

Private Property, Coercion, and the Impossibility of Libertarianism

by

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A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Arts

Approved April 2011 by the
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ARIZONA STATE UNIVERSITY

May 2011

ABSTRACT

Libertarians affirm the right to liberty, i.e., the right to do what one wants free from interference. Libertarians also affirm the right to private property. One objection to libertarianism is that private property relations restrict liberty. This objection appears to have the consequence that libertarianism is an incoherent position. I examine Jan Narveson's version of the libertarian view and his defense of its coherence. Narveson understands the right to liberty as a prohibition on the initiation of force. I argue that if that is what the right to liberty is, then the enforcement of property rights violates it. I also examine Narveson's attempt to support private property with his distinction between interference with and mere prevention of activity and argue that this distinction does not do the work that he needs it to do. My conclusion is that libertarianism is, in a sense, impossible because conceptually unsound.

ACKNOWLEDGEMENTS

I would like to thank my advisor, Dr. Peter de Marneffe, for his guidance throughout the writing of this thesis. I would also like to thank Dr. Joan McGregor and Dr. Thomas Blackson for their participation in this project.

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CHAPTER 1

INTRODUCTION

One of the things with which political philosophers concern themselves is what justice requires of coercive political institutions. That is not all that political philosophers can or should be concerned about. Not only should we want to know whether or not a proposed normative requirement on coercive political institutions is morally persuasive, we should also like to know if it makes sense in the first place. That is the sense in which I intend to evaluate the plausibility of libertarianism in the present discussion. By the term “libertarianism,” I refer specifically to so-called right-libertarianism¹ of the sort defended by Jan Narveson. Libertarians such as Narveson affirm a general right to liberty, or non-interference, i.e., a right that others refrain from interfering with whatever non-interfering things you want to do. The right to liberty, on this view, is the sole basic right that individuals have; it is, in a sense, the *only* right that you have. Libertarianism is also wedded to the belief that individuals have the right to private property, which is often taken to justify capitalistic property relations. If the right to liberty is the sole basic right that individuals have, then it would seem natural to suppose that private property rights are grounded by that right. This view is sometimes objected to on the grounds that what counts as interference is a function of what property rights people have, so the right to liberty cannot be non-

¹ Right-libertarianism is distinct from the class of theories known as left-libertarianism, which take a very different view regarding what counts as a just property arrangement. For more on left-libertarianism see Vallentyne.

circularly invoked to justify property rights (Lomasky 113). Narveson flatly denies this objection, believing that property rights *can* be justified by the right to liberty, and that these property rights will be *private* property rights (“Libertarianism vs. Marxism” 3). However, Narveson’s position on this matter is problematic. It is far from clear that accepting the right to liberty by itself commits one to countenancing the legitimacy of private property. In fact, if one of G.A. Cohen’s objections to libertarianism is correct, then it appears that Narveson’s libertarianism might actually be incoherent, since it suggests that the assertion of a right to private property contradicts the unqualified statement of a right to liberty, or non-interference. Cohen’s objection is that private property limits—or interferes with—liberty, so liberty and private property do not have the conceptual link that libertarians like Narveson think they do. This is rather surprising if it is true. For the debate about libertarianism becomes, in this context, not about whether it makes moral sense, but about whether it makes sense *at all*. The purpose of my inquiry is to navigate the logical geography of this issue, so to speak, and to assess whether some of the moves that Narveson does make or could make in defense of his libertarianism have any promise of overcoming this challenge to the coherence of his view.

At first blush, it may look like the view that private property restricts liberty can be accepted without concluding that it shows that libertarianism is incoherent. Libertarians such as Narveson may mean something quite different by the terms “liberty” and “interference” than others do when they challenge

