

REPLY TO BLOCK ON LIBERTARIANISM IS UNIQUE

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WALTER BLOCK VERY BADLY misrepresents my views in his article “Libertarianism is Unique and Belongs Neither to the Right Nor the Left: A Critique of the Views of Long, Holcombe, and Baden on the Left, Hoppe, Feser, and Paul on the Right” (pp. 127-70 of this issue), and in some cases his characterization of them even seems to me to be defamatory. Let me try to set the record straight. First some background.

A common argument for libertarianism of the sort associated with writers like Nozick and Rothbard is that it follows more or less directly from the thesis of self-ownership, at least given the assumption that external resources start out unowned.¹ I used to endorse this sort of argument myself,² though I do not endorse it (or libertarianism itself for that matter) any longer. One problem I now see with it is that the thesis of self-ownership simply isn’t as determinate as its defenders

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¹If one assumes instead that external resources start out or otherwise ought to be regarded as commonly or equally owned, then even if one is committed to self-ownership, the result is a view that is very different from the sort of libertarianism associated with Nozick or Rothbard. Still, this combination of views (self-ownership together with egalitarian ownership of external resources) is regarded as a kind of libertarianism by those who defend it, a group of thinkers who call themselves “left-libertarians.” See Peter Vallentyne and Hillel Steiner, eds., *Left-Libertarianism and its Critics: The Contemporary Debate* (Basingstoke: Palgrave, 2000). For whatever reason, Block neglected to discuss this variety of left-wing libertarianism in his paper.

²See my book *On Nozick* (Belmont, Calif.: Wadsworth, 2003) and my article “There is No Such Thing as An Unjust Initial Acquisition,” *Social Philosophy and Policy* 22, No. 1 (January 2005), respectively, for my earlier defenses of the thesis of self-ownership and the claim that external resources start out unowned.

usually take it to be.³ There are several reasons for this. One reason is that to own something is to have a bundle of rights over it, so that the content of a claim of self-ownership cannot be determined until we first know what theory of rights grounds it. And some rights theories that can be said plausibly to entail a kind of self-ownership nevertheless do not entail all the rights over ourselves that libertarians claim we have. For example, Locke's theory of rights famously entails a kind of self-ownership, but also entails that we can have no right to commit suicide or in other ways to cause serious damage to ourselves.⁴ So, it is at the very least much too glib to assert that self-ownership all by itself entails libertarianism. There is no such thing as "self-ownership all by itself"; the notion is indeterminate until we specify a particular rights theory to ground it or at least give it content.⁵

That is a point about the "ownership" part of self-ownership. There are also considerations about the "self" part of the thesis. What exactly is a self in the first place? One needs to answer that question before one

³Another problem is that I now see that it is false to say that external resources start out with no one having any claim over them—not because we all somehow have an equal claim over them (as "left-libertarians" hold), but rather because (as traditional natural law theory holds) such resources have a divinely appointed end, namely the sustenance of human existence. Hence each human being has a right at least to access to the use of the earth's resources. This does not entail that everyone must have an *equal* share of the earth's resources, or even that everyone must have *ownership* of part of them; hence it does not entail a general redistribution of wealth. Indeed, traditional natural law theory entails very strong private property rights and holds that some degree of inequality is part of the natural order. At the same time, it also entails that property rights can never be *so* strong that it would be in principle unjust to redistribute even a small part of the surplus of the wealthy to aid those who are starving. Natural law theory condemns both socialism and libertarianism alike.

⁴See my book *Locke* (Oxford: Oneworld Publications, 2007) for detailed discussion. Incidentally, Locke's theory of rights is not what led me away from libertarianism, for I am not a Lockean, but a Thomist. I cite Locke only as an example.

