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SLAVERY, SOCIALISM, AND PRIVATE PROPERTY

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If slavery is not wrong, nothing is wrong.

—Abraham Lincoln

Upon what grounds can slavery be condemned *categorically*? The vicissitudes of the continuing debate on the economic efficiency of slavery, in both the ancient and the modern world—and even when, as is but recently the case, the slave's own living standard is subsumed in the social calculus—only serve to remind us of what we already know: that social utility, however reckoned, affords no foundation for the unqualified rejection of any institution or practice. Perhaps, then, the cruelty and indignity attendant upon slavery can be pressed into service for this purpose. But again, although the concept of the "happy slave" or the "noble slave" may be only an invention of slavery's apologists and a heuristic device used by moral and political philosophers, this phrase is nevertheless not a contradiction in terms. Its instanceability disqualifies the slave's humiliation as a firm basis for the universal condemnation of that "peculiar institution."

We advance a little way in the desired direction if we say that slavery is wrong because it deprives persons of liberty. But only a little way, because it is an awkward but undeniable fact that the abolition of slavery also deprives persons of liberty. Slavery is a legal condition.

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Its abolition requires a legal enactment and, more specifically, an enactment abrogating certain property rights. In what sense is such an enactment liberating? Clearly, it has the effect of extending the range of actions which the emancipated person may perform or forbear without legal interference from others. In extending to him rights enjoyed by nonslaves, it expands the sphere in which his conduct is subject only to his own determination. Yet evidently the aboltion of this legal condition, in abrogating certain rights, must be understood to curtail the liberty enjoyed by some members of society. For the range of legally unobstructable actions open to slaveowners is necessarily and drastically reduced by such measures. Sharing an enthusiasm for personal liberty, they might well fail to see the elimination of their property rights as in any way a contribution to its advancement.

Might we say, then, that abolition can be understood to expand the *total amount* of liberty in society and, therefore, that a conclusive justification for the indictment of slavery resides in its being restrictive of that magnitude? But again, there is no very straightforward sense in which an increase in some persons' liberty, secured at the expense of a reduction in others', can be said to entail a net increase in liberty. Perhaps those who have seen slave emancipation as expanding total personal liberty in society, have believed it to have this consequence on the grounds that some kinds of liberty are more important than others. However, such a belief unwarrantedly equates "more important liberty" with "more liberty." Moreover, the equation of "more important liberty" with "more liberty" raises the thorny and not irrelevant issue of "more important to whom?"[1] And in suggesting that different kinds of liberty can be morally graded, it reintroduces the element of contingency into the grounds for the rejection of slavery that, as was indicated in the first paragraph above, deprives such rejections of any categorical status. For if the ranges of action opened to emancipated slaves are considered more important than those available to unexpropriated slaveowners, this must be because that former set of activities is expected to produce more desirable results than the latter. But such expectations, like any others, need not be fulfilled.

Thus Isaiah Berlin, quoting the epigram "Freedom for the pike is death for the minnows," has interpreted it to mean that "the liberty of some must depend on the restraint of others."[2] The concept of liberty, as has been argued elsewhere, is such that it makes no sense to speak of it as being enlarged or diminished—much less, maximized

or minimized—within a society, but only as being distributed in a certain way.[3] Nor, therefore, can liberty be said to be accorded or denied priority by any particular set of social institutions.

Nevertheless, many writers and political figures have held that the minimization of noncontractual legal restrictions on individual liberty—slavery being the paradigm case—is the essential mark of a free society. And it is this belief that is usually identified as the distinguishing feature of classical liberalism. The progressive transition from "status to contract" is, for instance, the central theme of the Whig interpretation of history. Maurice Cranston expresses what is unquestionably a common view when he says, "By definition, a liberal is a man who believes in liberty."[4] But if, as I am suggesting, we can assess societies only in terms of their interpersonal distributions of liberty and not in terms of their aggregate amounts of liberty, then it is plain that H. L. A. Hart is much nearer the mark in claiming:

> that the principle that all men have an equal right to be free, meagre as it may seem, is probably all that the political philosophers of the liberal tradition need have claimed to support any programme of action even if they have claimed more.[5]

Certainly the historic tasks of liberalism, consisting in the abolition of the legal privileges and disabilities associated with slavery and serfdom in their developed and vestigial forms, can readily be understood as programs for realizing *equal* liberty, and were so understood by writers such as Locke, Kant, and the early Spencer in setting out the implications of their natural rights positions.[6]

I shall take it, then, that the principle entitling each person to equal liberty furnishes the grounds for a categorical condemnation of slavery. What follows is an attempt to explore the implications of this principle and to display the requirements it imposes on any legal order that embodies it. Hart, in the passage quoted above, describes this principle as being of "meagre" appearance. I shall try to show that it is neither quite so meagre as it may seem, nor is its prescriptive imposition exhausted by the items characteristically found on classical liberal agenda.[7]

Legal systems consist essentially of enforceable rules and, therefore, consitute sets of rights and correlative duties. To apply a normative standard—such as the equal liberty principle—to a legal system is to attempt to ascertain whether the set of rights constituted by that system's rules conforms to the requirements of that standard.

Rights are a certain kind of claim that individuals may make one against another. Like any other term, the word "rights" has certain logical properties such that, if a claim lacks those properties or possesses properties incompatible with them, it cannot be a right. And if it cannot be a right, it cannot be constituted by the rules of a legal system.

