptualization and the scope of social responsibility and social justice. If there is no real difference between lawful and unlawful restrictions of liberty, then all restrictions could be considered illegitimate and the society will be responsible for eradicating or reducing all types of limitations in order to enhance the level of social justice. Practically all actions should be examined in order to see if they are diminishing or increasing the general level of liberty. And I believe that Cohen's aforementioned statement regarding the need to restrict the liberty of few for the sake of the liberty of many, his scenario regarding the society without money, or his talk about the importance of people's knowledge regarding the possible outcomes of their choices (presented above) could easily be understood in this sense.

Moreover, if we take into consideration his counterexamples to the principle D1 the scope of social responsibility and social justice becomes so comprehensive that it will refer not only to voluntary choices and actions, but also to states of affairs generated by factors like errors, mass uncoordinated transactions and accidents which are partially or totally independent on human willpower. He mentions four counterexamples: the first two are called "petty counter-examples" and the last two "substantial counter-examples".

The first example refers to a situation in which one of a man's justly possessed rolling pins rolls out his door and down the hill into another man's house, who will innocently mistake it to be one of his mislaid rolling pins and keep it. In his opinion, the situation will be unjust even if no one behaved unjustly. Moreover, even if the second man keeps the rolling pin in full knowledge of how it got to him, the outcome will be unjust not because of an action, but because of an accident: "what you do is unjust because you are preserving a situation that counts as unjust for

other reasons: it is not your action of keeping the rolling pin that makes the situation unjust in the first place” (Cohen 1995, 44).

The second example speaks about the voluntary transaction of a real diamond between two men which are both convinced it is made of glass. Then, after its authenticity has come to light, the buyer will unjustly hold a diamond, injustice caused not by something he has done, but by the injustice in the very situation of coming in its possession.

The third example presents the circumstance of an insurance company that innocently gets ruined and ruins the lives of people who invested in it. In his opinion, this demonstrates how “a just situation could be transformed into an unjust one because of the way that mass uncoordinated transactions *foreseeably* or *otherwise* combine” (Cohen 1995, 46). Finally, the fourth example (also mentioned by Nozick) describes the case of a person who becomes the monopoly holder of drinking water. Although, no injustice caused that situation, it requires a rectification (Cohen 1995, 46).

In my view, all these examples reveal that his theory about freedom understood as “lack of interference” is inconsistent and ambiguous to say the least. I will leave aside the fact that his interpretation of what caused the injustice in all these examples is rather counter-intuitive and strange: he claims that there is an injustice in the outcome without clearly explaining why it should be labelled as such and how it occurred from a previous just situation. I already argued that he must provide an outcome-independent explanation of injustice if he wants to avoid landing into circularity (see section 5 of this paper). Nevertheless, even if we ignore this problem, his conception remains ambiguous and inconsistent.

As John Gray sustained (although Cohen tries to reject his interpretation), this theory is probably derived from the intuitions embodied in our ordinary language (Gray 1986, 96). In the core of his theory is the commonsensical idea that we are free if no one and nothing interferes with our options. Nonetheless, Cohen uses this relatively imprecise intuition and transforms it into something else: a normative standard or principle used to establish the meaning of the very concept of freedom and its scope. And this is a role that it never had in our ordinary language (and so he is partially right to oppose Gray’s interpretation).

But, what happens when the expression “lack of interference” gets to play this very important role? I believe that it becomes ambiguous and misleading as a standard for assessing the level of freedom. Because we are entitled to ask: What kind of interference will be relevant? We notice

from the previous examples that not only human actions should count, but also accidents, unpredictable errors, states of affairs and unforeseeable effects of uncoordinated mass transactions on the market. Yet, is this list complete? If we are taking seriously Cohen's view then the answer should be: "No, it is not". Why not include natural events and states of affairs that also interfere with people's choices? For example, we can include not only natural events and catastrophes, but also the quantity and quality of natural resources, peoples' ethnicity and race, people's natural features and talents, the natural "distribution" of sickness and health, peoples' tastes in food, clothing and in choosing their partners and so on. In a sense, our very naturally and socially predetermined features also interfere with our options, which will be equivalent with saying that some parts of us interfere with our freedom. All this process, events, states of affairs and even his own nature and previous choices interfere with individual's capacity of exercising free choice, and, therefore, in Cohen's own terms, they will result in injustice and will require rectification.

However, this will expose his view to another set of serious objections. First, this kind of social responsibility to intervene would have no principle or standard to guide it and restrict it, except maybe for the complex calculus regarding the optimal level of general freedom. The decision to interfere with the liberty of few could be based on idiosyncratic and arbitrary conceptions concerning the optimal level of liberty for the many. In that sense, the decision to interfere in order to redistribute social goods for example, will be totally unjustified.