⁵It is similarly pointless to appeal, as is sometimes done, to a "non-aggression axiom" to ground either libertarianism in general or self-ownership in particular, for what counts as "aggression" depends on what rights we have. In particular, if you take X from me without my consent, what you've done is "aggression" only if I had a right to X in the first place. (A thief is not a victim of "aggression" if you forcibly take away from him the TV set he stole from you.) So, we need first to develop a theory of rights before we can determine either what aggression is or what self-ownership amounts to. To try to build a theory of rights on either a non-aggression principle or the thesis of self-ownership has things backwards.

can know exactly *what* one owns by virtue of being a self-owner; and as I have argued elsewhere, some defensible answers are going to have implications for what we can be said to have rights to by virtue of being self-owners that are not conducive to a defense of libertarianism, as that view is usually understood.⁶ Again, to defend libertarianism it simply won't due to appeal to the thesis of self-ownership all by itself, or even in conjunction with the assumption that external resources start out unowned. For apart from a theory of the self, the thesis is simply indeterminate.

A third consideration is that what counts as a violation of self-ownership rights (whatever they turn out to be) is by no means as obvious as some libertarians suppose. Here it is useful to make a distinction between “formal” versus “substantive” self-ownership. Suppose we agree that the thesis of self-ownership, if it entails nothing else, entails at least that, unless you are guilty of a capital offense, you cannot justifiably be suffocated to death by another human being. So if Smith is an innocent man, and Jones grabs his windpipe and strangles him to death, Jones has violated Smith's self-ownership rights. So far so good. But suppose Smith and Jones are walking in some virgin meadow, heretofore unknown to and unclaimed by anyone. Jones, being a mad scientist, suddenly dons an oxygen mask and then activates a special device he has prepared that sucks away all the oxygen for the entire square mile around he and Smith, generously leaving enough oxygen in the air around Smith to last him another minute. He then tells Smith: “Sorry about that, but I need this particular parcel of oxygen for an experiment I'm conducting. Unless you can run very fast and very far on a minute's worth of oxygen, I'm afraid you're going to suffocate to death. I admit this is very cruel of me. But look, it isn't really an *injustice*, strictly speaking. You didn't own this square mile of oxygen, because no one did—it's virgin territory—so you really had no enforceable claim over it. But I acquired it, just now, with my device, ‘mixing my labor with it,’ as it were. So in fact it's now all *my* oxygen, and I don't have an obligation in *justice* to give any to you—even though, I acknowledge, I'm being very uncharitable in refusing to do so. Moreover, I'm not really ‘killing’ you anyway, any more than I'm ‘killing’ starving Third World children (or whomever) by deciding not to send money to them. In both cases, I'm just refraining from using my justly earned property

⁶“Personal Identity and Self-Ownership,” *Social Philosophy and Policy* 22, No. 2 (July 2005). The correct theory of personal identity, in my view, is Aristotelian-Thomistic hylomorphism. But this theory entails a version of natural law theory which in turn entails a theory of rights that is incompatible with libertarianism. This is one reason why I am no longer a libertarian.

in a charitable way, which I have a perfect right to do. Letting someone die is not the same as murdering him. Anyway, I guess you'd better start running!"

Now, has Jones violated Smith's self-ownership rights or not? We might ask it this way: Has he suffocated Smith (which, we've agreed, would violate his self-ownership rights), or merely let Smith suffocate (by simply refusing to offer assistance by giving up some of his own resources, which arguably would not violate Smith's self-ownership rights)? One possible answer is to say that Jones has respected Smith's right of self-ownership *formally* but not *substantively*. In other words, he has not, strictly speaking, damaged, trespassed, or in any other way violated anything Smith owned by virtue of being a self-owner: Smith has been left intact "from the skin inward." But he *has* nevertheless put Smith in the very sort of dire situation the avoidance of which is presumably part of the *point* of defending the thesis of self-ownership in the first place. He has followed the letter of the thesis of self-ownership but not its spirit.

The point goes far beyond the sort of science fiction scenario just described. Suppose someone acquires, through a series of transfers that are perfectly just considered by themselves, all the rights to the water supply in some isolated territory, and suppose its inhabitants have no realistic way of exiting. May he *justly* (however uncharitably) refuse to give some of these inhabitants water? May he *justly* (however uncharitably) charge them crippling prices for it, just because he feels like it? (Perhaps this would be economically unwise of him; or perhaps not. It doesn't matter for the example, because the question is whether it would be *just*, not whether it would be economically rational.) Again, such action might respect the formal rights of self-ownership of the inhabitants, but it is at least questionable whether it affords them any substantive rights.