One property of rights is that they can be exercised. We speak of persons exercising their rights or of being prevented by others from doing so. A right thus denotes a sphere of action, a domain within which the right holder may act—or compel others to act—as he chooses, and must not suffer interference by others with the execution of his choices. This fact about the concept of "a right" allows us to infer a criterion for assessing the coherence of a set of rights, that is, a criterion for determining whether the prescriptive impostions of a rule or set of rules can intelligibly be called rights: *a set of rights must be such that it is logically impossible for one person's exercise of his rights within that set to interfere with another person's exercise of his rights within that same set.*[8] I do not, of course, mean to suggest that our systems of, say, legal rights meet this requirement in any simple and straightforward way. If they did, and if there were no dispute about the facts of the cases in question, our courts would presumably be empty of all persons except those appearing to be sentenced on uncontested charges. Rather the point is that, in adjudicating between opposing claims, the court is determining which contestant was within his rights and which was not.[9] The court cannot find for both the plaintiff and the defendant on a single charge. Thus, where one person's rightful action can interfere with another's rightful action, the underlying structure of rights is incoherent inasmuch as it is constituted by rules that are, by implication, mutually inconsistent and to that extent prescriptively meaningless. The rules of such a system imply, of one and the same act, that it is both permissible and impermissible.

Hence the characteristics of a set of mutually consistent rights-constituting rules are discovered by considering the conditions under which different persons' actions cannot interfere one with another. All actions consist in some kind of motion: the passage of some body from one place to another, the displacement of some material substance from one portion of physical space to another. Interference by one individual's action with another's occurs if, and only if, at least one of the material or spatial components of the one action is identical with one of the material or spatial components of the other ac-

tion. Let us call the material and spatial components of an action its *physical components*. It follows that one individual's action cannot interfere with another's if, and only if, none of their respective physical components is identical. A rule or set of rules assigning the possession or exclusive use of each particular physical object to particular individuals, will, if universally adhered to, exclude the possibility of any individual's actions interfering with those of another in any respect. Such property rules would thus assign, to individuals, ranges of permissible and inviolable actions—rights—composed of their uses of their allotted bundles of physical objects. And the set of rights thereby prescribed would satisfy the previously stated condition of being coherent, inasmuch as the exercise of any one of them could not constitute an interference with the exercise of any other of them.[10]

Our problem is thus one of delineating the basic features of a set of rights embodying the principle of equal liberty. And it is to this theoretical task that classical liberalism has preeminently addressed itself. As was suggested above, however, liberals have failed to trace out fully the implications of the equal liberty principle. Correctly believing that the minimization of noncontractual legal restrictions (on the kinds of activities individuals may pursue) is a *necessary* condition of equal liberty, many of them have mistakenly assumed that it is also a sufficient condition of that state of affairs. In consequence, much laissez-faire thinking of the eighteenth and nineteenth centuries, as well as much current writing in that tradition, betray an erroneous if understandable view of the kind of juridical framework required to realize equal liberty. We *do* find, in the work of Locke, Kant, Spencer, and latterly Nozick, attempts to grapple with the difficulty presently to be examined. And some of these attempts are acute and painstaking indeed. But none of them is successful in closing what remains a serious hiatus in the liberal argument—an omission that can be understood to have been made good by arguments offered from a putatively opposed moral and political commitment.

What is the nature of a set of property rights embodying the principle of equal liberty? One kind of property right that this evidently entails—and that has historically been taken to be so entailed—is each person's title to his or her (physiologically) own body. Having a right to a body means, as with a right to any object, being entitled to the possession or exclusive use of that body. Thus Nozick:

> The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X.[11]

Being entitled to the use of a body means, as with an entitlement to any animate object, being entitled to the *labor* of that body. A slave is a slave inasmuch as he lacks any such right.[12] But one's body cannot constitute the whole of one's domain of equal liberty, since, while the body or parts of it must comprise some of the physical components of any of one's actions, it necessarily cannot be the only such component. Thus, individuals' entitlements under the equal liberty principle must extend to objects external to their bodies. It is the formulation of this aspect of their entitlements that has traditionally given rise to issues of considerable complexity.

Specifically, the difficulty has been to formulate an entitlement to nonhuman physical objects that is universal in its incidence *and* that does not have the logical effect of noncontractually conferring the ownership of (part or all of) one person's labor upon another. Thus, Nozick has rightly observed that most commonly proposed principles of distributive justice

> institute (partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people.[13]

Any distributive principle that, in making noncontractual assignments of property to individuals, either restricts the kinds of use to which it (and it alone) may be put by them or confiscates and reassigns the results of those uses, paradoxically implies that what belongs to one person by right may be disposed of by another by right and, in particular, that some have a right to the persons of others.[14]

For these reasons, many laissez-faire theorists have drawn the conclusion that the distributive impositions of equal liberty cannot be such as to allow the permissibility—much less the necessity—of regulating individuals' nonforcibly acquired property, or of confiscating and redistributing objects with which they have "mixed their labor." To reject this conclusion is to affirm that some have a noncontractual title to the fruits of others' labor, hence to the labor embodied in

those objects, and thus by extension to the persons whose labor that is.[15] This is tantamount to affirming the permissibility of slavery. It is these considerations which have led writers such as Locke, Kant, Spencer, and Nozick to adopt the view that the only kind of objects to which the strictly distributive requirements of the equal liberty principle *do* apply are those that do not embody human labor: namely, natural resources.[16] However, the accounts offered by these and other writers, concerning the nature of these requirements, differ significantly.