Second, the very notion of human freedom will lose its specific content and will even become inconsistent. As I already mentioned in a previous section, this kind of freedom exercised within the very strict boundaries imposed by the law or by the so-called experts in general liberty, would hardly be considered freedom at all: the optimizing calculus of general liberty will probably tolerate a very small possibility (if any) for personal choice. Consequently, Cohen's concern for advancing the freedom of the many at the price of decreasing the freedom of few will almost certainly result in practically eliminating the very possibility of freedom for most (if not all) members of society.

Third, even if they will be able to determine the optimal level of freedom and its consequences for each individual (which is highly implausible) we could still ask: wouldn't this intervention of authorities responsible with reinstating social justice represent an interference with people's choices nonetheless? In what sense this interference will be any better than the one generated by states of affairs, accidents or ordinary

people's actions? In Cohen's own style we could say that he recommends interference in order to stop or reduce other types of interferences? Why? Apparently, because it will enhance the general level of freedom. But how, if freedom is to be understood precisely in terms of "lack of interference"? Are there good interferences and bad interferences? What are the criteria or standards for this distinction?

Therefore, in my opinion, the definition of freedom as "lack of interference" is either inconsistent or incomplete. It is inconsistent if it simply recommends interference in order to oppose interference. It is incomplete if it sustains that there are other standards for distinguishing between good and bad interferences. Hence, I think that Cohen's account faces an even more serious problem than the circularity of the libertarian "rights definition of freedom" mentioned above. Because, as he recognizes, the libertarian theory has a way out of the circle: the classical link between freedom the principle of self-ownership to the justification of which I will dedicate the rest of this paper.

9. Self-ownership and the problem of original appropriation

Acknowledging that the principle of self-ownership has "a *prima facie* plausibility" and "plenty of appeal", Cohen's initial strategy against it will be not to contest it directly, but to argue that it is much less attractive and important than its defenders suggest. Its *prima facie* plausibility is evident in examples like the one he opposes to leftists who are willing to deny the principle altogether. These leftists will "lose confidence in their unqualified denial of the thesis of self-ownership when they are asked to consider who has the right to decide what should happen, for example, with their eyes" (Cohen 1995, 70). And he explains by adding: "But if standard leftist objections to inequality of resources, private property, and ultimate condition are taken quite literally, then the fact that it is sheer luck that these (relatively) good eyes are mine should deprive me of special privileges in them" (Cohen 1995, 70). This will be equivalent with stating that an unlucky blind man will have an equal claim to my eyes as myself, or that he will have an equal right to obtain them by means of an "eyes lottery".

Therefore he affirms that a possible strategy for a defender of equality could be to sustain that the "*prima facie* plausibility" regarding the principle of self-ownership disappears when we investigate the property over external things:

“But there is no comparable presumptive normative tie between any person and any part or portion of the external world. Hence, one may plausibly say of external things, or, at any rate, of external things in their initial state, of raw land and natural resources (out of which all unraw external things are, be it noted, made), that no person has, at least to begin with, a greater right in them than any other does; whereas the same thought is less compelling when it is applied to human parts and powers” (Cohen 1995, 71).

The next move in this tactic is to criticize the liberal and libertarian views (particularly those of Locke and Nozick) concerning the legitimate way of appropriating external things, because any version of these conceptions will prove to be wrong (in their own terms). However, in order to do that, Cohen analyses Nozick’s account and presumably tries to eliminate its obscure parts by offering his own interpretation of it. For example, he starts by declaring that Nozick’s statement according to which “things come into the world already attached with people having entitlements over them” is certainly false because, in the history of anything that is privately owned, there was a moment in which it was taken into private ownership (Cohen 1995, 73). Thus, he thinks that Nozick’s conception regarding the original appropriation must be extracted from a section in which he discusses Locke’s view on the same subject matter, presented in section 33 of his *Second Treatise of Government*:

“Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left; and more than the yet unprovided could use. So that in effect there was never less left for others because of his enclosure for himself. For he that leaves as much as another can make use of, does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same” (Locke 1980, 21).

This is Locke’s classical “labour mixture” theory regarding the original appropriation: a man has a property right over a thing because he mixed his labour (that was exclusively his) in it and improved it, and, in the same time, no other man’s condition was worsened in the process. In Cohen’s opinion, Nozick is rightfully unsatisfied with the first part of this thesis, which refers to the labour mixture, because many examples of appropriation that Locke himself mentions cannot be said to result from labour: picking a fallen acorn or swallowing some water and so on.

Therefore, he believes that the crucial part of an appropriation is if it worsens the situation of others. And he understands Nozick's conception in the same manner by reducing it to the following statement taken from *Anarchy, State and Utopia*:

“A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened” (Nozick 1974, 178).

Nozick never affirmed that this is his doctrine of appropriation, but Cohen interprets it in this way and dedicates the rest of the chapter to its refutation. First, he observes that, in explaining the aforementioned statement, Nozick speaks about the fact that the withdrawal from the general use should not make anyone's prospects worse than they would have been if the respective object remained in the general use, or if their position was in other ways improved as to counterbalance that worsening (Cohen 1995, 76). However, in his opinion, Nozick does not take into consideration all relevant counterfactual situations (for assessing the legitimacy of an appropriation) when he ignores other things that could happen with that object. And, in order to illustrate what he means, Cohen offers a set of different scenarios about possible appropriations of a portion of land.