These sorts of considerations have led the libertarian philosopher Eric Mack to propose that in order to respect people's rights of self-ownership in a substantive way, we need to endorse what he calls a *self-ownership proviso* on the use of one's property.⁷ His argument is complex and nuanced, and he illustrates the problem with many further examples that every libertarian rights theorist needs to study carefully; I do not claim to be doing justice to his views here. But the basic point is that the thesis of self-ownership cannot have serious moral force unless it guarantees that no one can use his property in a way that effectively nullifies the ability of others to bring to bear on external

⁷Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy* 12, No. 1 (Winter 1995).

resources the world-interactive powers that they possess by virtue of being self-owners. Such a proviso is, in Mack's view, perfectly consistent with the strong private property rights and firm rejection of egalitarian redistribution that are the hallmark of libertarianism of the type associated with Nozick and Rothbard. But it rules out the possibility of holding that a purely formal respect for self-ownership is all that libertarianism requires.

This brings me to the argument of my paper "Self-Ownership, Abortion, and the Rights of Children: Toward a More Conservative Libertarianism,"⁸ which was the main target of the section of Block's article devoted to criticizing my views. In that article, I endorse and briefly defend Mack's self-ownership proviso. (I have defended it at much greater length elsewhere, in an article that Block unfortunately ignores when he attacks the proviso, even though I cited it prominently in the paper he criticizes.⁹ Block also ignores Mack's own detailed defense of the proviso.) The main point of the article, though, was to argue that if one combines the self-ownership proviso with certain conservative moral assumptions drawn, say, from Thomistic natural law theory (assumptions which a number of libertarians of the Rothbardian school Block belongs to would sympathize with), it would follow that even given self-ownership, one could justify both (a) the legal prohibition of abortion, and—surprisingly, to be sure—even (b) certain limited governmental interventions in private transactions where these transactions might have, as a side effect, the promotion of a social climate that tends to make it extremely difficult to raise children according to the sorts of moral principles associated with natural law theory.

I won't repeat the whole argument here—interested readers are referred to the original paper itself—but the key idea was that if Mack's proviso is intended to safeguard our use of our world-interactive powers, then if these powers include our *moral* powers, and if (as Aristotelians and Thomists would argue) those powers can in the normal case only be properly formed through habituation, especially during childhood, then it would follow that the moral corruption of a child would count as exactly the sort of nullification of one's world-interactive powers that Mack's self-ownership proviso is intended to rule out. Hence respect for self-ownership would entail at least some measures for upholding conservative morality through legal means.¹⁰ For example, if someone held

⁸*Journal of Libertarian Studies* 18, No. 3 (Summer 2004).

⁹My defense of the proviso can be found in "There is No Such Thing as An Unjust Initial Acquisition," cited above.

¹⁰I hasten to emphasize that here I go well beyond anything Mack himself has said or, presumably, would endorse.

on natural law grounds that the institutionalizing of “same-sex marriage,” or adoption of children by homosexual couples, or a popular culture oriented toward sexual debauchery, tended to undermine the realistic possibility of children forming morally sound attitudes about sexuality, then one could make a case, in principle, for government action to prevent these sorts of things, even given self-ownership. As I also said in the article, this does not mean that “anything goes.” Only behaviors that plausibly undermine public morality in a serious, large-scale and systematic way could possibly call for such governmental action; there would be no case for government interfering with things done behind closed doors. I also emphasized that, at least in most cases, such policies could only be properly carried out by local rather than centralized governments. Moreover, my aim in the paper was not actually to defend any specific policy for upholding moral conservatism (though it obviously was not to reject any such policy either) but rather to show that libertarians were mistaken to suppose that such policies were automatically ruled out by the thesis of self-ownership. Again, self-ownership *by itself* simply doesn’t do the work many libertarians think it does.