Indeed the "land question," as it came to be called, considerably exercised liberal and radical thinkers from the late eighteenth until the early twentieth century. But it was gradually submerged beneath the ascendancy of utilitarian influences in economics specifically, and the optimizing claims of laissez-faire theory generally. Utilitarianism's eschewal of natural rights and, in particular, neoclassical economics' rejection of the earlier classical view—that there are theoretically important asymmetries between the conditions respectively governing different production factors' effects on the creation and allocation of values—fostered the undue neglect that, until very recently, has been accorded to the problem of what *original* (i.e. noncontractual) entitlements or endowments rightfully accrue to all individuals. Often implicit in such neglect was an acceptance of the legitimacy of whatever property titles currently happened to enjoy legal sanction, that is, regardless of whether they derived from forcible acquisition.

But the limitations of neoclassical economics, and especially its incapacity to identify welfare-maximizing or productively efficient allocations *that are not distribution relative*[17]—as well as the familiar and related inability of utilitarianism to underwrite any form of personal inviolability—have lately generated renewed interest among liberals in theories of just distribution and, therefore, in the question of what it is that each individual is originally entitled to. As was noted above, natural rights thinkers have been at one in asserting that these original entitlements pertain to natural resources, but they have differed in their characterizations of such entitlements. Thus, we are offered the following diverse interpretations of the kind of right involved: for a historically limited time, each person was entitled to "as much and as good" natural resources as others (Locke); an original community of land gives way to unlimited private titles through positive personal acts of occupancy (Kant); each person has an equal title to the land by virtue of his equal share in society which

owns it (Spencer); each person may appropriate unlimited amounts of natural resources, provided he compensates others for any net loss of well-being they incur as a result of their loss of liberty to use the appropriated object (Nozick). In each case, except that of Spencer, the private title thereby acquired is held to be one to an object that can rightfully be transformed or transferred only as its appropriator chooses,[18] and thus constitutes a permanent bequeathable property right.

It was earlier remarked that liberals are mistaken in believing the traditional injunctions of laissez-faire to prescribe the sufficient condition of equal liberty. The efforts of natural right thinkers to make good the implied ommission—by supplying an account of original appropriative rights—were described as acute but, in the event, unsuccessful. Hence it is to this desideratum that reference was made in reporting a serious hiatus in the liberal argument. In the remainder of this paper I shall try to show (1) why the attempts of liberal writers to eliminate this hiatus have failed, and (2) the kind of account which may be adequate to this task.

Consider, first, Locke's construction of individuals' original rights. The claim that for a limited (early) historical period each person was entitled to appropriate a quantitatively and qualitatively similar collection of natural resources is open to the unanswerable objection—noted by Nozick—that a right of historically limited validity and, thus, of less than universal incidence, cannot be constituted by any set of moral rules that extend the same kinds of right to all persons. The titles thereby established can preclude historically later persons from exercising the same kind of right. Hence the set of rights constituted by Locke's rule fails the test of coherence outlined previously. The same criticism applies to Kant's even more unbounded right of first occupancy, which betrays a rather uncharacteristically slavish adoption of the contemporary conventions of German jurisprudence and of the positive provisions of Roman law from which they derived. Thus, Spencer observes:

> For if *one* portion of the earth's surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has an exclusive right, then *other* portions of the earth's surface may be so held; and eventually the *whole* of the earth's suface may be so held. . . . Observe now the dilemma to which this leads. Supposing the entire habitable globe to be so enclosed, it follows that if the land-

> owners have a valid right to its surface, all who are not landowners, have no right at all to its surface. Hence, such can exist on the earth by sufferance only. They are all trespassers. Save by the permission of the lords of the soil, they can have no room for the soles of their feet. Nay, should the others think fit to deny them a resting-place, these landless men might equitably be expelled from the earth altogether. . . . it is manifest that an exclusive possession of the soil necessitates an infringement of the law of equal freedom. For men who cannot "live and move and have their being" without the leave of others, cannot be equally free with those others.[19]

Spencer's view that each person is entitled to an equal share of natural resources—a right exercised through his equal membership in society—avoids the difficulties besetting Locke's and Kant's formulations, but raises other questions to be examined presently.

Nozick's revision of the Lockean construction also fails, but its failure has the merit of helping to clarify the basic difficulty in specifying individuals' original entitlements and, thereby, indicating the direction in which a solution to this problem may be sought. Nozick suggests that what is required for an appropriation of natural resources to be rightful is that the appropriator must compensate all others who are thereby deprived of the level of well-being they might otherwise have expected to attain. This proviso generates a series of conceptual problems among which are: (1) that the compensation owed is logically indeterminable due to the proviso being circular, inasmuch as nonappropriators' net loss of well-being is not identifiable independently of the amount of compensation owed them;[20] (2) that Nozick's suggested index of well-being—market prices—is distribution relative and thus cannot consistently be treated as a parameter for determining the very distributive entitlements of which it is necessarily a function;[21] and (3) that market prices cannot in any case be taken to represent every person's valuation of every object, without rendering inexplicable why people ever engage in market exchange.[22]

More interestingly, Nozick's proviso, in requiring that compensation be paid out of their holdings, imposes restrictions on what owners may do with their nonforcibly acquired property, and licenses confiscation of it. Thus, as he concedes, his proviso on appropriation dictates noncontractual restrictions on the freedom to dispose of one's holdings—precisely that freedom that lies at the heart of laissez-faire doctrine.[23] Finally however, this complex proviso fails to es-

cape the very objection with which Nozick initially taxes Locke and that motivates his revision of Locke's formulation. For there appears to be no way in which the compensation proviso can be interpreted so as to yield a right of historically unlimited validity. This is because an appropriator can neither know, nor therefore compensate for, the loss of well-being incurred—in consequence of their being deprived of the use of the appropriated object—by persons who do not yet exist. For Nozick, as for Locke, the incidence of appropriative right is unavoidably confined to historically earlier individuals. As such, it cannot form an element of a coherent set of rights and it cannot be consistent with the requirements of equal liberty.