The first example, corresponding to Nozick's version (called “the actual situation”) is one in which a man A appropriates all the land or an amount that leaves to another man B an insufficient part in order to live. Next, he offers B a salary of $n+p$ which B is forced to accept, and A gains $m+q$, (q being greater than p , n being the amount B would gain and m the amount A would gain if A had not appropriated the land and none of them owned anything privately). According to the doctrine mentioned above A would have the right to own that land because he organized the distribution of goods and, in this scenario, B situation is better than in the situation in which the land remained in common use. But, in Cohen's view, this is not the only scenario that should be taken into consideration. There are many other relevant counterfactual situations: in which B is the (equally) good organizer and appropriates the land, employs A and obtains similar results in his favour; in which B is a much better organizer than A and produces much more for the benefit of both; in which B is the better organizer, but A appropriates the land and does nothing more than just letting B work in the benefit of both; and the one in which A and B agreed to appropriate collectively instituting a form of socialism for the

benefits of both. Consequently, Cohen sustains that Nozick cannot ignore all these scenarios and claim that A has a right to impose his decision on B just because B would be better-off than in the situation in which none of them owned anything (Cohen 1995, 79-83).

Cohen is convinced that this line of argument against what he believes to be Nozick's doctrine of original appropriation demonstrates that the libertarian conception on this subject matter is wrong and it should be replaced by some kind of egalitarian approach to worldly resources: a conception according to which external things are jointly owned or one in which we will have an initial distribution of an equal amount of external things for each individual. In his opinion, an egalitarian could choose to preserve the principle of self-ownership, because of its appeal, but to combine it with one of these two egalitarian approaches to worldly resources.

Nevertheless, as he recognizes, both attempts will be unsuccessful. The combination between self-ownership and joint property over worldly resources fails because, although it assures equality of condition (which is highly prized by egalitarians), it deprives self-ownership of its intended effect: "For people can do virtually nothing without using parts of the external world. If, then, they require the leave of the community to use it, then, effectively (as opposed to formally, or juridically), they do not own themselves, since they can do nothing without communal authorization" (Cohen 1995, 93-94). But, in his opinion this argument cannot be used by libertarians against egalitarians because they fare no better when it comes to the situation of a propertyless proletarian who cannot use means of production without a capitalist's permission: he suffers from a "lack of effective self-ownership". The second combination will be unsuccessful because people would be able to do whatever they want with the equal amount they received initially and will probably obtain different results in investing their share, which will fail to secure the equality of condition that is so important for egalitarians. Consequently, Cohen rejects both combinations and argues that the only viable option for an egalitarian is to reject the principle of self-ownership altogether (Cohen 1995, 94).

But before examining his attempt to repudiate the principle of self-ownership, let us turn our attention to his previously mentioned argumentation against the libertarian view concerning the original appropriation of external things. And I will begin by saying that although his line of reasoning seems compelling, there are several problems with it. I will begin by noticing (again in Cohen's own style) that his criticism is

directed not against all possible libertarian versions of the theory of original appropriation, but only against one version of what he believes to be Nozick's doctrine. And he does that by ignoring the fact that Nozick never said that those statements in which he speaks about Locke's theory and its problems represent his own theory of original appropriation. Additionally, he chooses to disregard many other relevant affirmations that Nozick made stating that they are evidently false or they do not deserve much attention. For example, this is what he does with the statement according to which things come into the world already attached with people having entitlements over them.

In my opinion, this argumentative step along with others to which I will refer later demonstrate that Cohen is not really interested to discover Nozick's doctrine, and uses a *straw man* type of strategy by attributing him a position he never held. The same observation is made by David Gordon in his book *Resurrecting Marx: the Analytical Marxists on Exploitation, Freedom and Justice*, in which he affirms that Cohen's criticism focuses against the theories of acquiring property on the grounds of "labour mixture", a theory that Nozick never endorsed (Gordon 1990, 86).

Another relevant affirmation that Nozick makes and Cohen practically ignores (after mentioning it a couple of times) is the one stating that external things are initially unowned. But this is surely a thesis that could become the core of a very different doctrine of original appropriation. Moreover, we notice not only that Cohen does not try to link this thesis with the rest of Nozick's statements. He also uses this thesis against the doctrine according to which external things initially come into the world with claims of ownership attached, forgetting that he rejected the same idea in his attempt to sustain the joint property doctrine. Therefore, as David Gordon notices, he does not seem to notice how he contradicts himself for the sake of his argument: "Property does not, he replies, initially come with claims of ownership attached. Rather, all property may be traced back to initial acquisition: before this, property was available for the taking. No doubt; but what happened to Cohen's challenge to the assumption that property begins as unowned?" (Gordon 1990, 83).