Now when I wrote the paper, it seemed to me that the resulting overall position was consistent with a kind of libertarianism, since it still involved an appeal to the idea of self-ownership, and self-ownership had always seemed to me a paradigmatically libertarian notion. But I would no longer claim (or at least not insist) that the position it represents really is “libertarian” after all (at least not in any interesting sense), since it clearly rules out much of what most actual self-described libertarians want to defend (e.g., a completely laissez-faire policy vis-à-vis matters of so-called “personal morality”). Also, for reasons that should be evident from what I’ve said above, I no longer think self-ownership is a very interesting or useful principle. As I now see it, everything true that can be said using the language of self-ownership can also be said in the language of rights (an in particular in terms of the rights theory developed by thinkers in the classical natural law tradition). And much (though not all) of what libertarians want to say when they use the language of self-ownership is, I now think, false. So, even if there is *some* sense in which we can be said to “own” ourselves, it is not the standard-libertarian-sense. Better, then, just to focus on the question of what specific rights we have, and bypass the language of self-ownership altogether, which is at best otiose and at worst misleading.

Overall, though, I stand by the main argument of the article, viz. that *if* you want to appeal to the idea of self-ownership, then you cannot rule out, on that basis alone, the possibility that government might

legitimately interfere with at least some activities that libertarians generally allege government has no business interfering with. And I must say that while those libertarians who have read the article seem generally to disapprove of it very strongly, I have (apart from the honorable exception of some comments by David Gordon) yet to see any serious attempt to deal with its actual arguments—as opposed to name-calling, the imputation of evil motives, the glib dismissal of caricatures of what I wrote, etc. This is annoying, but it does indicate to me that perhaps I’ve hit a nerve.

Block’s paper is a good example of this sort of “response” to my article. Missing the forest for the trees, he mostly ignores my overall argument and focuses instead on a few non-essential examples I gave to illustrate it. My actual argument had the structure: “If you accept A, then at least in principle you cannot rule out things like B, C, and D.” Block transforms this into: “Feser endorses B, C, and D,” and replies by ridiculing B, C, and D. Now to be sure, some of B, C, and D are things I would endorse. But that’s not what my article was about, so I made no effort to defend any such particular policy. I was defending a conditional (or “if-then”) statement, not the consequent of that conditional (i.e., the statement that follows the “then”). What Block attacks is the consequent, and says almost nothing about the conditional itself.

Worse, Block outrageously distorts the examples of “B, C, and D” that I actually gave. He says, for example, that I proposed “banning homosexuality” and “prohibiting [it] by law,” as if I favored marching homosexuals off to prison. In fact I did not propose, and would not propose, any such thing. Indeed, I explicitly denied in my article that governmental measures directed against acts between consenting adults done in private could be justified on the basis of my argument. Presumably Block read the two articles David Gordon wrote about me that he cites in his own paper, and perhaps the first of these articles is the source of his false charge that I want to “ban” homosexuality, since Gordon there made that charge himself. But Gordon, to his credit, retracted it in his second article. Yet Block repeats this slanderous allegation anyway. Whether this is due to bad faith or simply bad scholarship I do not know, but either way it is inexcusable, given how inflammatory Block surely knows such a charge to be.

Block’s desire to portray me as some kind of totalitarian monster is evidenced also by his bizarre allegation that I have “come out against private property rights.” It is true that, like all traditional natural law theorists, and like most classical liberals too, I would put certain restrictions on property rights under certain circumstances.¹¹ But to say that

¹¹See note 3 above.

that means that I am “against private property rights” is not only absurd on its face, but has the equally absurd consequence that Aristotle, Aquinas, Locke, Smith, and other famous defenders of private property must also be counted as having “come out against” it. Then there is Block’s quip that he “has no doubt” that one could “rely on Feser to provide a ‘libertarian’ justification” for putting people into “concentration camps.” (See his note 38.) This, it seems, is Block’s idea of serious scholarly debate. Can it get any worse?

Indeed it can. In his most egregious act of intellectual dishonesty—it is very hard to see how it could plausibly be attributable to mere error—Block alleges that I want to “force conservative morality on all of us,” on the basis of the following “quote” from my article:

. . . if I own myself, doesn’t it follow that I can . . . do anything I want with myself, since it’s my own property I’m using—including engaging in certain sexual and other behaviors frowned upon by conservative moralists? . . . The answer . . . is a firm No.