It is not unilluminating to reflect upon what it is about the "human condition" that renders so intractable the problem of formulating an original entitlement of universal incidence. If the world in which we live were (self-contradictorily) one of unlimited natural resources, there would be no difficulty about applying Locke's simple "as much and as good" requirement over an unlimited span of time and, thus, on a universal basis. Indeed, that requirement would be superfluous. That no world can be one of unlimited natural resources is painfully apparent to us today, confronted as we are on all sides by pollution and raw material shortages, to say nothing of the prospect of general ecological disaster. On the other hand, that this necessary truth may have been less than fully apprehended by earlier liberal writers is perhaps indicated in Locke's hesitantly extenuatory remark that "in the beginning all the World was America;"[24] in some classical economists' optimistic classification of clean air and water as "free gifts" of nature; and in the utterly extravagant claim of that nineteenth-century popularizer of laissez-faire doctrines, Harriet Martineau, that

> As the materials of nature appear to be inexhaustible, and as the supply of labour is continually progressive, no other limits can be assigned to the operations of labour than those of human intelligence. And where are the limits of human intelligence?[25]

Their entertainment of such beliefs renders more understandable, as was earlier observed, the erroneous conception entertained by many laissez-faire theorists of the juridical framework required to confer equal liberty upon each individual: namely, the conception that only the right of self-ownership and the absence of any (other) noncontractual restrictions on conduct are necessary. Owning oneself, one

could proceed to "mix one's labor" with any amount of natural resources without running the risk of thereby depriving others of the same liberty.[26] Such a belief readily licenses, if it does not necessitate, the attribution of poverty to idleness—an attribution that, viewed in this context, betokens little of the inhumanity and self-serving hypocrisy with which its subscribers have frequently been charged.

If we are sadder and wiser than some of our forebears concerning the exhaustibility of natural resources, there is nevertheless an alternative—if equally unwarranted—hypothesis under which the Lockean requirement could constitute a nonenslaving original right of universal incidence. Some brief consideration of this condition will also help to shed light on the nature of our problem and on the constraints governing its solution. Suppose that the membership of the class of persons were historically constant in identity and, therefore, in number. In this circumstance, and even allowing that natural resources are limited, it would in principle be possible for Locke's rule to apply universally. Each person would be originally entitled to—and could rightfully mix his labor with—a collection of natural resources such that a quantitatively and qualitatively similar collection was left for every other person. Having acquired his equal share of resources, each person would be entitled to dispose of them as he wished and in the absence of any forcible interpersonal transfers, each person's holdings would at all times be in conformity with the universal enjoyment of the right of self-ownership.

But this supposition of constant identity is (contingently?) untrue. Consider, then, another contrary-to-fact condition under which the Lockean requirement could operate to create a right of the requisite kind. Let us now suppose, not that all persons are at all times contemporaneously existing beings, but rather that the total number of persons who are yet to exist is always knowable. In this circumstance, too, the Lockean rule could assign determinable natural resource entitlements to all individuals. Again, however, the supposition is groundless, and not merely because this datum was unavailable to our ancestors. For it is true that such a datum could be, and could have been, knowable in the circumstance of an appropriately designed and *enforced* population control program. But this possibility is irrelevant here since any such program would necessarily violate existing persons' rights of self-ownership—that right which is presupposed by any right to nonhuman objects. Not owning themselves, slaves are logically debarred from owning anything else.

A final and more complex counterfactual assumption will serve to

complete our delineation of the source of the difficulty. Imagine that the membership of the class of persons, though neither constant nor (numerically) knowable, is divided into an indefinite number of generations, which, however—and unlike human generations as we know them—do not overlap one another in time. That is, imagine that successive human generations are serially ordered in the same manner as generations of agricultural crops and that the members of any one generation share no element of contemporaneity with the members of any other generation.[27] The pertinence of this supposition is as follows. If all existing rights holders initially confront the same supply of natural resources at the same time, the Lockean rule would constitute an original right of universal incidence. Each person would be entitled to an equal share of whatever natural resources were left. Nor would the exhaustibility of natural resources pose a problem for this rule in respect of the original entitlements of members of later generations. For the assumption of completely nonconcurrent generations allows us to extend the jurisdiction of this rule. It was previously noted that natural rights thinkers believed that individuals' original rights—the rights they possess noncontractually—could pertain only to natural resources. This is because any original entitlement to man-made things would confer upon some individuals a noncontractual title to the labor and, thereby, to the persons of others. It would thus violate the requirement of equal liberty and constitute slavery. But it would seem beyond dispute that dead men cannot be slaves. When one has ceased to exist, one is, so to speak, liberated from the danger of having one's liberty curtailed. And so the noncontractual assignment to others, of the titles to those objects that embody a deceased individual's labor, cannot be said to constitute an augmentation of their liberty at the expense of a diminution in his. It cannot be said to violate the equal liberty principle. Now, in a world of entirely non-concurrent generations, the collection of objects that initially confronts all existing rights holders at the same time consists of whatever natural resources remain *and* of man-made objects embodying the labor of only deceased individuals. A right to an equal portion of *all* these objects on the part of each rights holder would at once be a right of universal incidence and one that does not assign to some a noncontractual title to the labor of others, since there are no "others."