However, this objection leads to another one, mentioned also by David Gordon, which is much more serious and affects the core of his theory regarding the initial joint ownership. Gordon declares that although Cohen is right in sustaining that property is initially unowned, the same principle can be used against his own theory: "Cohen's own views do not avoid this sense of the principle. If people have collective rights over the territory they inhabit, how did they acquire such rights?"

Cohen would need to confront this question if he wishes to develop a view along these lines. Unless he does deal with it, the libertarian can respond to Cohen by saying that the *only* sense in which people can acquire property is within an existing system of property rights which allows such a practice” (81). And he adds:

“Contrary to Cohen, then, the libertarian does not beg the question by assuming without argument that collective property rights do not exist. All that is assumed is that collective rights, like any other property rights, require support. Certainly, if collective property left no scope for individual acquisition of property, a libertarian view could not get off the ground. But this counts for nothing, so long as no defence of collective rights is in the offing” (Gordon 1990, 82).

In other words, if he claims that libertarians have to provide a non question-begging theory of initial acquisition, the same should be said about his own theory of property held in common: the common right of ownership requires justification in light of an independent theory of right acquisition at least as much as the individual right does.

10. Why egalitarianism fares worse than libertarianism in relation with the problem of original appropriation

In his argument David Gordon declares that Cohen fares no better than the libertarian position he argues against, which I am confident that I demonstrated does not represent Nozick’s actual conception. What his real doctrine may turn out to be is a problem that transcends the scope of this paper, although I tend to agree with Cohen that Nozick’s argumentation is not systematic enough and it is difficult to reconstruct it with sufficient accuracy. Nevertheless, in my opinion, Cohen’s theory actually fares worse than libertarian views about initial appropriation, including the one he explicitly criticizes. And the first argument for this is simple: in my opinion he did not succeed in demonstrating that the principle of self-ownership cannot explain the property over external things.

In order to understand why, let us return to his criticism against Locke’s labour mixture theory. He stated that this theory is wrong because even Locke’s examples suggest that in many cases of initial appropriation there is no real labour involved. I disagree. In my opinion even cases as the picking of an acorn or the drinking of water there is a clear personal contribution of the individual that is intimately and exclusively linked with his person that separates the appropriated thing

(the acorn or the draught of water) from the rest of the external world. And, if it is true that things were initially unowned, as Cohen himself argues against Nozick, then this mixture of the personal contribution or gesture with external things (even when it does not involve hard work) generates a *prima facie* plausibility for the idea that the individual has the right to keep what he separated from the rest of the external world. In other words, if external things are really for grabs, then an individual is justified in keeping what he grabbed.

To be sure, this does not yet demonstrate that he has a right of property over that thing, representing an exclusive and inviolable right over it. If the simple gesture of separating an object from the mass of external world would suffice, then we could rightly say that even the accountant in the story *Little Prince* by Antoine de Saint-Exupery who is claiming ownership over the stars is justified to do so. But it makes the idea comprehensible and plausible nevertheless. I will provide later additional reasons for sustaining that, when certain conditions are satisfied, such a right does exist.

By comparison, the theory of joint property cannot indicate anything similar that will be able to generate a *prima facie* plausibility to the idea that people have a common right of ownership over the entire external world. There is no “personal” contribution of this sort (like the picking of the acorn or the drinking of water), associated with something like the principle of self-ownership, that all people together combine with external things in order to appropriate the entire world. Additionally, it is difficult to understand not only what will be the contribution that gets added, but also who will be the agent adding it in the first place. In what sense can we say that people act together as one in the original appropriation of even one external object? And it will be much harder to explain who will be the agent and how he will act in order to claim ownership over the whole external world.

Moreover, we have to notice that it makes perfect sense to talk about the “person” corresponding to an individual human being, with his nature, features and fundamental needs for surviving and living a meaningful life. As Davin Gordon underlines, in his criticism Cohen “omits the point – stressed by those in the Randian or the neo-Aristotelian tradition – that the right to acquire property on an individual basis is essential to human survival and flourishing” (Gordon 1990, 86). Individual human beings really need (in a clear and intelligible way) private property in order to survive and thrive. And, I would add, they also need to be independent of anybody else’s decision or veto in the process of satisfying

their fundamental necessities. But, it makes no real sense to talk about something similar in the case of all humans beings taken together. Unless we sustain that there are “social entities” and trans-individual “persons” with features and needs equivalent to those of individuals (and we noticed that even Cohen rejects this theory) we have no way of making plausible the idea of joint property over external things.

This proves that Cohen’s egalitarian theory of initial appropriation fares significantly worse than any libertarian view based on the principle of self-ownership. Cohen’s obvious reply could be his usual objection that this theory begs the question: it does not really explain why people do have the right of self-ownership, but only assumes it without further examination. He would also add that the libertarian would have to provide another explanation of the original appropriation, that won’t have anything to do with self-ownership. My reply is that this argument would be question-begging only if no explanation of the principle of self-ownership would be provided. However, as Cohen himself recognizes, there is a *prima facie* justification of this principle that comes from its intuitive plausibility. In the next sections I will offer further justification for it.