Note the many ellipses in this passage, for Block can only make what I wrote appear to say what he wants it to say by ripping the words in question violently out of context. The original passage occurs, not in the course of my main argument, but at the beginning of my article, where I merely rehearse the standard libertarian view (which Block himself endorses) that self-ownership rules out only the *legal* enforcement of traditional moral attitudes, and does not necessarily imply that they need not be adhered to in a voluntary way. Quoted in full, the first sentence is actually just the following rhetorical question, presented as something many conservatives might (falsely) think constitutes a *prima facie* objection to libertarianism:

After all, if I own myself, doesn’t it follow that I can, *morally* and not just legally speaking, do anything I want with myself, since it’s my own property I’m using—including engaging in certain sexual and other behaviors frowned upon by conservative moralists?¹²

And I go on to explain why, *in the view of most libertarians themselves* (again, Block included), the answer to this question “is a firm No,” for to say that something should be legal doesn’t entail that it is morally unobjectionable. Block turns a passage that expresses agreement with a view to which he is himself committed into an expression of the straw man argument he wants to attack. A tour de force indeed!

¹²“Self-Ownership, Abortion, and the Rights of Children,” pp. 96–97.

Block does make a few points which are at least in the ballpark of dealing with my actual argument. The first is his claim that my argument could also be used by liberals to justify upholding a liberal conception of public morality via governmental action. He is right about this; but it does nothing to undermine my argument. Indeed, I have on several occasions made this sort of point myself.¹³ Although in the article Block is criticizing I did indeed focus on the way in which the self-ownership proviso could be used to justify upholding conservative moral views via legal means, I also made it clear that this was so only to the extent that one independently accepted some conservative (e.g., natural law) conception of morality. If one instead endorsed a liberal conception of morality, then as Block says, application of the self-ownership proviso might have very different implications indeed. Either way, my main point stands: appeal to self-ownership does not by itself settle anything; for even given self-ownership, one could justify policies (either conservative or liberal, depending on what further moral premises one is committed to) that libertarians assume self-ownership rules out.

Block also says a few things about the sort of example I used above to illustrate the distinction between substantive and formal self-ownership, but none of his remarks get close to the nub of the matter. Following Gordon, he first suggests that to suck the oxygen out of the vicinity of someone would ipso facto be to kill him, and so is automatically ruled out by the thesis of self-ownership. Hence (the reply continues) the example doesn't really pose any problem that requires making a formal/substantive distinction or appealing to a self-ownership proviso. But this simply misses the point; in particular, it fails to address the worry that, given the view of property rights endorsed by some libertarians (e.g., Rothbardians), the perpetrator could argue that he is not really "killing" the victim at all, but only letting him die by refusing to give him any of the oxygen he has justly acquired, and thus has a right to withhold (however uncharitable this would be). If such a line of argument would be mistaken, Gordon (in the passage Block quotes approvingly) doesn't show that it is, but merely asserts that it is.

Coming closer to answering the point, Block also suggests the following argument: (1) Air, in ordinary cases (such as when one is sitting quietly and breathing) is not scarce; but (2) One can only homestead or own scarce goods; so (3) In ordinary cases, sitting quietly and

¹³See "The Trouble with Libertarianism," *TechCentralStation.com* (July 20, 2004), "The Myth of Libertarian Neutrality," *TechCentralStation.com* (August 3, 2004), and my series of posts on "Libertarianism and moral neutrality" on the blog *Right Reason*.

breathing doesn't count as homesteading air. But (4) To use a device to suck away all the air in some person's vicinity makes it suddenly scarce; so (5) Anyone who does this commits an injustice by interfering with the peaceful homesteading of air.

The argument fails. First of all, while the inference from (1) and (2) to (3) is valid, the crucial second premise is neither *prima facie* plausible nor defended by Block. Why, pray tell, can someone not homestead or even own a non-scarce good? If anything, the homesteading and ownership of a non-scarce good seems the *least* problematic sort of case. Hence Locke says that you can easily come to acquire via labor-mixing a parcel of water or fruit, say, provided you leave "enough and as good" for others. It is only when there is *not* enough and as good for others—that is, when the resource is scarce—that acquisition becomes problematic. If Locke and the many others who take this sort of view are wrong, it is hardly obvious that they are, so Block needs to say something in defense of his claim, rather than merely asserting it.