The immediate objection that might be raised against this argument is that deceased persons may have bequeathed their possessions to members of the subsequent generation and hence that any non-

contractual allocation of these objects entails a forcible violation of the right that owners have to dispose of their property as they wish. Indeed, we are all familiar with Burke's view—a view entailed by this objection—that the dead can and do have rights against the living. Clearly, this claim raises questions of far greater complexity than can satisfactorily be handled here. But it seems to me that there is at least one consideration that counts—and counts decisively—against its acceptance. This consideration arises out of the requirements of the equal liberty principle itself. For any individuals who have rights against one another are necessarily encumbered with duties to on another. What duties, then, do the dead owe to the living? Is it possible for them to act in dereliction of such duties? Suppose there can be such duties and such derelictions. In any case, one thing is certain: the equal liberty principle imposes upon all rights holders the duty to deprive no one of his original entitlement. If the dead remain rights holders, how must they act—or, more precisely, how must they have acted—to fulfill this duty? Presumably, they owe it to each subsequent (as well as current) rights holder to insure that the supply of natural resources available for his appropriation is as great as that which was available to each of them. They have a duty to appropriate no more than would leave such a remainder. But we have already seen that the condition for this remainder to be knowable is that the number of subsequent rights holders be knowable. And we have already noted that this condition cannot be fulfilled. Members of earlier generations cannot fulfill a duty to respect the original entitlements of their posterity because there can be no such duty. It follows that deceased persons are not part of the network of rights holders comprehended by the principle of equal liberty, that this principle cannot sustain any right of bequest, that the dead can have no rights against the living. Their possessions, embodying their labor, are as eligible to constitute the original entitlements of others as are unappropriated natural resources.[28]

This finding, however, avails us little in our quest for a nonenslaving right of universal incidence, once we relax our assumption that human generations are entirely nonconcurrent. The foregoing argument—that the principle of equal liberty sustains no right of bequest—was, of course, constructed independently of that assumption and its validity is not affected by an admission of the fact that successive generations do share some element of contemporaneity. But the relaxation of the assumption of nonconcurrence does throw back into question the identity of the kinds of object which can permissibly

constitute each individual's original entitlement. We cannot now include man-made objects *simpliciter*, since, apart from the irrelevant fact that these are already owned by the living persons, many or all of them can embody the labor of living persons.

With the relaxation of this third counterfactual assumption, we appear to have exhausted the range of alternative possible circumstances in which an original right—bearing the features required by the equal liberty principle—can be formulated along Lockean or semi-Lockean lines: that is, along lines that confer on each person a noncontractual title to a particular bundle of objects. The aspects of the human condition that render the problem so intractable consist in the indefinite reproducibility of persons and the nonreproducibility of natural resources. If either of these conditions did not obtain, our problem would be soluble along Lockean lines. Because they do obtain, most attempts to formulate individuals' original entitlements have consisted either in (1) assigning original rights to things to only some persons (classical liberalism), or (2) assigning original rights to things to all persons, but the rights thereby assigned dictate the constant redistribution—or disassignment—of assigned things and their manufactured derivatives, and thus noncontractually confer the ownership of some living persons' labor on others (various other moral and politiical theories). Both formulations are inconsistent with the principle of equal liberty, since the first lacks universality and the second underwrites slavery.

An indication of the direction in which a solution to these difficulties is to be sought is, I believe, to be found in the proposal offered by the early Herbert Spencer. Although, in his view, the principle of equal liberty can support no restriction on free exchange nor on what individuals may rightfully do with what is theirs, it does at the same time encumber all persons with the duty to respect the entitlement of each to an equal share of natural resources. This entitlement takes the form of each person's being an equal shareholder in society, which, as a joint-stock company, owns all such resources and leases them to individuals or groups for a specified period.[29] Now, this proposal raises two difficulties, one of which we have already encountered. The exhaustibility of natural resources makes it possible that, with the expiration of leases, there may no longer be any assets which revert to shareholders for their further disposition. That is, leaseholders may have mixed their labor with all available natural resources.[30] The second problem engendered by Spencer's formulation has to do with the nature of the liberty conferred upon an individual

by virtue of his entitlement, not to specific objects, but to a stockholder's share in jointly owned objects. Can a right to participate in collective decisions affecting the disposition of jointly owned assets sensibly be construed as affording to each individual the domain of inviolable choice that the equal liberty principle purports to confer upon him? It seems fair to say that Spencer's account, suggestive as it undoubtedly is in many respects, fails to come to grips with either of these difficulties, and that their solution—if they can be resolved—involves an altogether more profound departure from prevailing arrangements than he contemplated. Let us consider them each in turn.