But before that, I would also like to argue that, in my opinion, there is a suspicion that Cohen would also abuse of the question-begging objection in this reply. For we have to ask: what kind of explanation would he expect? If we follow the Gordon’s suggestion it would have to be a legitimate “existing system of property rights”. But legitimate according to what criteria and instituted by whom? In Locke’s theory the response was clear: by God. Presumably, Cohen’s answer could be: by all the people taken together. But this argumentation would be question-begging in much evident manner: it states that all people have a right to joint ownership that was granted by nobody else but themselves. And at the same time he has to admit that it is unreasonable to speak about all the people taken together as about a supra-individual being, or agent. So, who would be this agent that granted the right after all?

Maybe he would say that we have to assume a more mundane conception about the procedure of granting this right: there is no super-individual agent, it is only the ordinary human society at the global scale. Leaving aside the problem of understanding the concept of a “society of the human kind”, the problem still stands: who granted the right in the first place? The next reply could be that nobody granted it initially, because there was no pre-social state of nature: people always lived in society and property rights were always granted by society. However, this vision not only contradicts all we know from the history of human

society, which proves that there was never a global society and that property rights are never granted from that global level, but it is still question begging (saying that people jointly own the world because they always did), and still has to face the serious objection concerning the veto of the community that Cohen presented: if we have to ask for the global approval for everything we own, then even our survival will be put in danger, not to speak about other violations of our freedom. And I will argue that this is the fundamental way in which the libertarian view about the connection between self-ownership and freedom fares significantly better than any egalitarian view¹.

11. The intelligibility, consistency and usefulness of the principle of self-ownership

In the last two chapters of his book Cohen turns his attention to the principle of self-ownership itself and argues that the concept is intelligible, consistent and sufficiently determinate, but as a philosophical thesis it is pretty much useless although it cannot be refuted directly. The first challenge he analyzes is the one stating that this concept could be a non-intelligible notion: something like the concept of a green number. He rejects this idea and affirms that the concept itself is coherent and intelligible. Its content refers to the idea that persons and their powers can be controlled by the person herself, and there is nothing incoherent in this (Cohen 1995, 210).

Next he mentions the classical Kantian objection according to which the concept of self-ownership is an impossible notion because it is self-contradictory: if a man were his own property, he would be a thing over which he would 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 (Cohen 1995, 211). Cohen reconstructs the Kantian argument in the following form: We have three premises – *Man is a person, Nothing can be both a person and a thing, Only things can be owned* – from which a couple conclusions are derived (by means of a valid argument) *Man cannot be owned*, and *Man*

¹ Notice that the second egalitarian view he presents, according to which people initially received equal shares, fares no better because the question still remains: who granted the shares and in accordance with what system of property right? How should that agent be conceived? Similarly, the problem of the possible violations of individual's property and freedom will still stand. Additionally, as Cohen argued, this conception would result in inequalities unacceptable for a self-consistent egalitarian.

cannot own himself. However, in Cohen's opinion, the third premise is question begging: Kant did not prove that only things can be owned, but just presupposed that is so. He adds that what Kant had in mind was that people are ends in themselves, but this is a different argument altogether.

Against Ronald Dworkin, he argues that the concept of self-ownership is not affected by indeterminacy. In Dworkin's opinion, the right to self-ownership is indeterminate because it is compatible with various interpretations of the set of rights associated with it. Cohen's reply is that its determination is given by the requirement stipulating that everyone enjoys full self-ownership rights: "But when one stipulates that each person has full private property over himself, then the constraints of universality and fullness combine to disqualify some sets of rights as possible denotation of 'self-ownership', and on the hypothesis proposed here, only one set of rights survives, with which self-ownership can then be (uniquely) identified" (Cohen 1995, 213).

Before presenting and analyzing his argumentation against the usefulness of the principle, I would like to make some observations regarding the ideas mentioned above. I will begin by declaring that I agree with him that the concept is indeed intelligible, non-contradictory and determinate. However, I believe that his argumentation against Kant has to face an important objection. I think that Kant's third premise (in Cohen's reconstruction) is not question-begging if interpreted in the right way. It is true that only objects can be owned in the *ordinary manner*, which presupposes an external and neutral relation between the proprietor and his property. The owner of an external thing can dispose of its property exclusively and completely: he can sell it, borrow it, and even destroy it, without any significant effect on the owner's person. He does not sell, borrow or destroy his own person in the process; his own nature is not dragged into the disposition act with possible irreversible consequences. However, when it comes to the right of self-ownership, the relation between proprietor and property is completely changed. There is no neutral and exterior relation between a person and himself, and any disposition act implicates its very own person into it. Therefore, I believe that Kant is right to reject the principle of self-ownership in this ordinary interpretation (which is also Cohen's interpretation) as self-contradictory. Nonetheless, when it is interpreted in the right way the principle of self-ownership does not confuse persons with things and it is perfectly compatible with other Kantian theses like the one stating that people are ends in themselves.