Secondly, even if we were to grant (3) for the sake of argument, along with the obviously true (4), it isn't at all clear how (5) is supposed to follow. Suppose Jones sucks away *all* the air. Now air becomes scarce, so that (according to Block) Smith's breathing of air (if he can get a hold of any) can suddenly count as homesteading. So far so good. But how does this show that Jones's action counts as an unjust interference with Smith's homesteading? For according to Block, Smith's breathing could not possibly count as homesteading until *after* Jones has sucked away all the air (thus making it scarce), not before. Hence there *was no* homesteading on Smith's part for Jones to interfere with before Jones sucked away the air, and thus Jones could not then have been guilty of any injustice. But even after Jones sucked away all the air, there could not have been any injustice of the sort Block alleges; for at that point there was no more air left for Smith even to *attempt* to homestead, in which case once again, there was no homesteading going on that Jones could be said to be interfering with. In short, the way Block himself describes the scenario, there is just no point at which Smith could be doing something that counts as "homesteading air," and thus no point at which Jones could be said to be *interfering* with Smith's homesteading of air.

Now in the scenario I described at the beginning of this paper, Jones does not in fact take away *all* the air—he leaves a minute's worth behind for Smith to breathe (an air bubble, as it were, that surrounds Smith's body). Does this way of describing things help Block's argument? Not at all. For now it is even more obvious that Jones is not interfering with Smith's homesteading of air: Smith can homestead all he wants, even though there now happens to be very little for him left to

homestead (just the minute's worth surrounding his body). Jones just happens to have homesteaded most of it already for himself, and Smith is (Jones claims) simply out of luck. True, he's homesteaded a much bigger share, but that is hardly something a Rothbardian like Block can regard as intrinsically unjust. For Rothbardians and (at least many) other libertarians hold that there is no strict *injustice* involved, but only a lack of charity, if (say) someone is allowed by others to starve to death simply because through bad luck he has no access to food, and others, who do have it and got it fair and square, refuse to share any with him. The case at hand, I submit, differs from this sort of case only in degree, not in kind. If Block and other Rothbardians find this troubling, good for them—they should find it troubling. (Though they should also find it troubling that their view entails that we could, at least in principle, *justly*, if uncharitably, let an innocent unlucky person starve to death. But let that pass.) It is, however, hard to see how they can avoid this obscene consequence without appealing either to the self-ownership proviso or to some other limitation on the acquisition and/or use of property (e.g., a Lockean proviso, an egalitarian proviso, or whatever). Certainly Block does nothing to show that there is any other way to avoid it.

Block also addresses another example I briefly alluded to in my original article, in which we are to imagine someone (another mad scientist, say) who uses a device to cause things to disappear whenever you reach for them. The point of the example was that, here too, we have a case where even though the person doing this does not violate your self-ownership in a formal way—he leaves you unmolested “from the skin inward”—he nevertheless denies you any substantive self-ownership by making it practically impossible for you to bring your self-owned powers to bear on the external world.

Block's only reply to this example is to assert without argument that the actions of such a person would obviously count as “theft,” so that, once again, we have a scenario which (Block alleges) poses no need for a distinction between formal and substantive self-ownership, etc. But what he fails to realize is that the example in question, like the example of Smith and Jones described above, concerns individuals in “virgin territory,” a context where the resources in question are unowned and no property rights yet exist. So, when the mad scientist causes everything you reach for to disappear, what he's causing to disappear are things that *no one*—not you, not him, not anyone else—heretofore had any claim over. In effect, *he* is acquiring or “homesteading” them (and immediately destroying them) before you have a chance to. But in doing so, he is not engaging in “theft,” precisely because they didn't belong to anyone before he caused them to disappear. So, Block's

objection, such as it is, simply fails even to grasp the point of the example.

The issues in question—the distinction between formal and substantive self-ownership, the self-ownership proviso, and so forth—are central to the argument of the article of mine that Block is criticizing. And yet Block's treatment of these key issues is extremely superficial. He relies exclusively on the brief summary I give of them in the article, ignoring both the more thorough discussion I have provided elsewhere (and refer to in the article he does discuss), and the article by Mack that originally inspired that discussion.¹⁴ Of course, I do not expect him to read everything I have written, but if he is going to criticize my views with such vitriol, surely it is not too much to ask that he at least try to understand them first.

¹⁴See notes 7 and 9 above for references.