The first difficulty has to do with what can permissibly he owned by society construed as a joint-stock company. If it is to be only natural resources, if only unused resources are what revert to collective disposition when leases terminate, shareholders who are members of later generations may find themselves lacking any original entitlement. If, however, what reverts to society are *all* unconsumed objects—all objects that have not, so to speak, become parts of leaseholders' persons in a strictly physical sense—no problem arises in respect of later shareholders' deprivation.[31] To this proposal it might be objected that, although it protects the right of self-ownership to the extent that it leaves intact each individual's exclusive title to his own person, it nevertheless also violates that right by conferring upon shareholders the titles to objects embodying leaseholders' labor. As such, this formulation appears to assign original ownership of (part of) some persons' labor to others. This objection is, however, groundless, because the entitlement of shareholders to objects embodying leaseholders' labor is not an original but a contractual one. No one can be originally or noncontractually entitled to the labor of another. But leaseholders, in contracting terminal leases for the use of shareholders' assets, would thereby be contracting to relinquish all unconsumed (including labor-embodying) objects to shareholders when those leases expire. Leaseholders' labor is contracted, not conscripted nor confiscated.

Our second difficulty revolves around the wider and more troubling issue of whether the personal inviolability associated with one's exclusive ownership of some objects can equally be associated with one's shared ownership of all objects. Notice that if everyone enjoys an equal right to determine the disposition of the same set of objects, there is a clear sense in which the demands of the equal liberty principle are at least formally fulfilled.[32] Perhaps, then, we should let the analysis end at this point. But one would, I think, be understandably

dissatisfied with such a conclusion to an argument about individuals' natural rights or original entitlements, inasmuch as it appears to display them as being purely procedural and not substantive. Rights to be heard, to participate, to have one's preferences counted, and so forth are just not the same as rights to have one's practical choices fulfilled. And the personal liberty implicit in the latter would seem intuitively to be not merely different from, but also more significant than, that implicit in the former—even if, as in the present case, the range (of objects) over which individual choices are exercised is inversely greater in the former than in the latter.[33] I do not know, nor do I propose to consider here whether this intuition is ultimately justifiable. Suffice it to say that the reasons why we commonly hold a substantive right to be more significant for personal liberty than a procedural one are as follows. A substantive right endows its owner with a domain of decision making such that, barring unforeseen circumstances, the outcomes of the choices he makes within that domain cannot permissibly be contrary to his preferences or values. But the same cannot be said of a procedural right. For such an entitlement is one to make choices in a decision-making process, the outcomes of which possess the crucial property that they *can* permissibly be contrary to a chooser's preferences or values even if no unforeseen circumstances intervene. Since we are only too aware of the possibility of the formation of persisting majorities and permanent minorities, we are generally loath to construe the possession of a procedural right—such as a right to vote—as conferring more than an adjunctive and relatively attenuated form of personal liberty upon its owner.

The question to be answered, then, is whether, we are forced to conclude that the rights of shareholders—those rights that, I have argued, are individuals' natural or original rights—cannot but be of a procedural character. And to this the answer is, I think, no. Again, Locke is a helpful guide. He suggests that the essence of something being a person's property is that it cannot be disposed of by others without his consent.[34] If we interpret each shareholder's title as a right that none of society's assets be disposed of without his own consent, the right we thereby confer on each individual is a substantive and not a procedural one. It gives him an indefeasible claim against anyone disposing of an asset in a manner to which he has not given his approval. All persons have a duty to forbear from dispositions of this kind. It is, indeed, a right of similar form (thought of different content) that Rawls confers upon each person in the "original position," when he requires that principles of justice be chosen unani-

mously. There would thus be good grounds for describing his theory as one that takes as its prescriptive starting point each person's natural or original right to determine the "basic structure" of his society.[35]

Let me end this somewhat protracted argument by summarizing its main points and clarifying a subsidiary one. We began by asking for the grounds upon which slavery can be condemned categorically and located these grounds in the principle of equal liberty. This principle was taken to confer upon each individual an original or noncontractual right to his own person and, hence, to his own labor. Our problem thus became one of formulating a right to nonhuman objects—the receptacles or fields of labor—that would possess two properties: (1) that it is capable of being exercised by all individuals, regardless of their temporal locations; and (2) that it does not confer, upon any individuals, a noncontractual title to the labor of others. This right was shown to consist in the title to an equal shareholding in all nonhuman objects—a title that makes any permissible disposition of these objects subject to its owner's consent. What I have admittedly not attempted to explore in this chapter are the sorts of bargaining mechanism and institutional structure required to sustain such a right. For although their nature is obviously of the first importance, it is equally clear that the question of what they would be like is conceptually distinct from that of the form of the principle they are to embody. Little is gained from blurring this distinction, and it may be profitable to treat the two issues separately.

What can be said, however, is that these mechanisms and structures—whatever specific forms they might assume—appear to bear certain central affinities to *some* conceptions of socialism. That is, they appear to be the necessary conditions for realizing that socialist injunction that requires that no one be unjustly deprived of the fruits of his labor: that the circumstances in which any individual enters into a contractual relation of exchange must be equitable ones.[36] Socialist theories that place principal emphasis on the *exploitative* character of such exchanges in nonsocialist societies are theories that imply the adequacy of the kind of right outlined above for the realization of socialism. One might therefore say that socialism, thus conceived, is the embodiment of the principle (equal liberty), if not the practice, of classical liberalism. On the other hand, those conceptions of socialism that assign primary importance to distribution according to need—and that, in that respect, suggest that welfare states are approximations to socialism—cannot be seen as embodied in this right and may well be incompatible with it.[37]

Finally it should be observed that, in saying the requisite right must be of this character because of *inter alia* the indefinite reproducibility of rights holders, we are not positing duties to future generations as the grounds for this right. The grounds for the right taking this form are conceptual, not moral. It is quite true that this is a right that can be enjoyed by all members of an indefinite number of future generations. But the reason the right must be of this kind has nothing to do with duties to them. Rather, it is that only this right guarantees that persons who are born at different times, but who nevertheless share some element of contemporaneity, can all be said to be equally free with respect to one another. It is in constructing a right conferring equal liberty upon all persons whose existences are at least partially concurrent, that we *pari passu* confer rights on members of future generations. These are rights they hold against their contemporaries, but not against their entirely noncontemporaneous predecessors. For under the equal liberty principle there are no duties to nonexistent persons, be they dead or as yet unborn.