Cohen's argumentation according to which the principle of self-ownership is useless starts in a puzzling manner (and finishes similarly), namely with his affirmation that the principle cannot be refuted. But we can make it lose its appeal if we distinguish it from three independent theses with which it is confused and from which it takes virtually all its attraction: the interdiction of slavery, the importance of autonomy and the Kantian thesis affirming that people are ends in themselves. In my opinion, this argumentation step alone is capable of lifting many eyebrows regarding the nature of Cohen's argumentation: if the principle is really irrefutable, why doesn't he investigate the cause of its irrefutability, and instead focuses his attention in the opposite direction by trying to state that it is nevertheless useless? It seems again that he is more interested in advancing the case of his egalitarian view, than in analyzing objectively the libertarian principle of self-ownership.

But let us return to his statement according to which self-ownership is an independent condition from the interdiction of slavery. Once again he starts from a thesis belonging to Nozick stating that the rejection of self-ownership is equivalent with the affirmation of a non-contractual obligation to serve other people. And, because this obligation would make you a slave, which is morally intolerable, it follows that it is morally intolerable to be non-contractually obliged to do something for others. Against this line of reasoning he mentions a counter-example taken from Joseph Ratz: although I am obliged to assist my sick mother, she is not able to absolve me from this obligation, meaning that she cannot dispose willingly of my labour, and from which it follows that I am not her slave. To the possible objection that he confuses moral obligation with legally enforceable obligations he replies that even if the state would impose me a legal obligation to serve my mother it does not follow that the state has the sort of right over me that a slaveholder has over his slave, because the state cannot absolve me of my obligation either: "Therefore the state lacks the relevant right to dispose over my labour even if it has the right to direct particular other-assisting use of it" (Cohen 1995, 232-234).

In my opinion, at this point his argumentation is plainly inconsistent. How can the state have the right to impose me a legal obligation, and in the same time lack the right to absolve me from it with an equivalent manifestation of its will? Is it because of the independent moral obligation to help my mother? The moral obligation is not something anyone could impose on me forcefully, but the legal obligation is. Therefore, I do not see how the state's decision to interfere with my

freedom and to dispose of my labour would be different from the right of a slave-holder over its slave. And this point becomes even clearer if we change the example in the following way.

Let us suppose that a man's mother was very abusive and cold, and that she abandoned him as a child and therefore he has no filial feelings toward her. If the state will impose him a legal obligation to offer her financial and personal support, wouldn't that decision seem to be just like a slave-holders order to his slave, which violates his freedom and right of self-ownership? In my opinion, the answer is surely affirmative, demonstrating that there is indeed an intimate and necessary connection between self-ownership and the interdiction of slavery. As to his other argument that Nozick's libertarian view founded on self-ownership allows for contractually based slavery, I already argued that its voluntary nature makes contractually generated slavery practically impossible.

His second argument states that autonomy is an independent condition from self-ownership because it varies positively with the rights over yourself and varies with the rights of others over themselves, which sometimes demand some restrictions on self-ownership: "There are many scenarios where some, or even all have less autonomy than some, or all, would have with certain restrictions on self-ownership" (Cohen 1995, 237).

I find this line of reasoning equally puzzling and inconsistent as the previous one. How can it be that autonomy varies positively with self-ownership and simultaneously is an independent condition from it? I think his reply has to do with his explanation of freedom, that I already rejected, according to which we can speak about legally free persons (for example the starving proletarian from his scenario, who is forced to sell his labour) that are not autonomous because they lack the powers to exercise freedom. However, this does not make the two conditions independent from one another, for it is plausible to say that self-ownership is a necessary but not a sufficient condition for real autonomy. Yet, that does not mean that we can trade self-ownership for autonomy, but only that we also need to satisfy the other necessary conditions for it.

With reference to the so-called independence of the self-ownership principle from the imperative to treat persons as ends in themselves, I already sustained that the opposition between them is only apparent and generated by an inappropriate interpretation of the principle of self-ownership. In the final section of this paper I will argue that the principle of self-ownership is indeed useful and very significant for political philosophy and mainly because of its intimate connection with freedom and human agency. In my concluding observations, I will also

provide some suggestions regarding the connection between self-ownership and a general theory of private property and of social and political normativity.