libertarianism in the way that I am describing. If it is to be proven that libertarianism does not live up to its own professions, it must be shown that private property limits liberty in a way ruled out by the right to liberty. In order to address that issue, the notion of interference needs to be fleshed out. The challenge for Narveson is to flesh it out in a way that makes acquisition of private property *non-interfering* and private property violations *interfering*. Yet it is far from clear that this can be achieved. I will make the case for that claim first by examining ways that Narveson can and does defend his position by appeal to the concept of force. In Chapter 4, I will try to show that these defenses do not work, and I will argue that conceiving of the right to liberty in terms of the concept of force will not do the work that Narveson needs it to do, since it will leave him without a clear way of explaining how property rights violations should be prohibited by the libertarian standard of justice. I will argue that the right to private property is *incompatible* with the right to liberty if the latter is understood as a prohibition on the initiation of force. That argument, if successful, would lend credence to the claim that libertarianism is unintelligible. In Chapter 5, I will consider a way that Narveson attempts to characterize the difference between acquiring property and violating a property right, i.e., his appeal to the distinction between preventing and interfering with an activity. I will argue that Narveson's distinction will be unable to achieve what he wants it to, because the distinction itself cannot tell us whether an interference with an activity is coercive, which means that it cannot tell us why invasions of property should be prohibited.

Narveson will, as a result, have to fall back on his reliance on the concept of force to explain why property rights violations should be prohibited. But since I argue in Chapter 4 that this move simply will not work for Narveson, the failure of his distinction to do the desired work is quite troublesome for him. If all my arguments go through, then Narveson will be left with a conceptual quandary. I will conclude, ultimately, that private property relations restrict liberty in the very sense of “liberty” that the libertarian has to be committed to. Taken together, the points I raise in my discussion will, I think, constitute a fairly strong case against libertarianism as conceived of by Narveson and others of a similar mindset.

I should emphasize that I take what I say in the ensuing discussion to undermine only Narveson’s particular version of libertarianism according to which private property rights are generated by a morally neutral conception of liberty. One alternative view endorses a moralized conception of liberty. According to that view, an act does not interfere with one’s liberty if it does not violate one’s rights. To be free, on that view, is to be free from interference with what one has the right to do. Robert Nozick accepts something along these lines. Nozick’s view seems to be immune to the objections I raise against Narvesonian libertarianism, although his view has problems of its own. I will explain why in the final chapter.

CHAPTER 2

DEFINING LIBERTARIANISM

I said in the preceding chapter that libertarianism—at least the sort of libertarianism that I will direct my arguments against—is the doctrine that the sole basic right that individuals have is the right to liberty. What does it mean to say that somebody has a right? Clearly we do not want to say that one has a right in exactly the same sense in which one has an arm and a leg, or a car, or a spouse. Part of what we seem to be asserting about a person when we say that they have a right of a certain sort is that a certain moral claim is true of them. More specifically, we seem to be saying that that person ought to be, or ought not to be, treated in such and such a way. To treat that person in a way ruled out by the right they possess would be to violate that particular right of theirs. This consideration suggests a further feature of rights: If a person's possession of a right of a certain sort means that they ought to be, or ought not to be, treated in specified ways, then somebody else has a duty to treat or refrain from treating that person in the ways specified by their right. This idea is known as the correlativity of rights and duties. Another way to express the idea would be to say that claims about rights entail claims about duties. Given that the claim that somebody has a right of a certain sort entails the claim that somebody else has a duty of a certain sort, it makes sense to speak of a person's right as a right *against* somebody else. If A has a right against B to do X, then B has a duty to do Y (Narveson, *The Libertarian Idea* 41-42). Upon whom does a right's correlative duty fall? It

depends on the particular right under consideration and, in certain cases, who has that right. It may be that the duty falls upon just a single individual, or many individuals, or everybody. If a lender has the right to be paid back the amount of money, plus interest, that she loaned out to somebody, then the correlative duty to pay the money back, in the typical case, falls upon whoever took out the loan. If I have the right to say whatever I want, whenever I want, then the duty not to interfere with my saying whatever I want falls upon everybody.

The right to liberty, in the libertarian's sense of that term, is a *negative* right (Narveson, *The Libertarian Idea* 59), so we need to get clear on what negative rights are. A negative right, to put it roughly, is a right that others refrain from interfering with whatever it is that you have a right to do. In contrast, a positive right is a right to assistance or to the provision of some good(s). If I have only the *negative* right to be alive, then everybody else has the duty to refrain from ending my life, but they do not have the duty to assist me in staying alive or saving me if I am about to die. All that is required of them in order to respect my negative right is to refrain from interfering with my efforts to keep myself alive. On the other hand, if I have the positive right to be alive, it is not enough for others to refrain from interfering with my efforts to stay alive. In that case, others have the duty to do something to keep me alive. They might be required to provide me with the means required to sustain myself (food, healthcare, etc.), or they might be required to attempt to rescue me if I am about to die (perhaps, however, only if doing that would not impose an unacceptably high cost on them).