NOTES

1. Indeed, defenders of slavery have celebrated it as "the beneficent source and wholesome foundation of our civilization," "Moral and civilizing, useful at once to blacks and whites," "the highest type of civilization yet exhibited by man"; cited in J.E. Cairnes, *The Slave Power* (London and Cambridge, 1863)), p. 169. See also R.B. Davis, *The Problem of Slavery in Western Culture* (Ithaca, 1966), esp. part II.
2. *Four Essays on Liberty* (Oxford, 1969), p. 124.
3. Hillel Steiner, "Individual Liberty," *Proceedings of the Aristotelian Society* 75 (1974–75), pp. 33–50, esp. pp. 48–50.
4. "Liberalism," *The Encyclopedia of Philosophy*, ed. P. Edwards (New York, 1972), vol. 4, p. 458.
5. "Are There Any Natural Rights?" *Philosophical Review* 64 (1955), pp. 175–91; p. 176.
6. Cf. J. Locke, *Second Treatise*, chap. II, sec. 4, and chap. IV; I. Kant, *The Metaphysical Elements of Justice*, ed. J. Ladd (Indianapolis, 1965), pp. 33–45; H. Spencer *Social Statics*, 1st ed. (London, 1851), pp. 75–109.
7. Thus, although the equal liberty principle is the only grounds for a categorical rejection of slavery, it also serves as grounds for condemning forms of servitude other than the historically familiar institution of chattel slavery; cf. n. 12, below.
8. For a full account of the conditions that must obtain for this criterion to be satisfied, see my "The Structure of a Set of Compossible Rights," *Journal of Philosophy* 74 (1977), pp. 767–775.
9. I leave aside here the important question of whether the court's

verdict reports a discovery or a decision: in the former case, the respective contestants' rights and duties are previously determined; in the latter, they are created *ex post*. I also leave aside the question of whether there can be *ex post* duties.

10. Cf. Steiner, "Individual Liberty," and "The Structure of a Set of Compossible Rights."
11. Robert Nozick, *Anarchy, State and Utopia* (Oxford and New York, 1974), p. 171.
12. What are the referential limits of the concept of slavery? This intricate and troubling issue is not a purely semantic one. For the general condition of involuntary servitude—or, more specifically, the involuntariness of the relation of servitude—seems susceptible of an indefinite number of gradations. In *Progress and Poverty*, Henry George offers the following observation: "Place one hundred men on an island from which there is no escape, and whether you make one of these men the absolute owner of the other ninety-nine, or the absolute owner of the soil of the island, will make no difference either to him or to them. In the one case, as the other, the one will be the absolute master of the ninety-nine—his power extending even to life and death." (London, 1884), p. 268. How would our appraisal of this society be affected if the ownership of the island were vested in *two* of the hundred persons? For an illuminating account of another dimension in which gradations of involuntary servitude arise, see Nozick's "Tale of the Slave," op. cit., pp. 290–92, and the earlier argument of Spencer, from whch Nozick's is derived, in "The Coming Slavery," *The Man versus the State* together with *Social Statics*, 2d ed. (London, 1892), pp. 315–16. Davis, op. cit., chap. 2, provides a useful resume of the historical difficulties in delimiting the institution of slavery. One of the reasons underlying the frequent situating of various other forms of servitude on a continuum with slavery is set out in n. 15, below. That said, it is nevertheless important to remember that there are significant conceptual differences between chattel slavery and other relations of servitude—differences that, under certain conditions, have been of the utmost practical consequence for persons in such relations. I am grateful to my colleague, Ursula Vogel, for insistently reminding me of this fact. See also M.I. Finley "A Peculiar Institution" *Times Literary Supplement*, July 2, 1976, pp. 819–821.
13. Op. cit., p. 172.
14. Such principles are incoherent; cf Steiner, "The Structure of a Set of Compossible Rights."
15. A number of writers have queried the validity of this inference; that is, they have denied that the premises 'X owns L' and "X mixes L with O" imply that "X owns O." They suggest that one could equally conclude that X loses L; cf. Lawrence Becker, *Property Rights* (London, 1977), p. 34; Nozick, op. cit., pp. 174–75. It seems to me, however, that the inference is unimpeachable, given the two considerations conventionally assumed in drawing it: (1) that O is an object owned by no one; and (2) that to own something is to have an exclusive entitlement to dispose of it. Doubts as to the validity of the inference may, in

part, be due to the fact that the conclusion is slightly misstated in the above form. Strictly speaking, it should read *not* "X owns O" *but rather* "X owns OL," since the inference in fact contains a suppressed premise that immediately precedes the conclusion—namely, "X thereby creates OL." If one denies the properly stated conclusion—if one affirms "X does not own OL"—it follows that persons other than X may dispose of OL and, hence, of L. And this directly contradicts the first premise, "X owns L."