12. Self-ownership, freedom and human agency

I am confident that from the argumentation presented so far it should be clear that the libertarian principle of self-ownership is not only an intelligible and coherent idea, but also a necessary and useful thesis for political philosophy. Moreover, I also believe that it fares better than egalitarian views (and especially better than the one defended by Gerald Allan Cohen) in explaining very important subjects like: the special status of individual human beings, their freedom, the nature of individual rights, original appropriation, and so on. However, when it comes to the problem of justifying the principle of self-ownership itself, I mentioned only its *prima facie* justification based on its intuitive plausibility. Someone could say that, if this *prima facie* justification is added to the observation that it fares better than egalitarian views, then it would suffice to offer a reasonable justification for it, because it will be hard to provide a more substantial basis for such a fundamental principle. However, I believe that a more robust explanation can be provided for the principle itself and its connection with freedom and individual rights and this is precisely what I will try to advance in this section.

In my opinion, one of the most important arguments for the connection between self-ownership and freedom has to do with the concept of *human agency* itself. If we are to agree with the commonsensical belief that human beings are autonomous agents who are capable of producing various kinds of changes in their natural and social environment, then we have to assume the existence of self-ownership. If we really are agents that can at least initiate and control some types of changes in our environment, then it must be true that the respective initiative, stimulus, contribution or control are originated in a domain of reality which is essentially *our domain*: it must be directly and intrinsically linked with the nature of *who we are* as individual human beings. If that domain will not be essentially ours and we could not exercise our autonomy and sovereignty over it, then it will make no sense to talk about human agency.

Moreover, I believe that in the absence of the aforementioned personal domain, the talk about *human freedom* and *responsibility* would not make any sense either. The *initiative* and the *option* to bring about any

change in the world, no matter how small, must originate in *what we own* which must be directly linked with *who we are*. In my opinion, this is the fundamental notion on which the idea of self-ownership is based. We own that realm of reality which *is not only ours* in a neutral and external way, but in the most intimate and internal way: it is also *who we are*. And, this is the reason why we do not need any other entitlement for this property over ourselves: *we are by default entitled to exercise this fundamental type of ownership*. Nobody gave us this right; *it is ours by our nature*.

And this takes us further to the conclusion that, in its core, the concept of property has to do not only with “having something” but also (and more profoundly) with “being someone”. In a similar manner, the concept of freedom could not be understood in all its depth only as a capacity *to do* something or *to act* in a certain way. It is much more than that: *our free choice is the intimate nature of who we are as individual human beings*. Our existence as persons manifests itself as free choice and by the means of free choice. We not only *have* our freedom, but we also (and more profoundly) *are our freedom*.

Hence, self-ownership cannot be conceived in a simplistic manner as a property right over me and my powers, both understood in an external way. I do not own myself and my powers as I would own a detached and neutral object. Self-ownership is primarily and more fundamentally a right essentially connected to the very nature of a human *subject* or *person*. And, at that fundamental level our quality of being persons or subjects coincides with our property over that domain of reality which is exclusively ours, with the right to dispose freely of it and with our status of sovereigns over it, which gives us the entitlement to control and to decide what should happen with it. In this sense, self-ownership is the right of property over ourselves, the freedom to decide what to do, the entitlement to be the only source of normativity and control, and the responsibility for all of these prerogatives. They are nothing more than different facets of the same reality: the fact that this domain is essentially *who we are* corresponds with *exclusive property* over ourselves, with *disposition rights*, with *freedom and control*, and finally with *legitimate authority* and *special responsibility* over ourselves².

² Ronald Dworkin defends the same idea when he talks about the two “principles of ethical individualism” that he believes to be fundamental to any liberal theory. The first one is the principle of equal importance according to which all human lives are equally important and they should be successful rather than wasted. The second one is the principle on special responsibility according to which each person has a special and final responsibility for the success of his/her own life (Dworkin 2002, 5).

To be sure, this does not mean that individual freedom is without limits and it should be understood in relation with the model of absolute or divine freedom. As I already pointed out, freedom at a human scale is *compatible* with a limited range of opportunities for exercising the aptitude of free choice. Moreover, we could say that it is also *conceivable* only in such a limited range of possible options. If our options would not be already structured and laid in front of us for selecting between them, our willpower would be without orientation, and therefore we would be incapable of choosing anything or we would choose in a completely irrational and arbitrary way. The existing limitations do not only interfere with our freedom, but they also make possible our human manifestation of free will. As I said previously, we are free although we are not omniscient and all-powerful.

Analogously, it does not mean that affirming our sovereignty over ourselves is equivalent with saying that we can do absolutely everything with our very life, body, bodily parts, powers, talents, faculties and so on, without any consequences. Precisely because our very nature is partially or totally dragged into any such disposition act, we have to be responsible in administrating our sovereign rights. Because, if it is true that we are not all-powerful in configuring the range of our choices, it is also true that some of the features mentioned above are at least partially out of our control and any substantial interference with them might turn out to be irreversible. This shows that the origins of responsibility could be traced to the same fundamental reality about which I spoke above.