A libertarian might be thought of as someone who countenances no positive basic rights at all.² The libertarian view is that the only basic right you have is the right not to be interfered with; you do not have a basic right to positive assistance. Let me be clear: The right to liberty is not to be interpreted positively. That is to say, the libertarian view is not that you have the right for others to assist you in defending against interference; it is only that you have the right that others refrain from interfering with your liberty. The reason for stating the view this way is that a positive right to protection against interference with liberty may be seen to conflict with a negative right to liberty. For a positive right to protection would license the use of force against individuals in order to provide such protection, and if merely refraining from the provision of such protection initiates force against nobody, then it looks like a positive right to protection is incompatible with fundamental libertarian principles.³

I said that the right to liberty is the sole *basic* right countenanced by the libertarian view. In order to get clear on what basic rights are, it is useful to contrast them with legal rights. Whereas our legal rights are reflected in actually existing laws, regulations, and so forth, our basic rights are those rights that we have independently of what our legal rights are. It is possible for legal rights to

² I am speaking loosely here. The libertarian may allow for positive rights that arise through somebody's voluntarily assuming an obligation toward somebody else, e.g. by entering into a contract. When I say that the libertarian countenances no positive basic rights I mean that there are no positive rights that people *just have* independently of others' voluntarily assuming an obligation toward them.

³ Nozick attempts a libertarian justification of the minimal state, which amounts to an argument for the right to protection (54-146).

conflict with basic rights. At one point in U.S. history, certain persons had the legal right to “own” slaves, but we now think that they never had a basic right of ownership over persons. At the same time, certain persons, merely because of their race, did not have the legal right to move about freely and determine the course of their own lives, but we now think that they had that basic right all along. The right to liberty is, on the libertarian view, a right you have regardless of whether or not a legal system recognizes you as having that right.

Rights, in the sense in which I am using the term, possess an especially powerful normative force. The duties that correlate with rights are not mere moral requirements; they are moral requirements of a special sort. One might think that A is morally required to do X for B without concluding that B is owed X as a matter of right. For instance, suppose that I ought to acknowledge my parents’ birthdays. It may be thought, consistent with my having that requirement, that my parents do not have the *right* that I acknowledge their birthdays. What is it, then, that accounts for the special normative force that rights seem to have? Narveson suggests, plausibly, that it is *enforceability* (*The Libertarian Idea* 48). According to this line of thinking, if A has an enforceable duty to refrain from doing X to B, then it is okay for A to be forced to refrain from doing X to B. A’s doing X to B, then, would be a violation of B’s right not to have X done to him. On this view, if my parents *did* have the right that I acknowledge their birthdays, then it would be permissible to *force* me to acknowledge their birthdays.

Some philosophers contend that there is a further sense in which rights have especially powerful normative force. The idea is often expressed by saying that rights are trumps, or side-constraints. To say that rights are trumps is to say that they override other non-right considerations. That is, when someone has a right, we have a reason to treat that person in certain ways or allow them the freedom to do certain things even if violating their right would serve some social aim. According to this line of thinking, when a person has a right, justifications from considerations of general utility to treat that person in a way ruled out by the right simply are not enough (Dworkin 191). A similar (equivalent?) idea is Nozick's conception of rights as side-constraints. According to Nozick, rights are side-constraints that limit what it is permissible to do in the pursuit of goals. Nozick's conception of rights as side-constraints rules out a utilitarianism of rights in which the non-violation of rights is a goal to be maximized even if rights are violated in the process of maximizing that goal. According to Nozick's conception, rights are constraints on goal-directed behavior; they define the space of just and unjust goal-directed behavior (28-29). On this picture of rights as trumps, or side-constraints, rights appear to place severe limits on consequentialist reasoning. That is to say, rights ought to be respected even if their violation would lead to a better state of affairs than their non-violation, according to this line of thought.