16. Cf. Locke, op. cit., chap. V; Kant, *The Philosophy of Law*, ed. W. Hastie (Edinburgh, 1887), part I, chap. II, sec. 1 (this chapter is omitted from the Ladd edition of the same work, op cit.); Spencer, *Social Statics*, 1st ed., chap. 9; but compare this with the revised 1892 edition of the same work, pp. 60–65, and with his *Justice* (London, 1891), chap. 13 and Appendix B, which reflect the utilitarian tendencies of Spencer's subsequently developed Social Darwinist beliefs; Nozick, op. cit., pp. 174ff.
17. No maximizing calculus can operate in a distributive vacuum; cf. n. 21, below.
18. And as is chosen by anyone whom it is tranferred through an unbroken series of nonforcible transferences.
19. Spencer, op cit., pp. 114–15.
20. Cf. Hillel Steiner, "Nozick on Appropriation," *Mind* 87 (1978), pp. 109–10.
21. See, for example, Peter Newman, *The Theory of Exchange* (Englewood Cliffs, 1965), p. 50: "prices are not given exogenously in the exchange situation, from the outside so to say, but are intrinsic to the problem embedded in the individuals' . . . preferences and initial endowments of goods."
22. Cf. Hillel Steiner, "The Natural Right to the Means of Production," *Philosophical Quarterly* 27 (1977), pp. 41–49; p. 46.
23. Nozick, op. cit., pp. 178ff.
24. Locke, op cit., chap. V, sec. 49.
25. *Illustrations of Political Economy* (London, 1832–34), quoted by H. Scott-Gordon, "The Ideology of Laissez-Faire," in A.W. Coats, ed., *The Classical Economists and Economic Policy* (London, 1971), p. 194.
26. It was conceded by some that, for later individuals, this might only be possible at the frontiers of their (or another) society—a concession that at once betrays the chief lacuna of this theory and suggests the importance of the notion of "the frontier" for some forms of liberalism.
27. We might introduce a grain of realism into this fable—and indirectly be more true to crops at the same time—by specifying that this entirely unshared contemporaneity subsists between generations of *moral agents*, that is, between generation of persons who have attained maturity or the "age of reason" and who are, therefore, rights holders.
28. For a convincing (though more qualified) criticism of the claim that the dead can have rights against the living, see E Partridge, "Posthumous Interests" (paper read at the Annual Meeting of the American Philosophical Association, Western Division, 1978). One might have

thought that the fact that Burke's emphatically antinatural rights theory entrenches this claim as its fundamental prescriptive premise, might have given the proponents of classical liberalism cause for some hesitation in endorsing a right (of bequest) that entails that claim.

29. In practice, Spencer suggests, such leases should be tendered on the basis of competitive bids.

30. Henry George's solution to the problem discounts the importance of assigning land on the basis of terminal leases and proposes, instead, that society impose a tax on the site value of land, i.e., on its value independent of the value of improvements made upon it—in short, its rent. But, apart from the empirical difficulties of applying this proposal, it falls prey to the same (second) objection made above to Nozick's appropriation proviso: namely, that the valuation in question, being based on market prices, make the just distribution a mathematical function of the prevailing distribution.

31. In an earlier paper I suggested an intermediate position: what belongs and reverts to society need only be the means of production (cf. "The Natural Right to the Means of Production"). This appears to be unsatisfactory in a theoretically important respect. For although the concept of "means of production" may be sufficiently precise for most exercises in economic analysis, it is ultimately and seriously indeterminate in its reference. Forests are viewed in one way by nature lovers, in another by timber manufacturers. Even the modest toothbrush, so beloved of poltical philosophers concerned with the present sort of issue, is apparently a most useful instrument in the finishing of various decorative metals. Thus, whether an object is a capital good or something else is, in the final analysis, contestable and dependent upon respective individuals' particular preferences and priorities. And it is therefore clear that to designate only some kinds of object as constituting what rightfully belongs to society—as what each shareholder has an equal natural right to —would be to favor some individuals' preference sets at the expense of others'. To say this is not, of course, to preclude the (highly probable) possibility that shareholders may frequently wish to renew many existing leases. We are here concerned only with the formal question of where an object's ownership ultimately resides, not with what disposition of it shareholders would commonly find to be optimally advantageous.

32. See Nozick's imaginative discussion of an analogous point in his chapter, "Demoktesis," op. cit., pp. 227–92.

33. "Inversely greater" in the following sense. Let x be the number of right holders in a society. Under an equal partition of objects among separate owners, each individual would have a personal title to particular objects which amount to $1/x$ of all objects. But where all objects are collectively owned, each shareholder's dispositional choices range over $x/1$ of all objects, i.e., all objects. One can of course say that (formally) each shareholder has a $1/x$ *chance* of exclusively determining the disposition of all objects.

34. Locke, op. cit., chap. XI, sec. 138 passim.

35. Cf. John Rawls, "The Basic Structure as Subject," *American*

Philosophical Quarterly 14 (1977), pp. 159–65.

36. On this view, the equity of these circumstances depends upon the equity of the distribution of preexchange property rights—what is referred to in microeconomics as *endowments* (cf. n. 21, above).
37. The distinction between these two conceptions of socialism—and the tensions between them—are noted by Anton Menger, *The Right to the Whole Produce of Labor* (London, 1899; reprinted, New York, 1970), p. 5 passim.