However, someone (like Cohen) could ask: How do we make the transition from this individual and fundamental level in which all these various prerogatives coincide, to the level of appropriating external things and to the social level in which they usually conflict with similar prerogatives of others? Regarding the justification of the initial appropriation of external things, I already argued that people need these things for their survival and thriving. Therefore, individual human beings do not need the approval of others in order to appropriate unowned external things necessary for their survival and meaningful life. They *are by default justified* and *authorized* in appropriating them by means of a personal effort or gesture that separates it from the external world. What will be the scope of legitimate appropriation is a distinct question which does not render any such gesture illegitimate (just because people can abuse of it). Moreover, I think that the answer could be suggested along the lines of the next argument.

Returning to the problem of the transition to a social level³, I believe that the same principle of self-ownership could help us sketch a possible solution. If all I said about the individual level is right, then the transition to the social level can be performed also in the classical libertarian way: only the individual's agreement or consent could grant any other individual, group or state the *conditioned authority* over him and his properties. But the sovereignty of the individual over himself does not vanish and is not abandoned when we move to the social level (as it happens in the Hobbesian version of the social contract). People will keep the prerogatives of property, freedom, sovereignty, authority and original responsibility over themselves. The similar prerogatives of the state for instance would be limited and conditioned by means of the social and political mandate received from individuals. In a similar manner as the individual, the state would have the right to own, legislate, control and dispose of its property, but within the limits and conditions of its mandate. Of course this will not include the right to dispose of individuals as if they were its slaves.

Taking a broader view on this account I would say that the notion of self-ownership should be placed in the centre of a general theory of social and political legitimacy and normativity that could be expressed in the simple formula: all agents should be free in deciding, controlling and legislating over their domain, freedom associated with a special responsibility which cannot be bestowed upon others.

13. Conclusions

This article addressed a classical theme of political philosophy: the relation between people's right to self-ownership and their freedom. In the view of leading liberal and libertarian thinkers from John Locke to John Rawls and Robert Nozick, people's right of property over their persons and powers represents the foundation of their political freedom: if other people or the state would interfere in any way with this right without the consent of the titleholder, that would correspond to a serious violation of personal and political freedom and would lead to tyranny.

This classical connection was challenged in various ways since its first clear formulation by John Locke. The objective of this paper was not to provide an accurate and exhaustive analysis of the various attempts to

³ For a more extensive explanation about how we could make this transition to the social level from a libertarian perspective see Gheorghe-Ilie Fârte's paper *Some Libertarian Ideas about Human Social Life* (Fârte 2012: 7-19).

support and reject it. Instead I focused on one of the most important and comprehensive critical analyses it received from its contemporary contesters: Gerald Allan Cohen's argumentation against the principle of self-ownership. Therefore, I focused on Cohen's attempt to reject the principle and its connection with freedom which aimed at discrediting any liberal and libertarian argumentation against redistribution (especially that of Robert Nozick), and also at redirecting the socialist and Marxist orientation towards the objective of advancing the case for equality and with confronting the defenders of inequality.

His strategy included a mix of tactics: from reinterpreting Nozick's arguments, to rejecting his explanation of justice, freedom and original appropriation, and finally to contesting the significance of the principle of self-ownership itself. I believe that I provided a number of convincing arguments against all these tactics: I revealed that several of his interpretations for libertarian theses are not accurate, that he repeatedly and unjustifiably shifted from a descriptive to a normative perspective and back again, that his view according to which justice is in the outcome is circular, that his explanation of freedom as "lack of interference" is inconsistent or incomplete, that egalitarianism fares worse than libertarianism in relation to the problem of original appropriation, and that the principle of self-ownership is intelligible, consistent and useful. Finally I offered a more robust justification of it and some suggestions about how we could generalize this account into an explanation of social and political legitimacy and normativity.

In conclusion, I believe that I provided some compelling reasons for preserving the classical connection and for strengthening its role in contemporary political philosophy.

References

- COHEN, Gerald Allan. 1995. *Self-Ownership, Freedom and Equality*. Cambridge: Cambridge University Press.
- DWORKIN, Ronald. 2002. *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, London: Harvard University Press.
- FÂRTE, Gheorghe-Ilie. 2012. "Some Libertarian Ideas about Human Social Life". *Argumentum – Journal of the Seminar of Discursive Logic, Argumentation Theory and Rhetoric* 10 (2): 7-19.
- GORDON, David. 1990. *Resurrecting Marx: the Analytical Marxists on Exploitation, Freedom and Justice*. London: Transaction Books.

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- GRAY, John. 1986. "Against Cohen on Proletarian Freedom". In *Marxism and Liberalism*, edited by Ellen Frankel Paul (et al.). Oxford: Blackwell.
- LOCKE, John. 1980. *Second Treatise of Government*. Cambridge, Massachusetts: Hackett Publishing House.
- NOZICK, Robert. 1974. *Anarchy, State, Utopia*. New York: Basic Books.
- RAWLS, John. 1999. *A Theory of Justice*. Cambridge, Massachusetts: Harvard University Press.
- RAWLS, John. 2001. *Justice as Fairness: A Restatement*. Cambridge, Massachusetts: Harvard University Press