We saw that the right to liberty requires that others refrain from interfering with what you want to do. We need to get reasonably clear on how the term

“interference” is being used here. Furthermore, the expression “what you want to do” needs to be appropriately qualified to allow for the enforcement of the right to liberty. At one end of the spectrum of putative interferences are actions that are clearly *not* interferences with one’s right to do something. If you have the right to say whatever you want, whenever you want, then my simply baking a cake cannot be construed as interfering with that particular right of yours. At another extreme of the spectrum are clear cases of interference. These involve clear uses of force against a person. Imprisoning me for saying something offensive would normally be considered an interference with my right to say whatever I want to say. If you have the right to use the public library and I push you out of the way so that you cannot enter, then I interfere with you in such a way that I violate your right. As we will see later, Narveson conceives of interference with the right to liberty as the use of force against persons. We shall affirm the following then: The right to liberty is violated only if force is used against a person. What about this notion of doing what you want to do? We do not want to say that the right to liberty is license for anybody to do absolutely anything they want to do, because then it would make no sense to call it a *right*. Rights entail restrictions on behavior, but the right to liberty interpreted in the way just described entails *no* such restrictions. If the right to liberty entails restrictions on behavior, then what is meant by the claim that individuals should be at liberty to do what they want to do? First, the right to liberty licenses the use of force against encroachments on the liberty to do what one wants. Second, encroaching on the liberty to do what

one wants is surely something that some people want to do. Third, such encroachments are conceived of as uses of force on the libertarian view. These considerations suggest that a distinction needs to be made between *initiatory* force and *defensive*, or *retaliatory*, force. The libertarian view may then be recast as follows: The right to liberty is the right not to have force initiated against oneself, but not the right that others refrain from defending, or retaliating, against initiations of force. On this view, then, individuals have the right to defend against unprovoked attacks. In short, individuals should be at liberty to do anything that does not initiate force against others. I will have more to say about initiatory force later on when I examine Narveson's views in more detail.

Before I conclude this chapter, I need to explain what property rights are and, in particular, what *private* property rights are. Two concepts appear to be central to the idea of a property right, namely the concepts of use and excludability. Ownership, it might be said, is "rightful use with power to exclude" (Narveson, "Property and Rights" 109). It might be more accurate to say, however, that ownership is rightful use with *legitimate authority* to exclude or, as Narveson says, "entitlement to use the thing oneself and to exclude others from using it" ("Property and Rights" 102). If I were to break into a house and kick the owner out by force, I might have the *power* to exclude the owner from the use of their house, but I would not be said to *own* the house, since I presumably would not have the legitimate authority to exclude others from the use of the house. At most I would be said to *possess* the house. According to my amended definition

of “ownership,” then, in order for A to have a property right in X, it has to be the case that A has the right to use X in certain ways and the legitimate authority to exclude others from the use of X.⁴

I presume that what counts as a use of something is reasonably clear, but what counts as a *justified* use quite a bit less clear. An obvious, though not terribly informative, requirement of property rights is that a person’s use of their own property should not violate anybody else’s property rights. A bit more informative, perhaps, would be the libertarian requirement that the use of one’s own property not initiate force against anyone. The radical libertarian would affirm a panoply of use rights with respect to property, the list of which would include “deciding whether, how, or when to use it; permitting others to use it; consuming, modifying, or destroying it; selling, exchanging, bequeathing, or giving it away as a gift; and so forth” (Kekes 4). Less radical views of property might qualify or eliminate one or more of the listed use rights, such as the plenary right of an individual to destroy something they have acquired.

What are *private* property rights? To put it simply, in a regime of private property, ownership rights attach to *individuals*. On this view, a single individual may acquire holdings, without need for the consent of a community or Central Committee, and alone determine the disposition of the acquired holdings. This does not preclude the possibility of, for instance, a number of individuals entering

⁴ Perhaps the rights of exclusion and use are not different sorts of rights, since it might be said that the right to exclude is simply the right to use one’s own property in ways that are incompatible with others’ having access to it.

into a contract together to own something in common as long as nobody's private property rights are violated in the process. Perhaps the libertarian would want to say that a number of different property arrangements are allowable, but that the right to private property is fundamental—that it defines the ways in which other ownership arrangements may permissibly come about. Essential to our understanding of the objection to libertarianism that I want to examine in the present discussion is the recognition that the rights of use and exclusion restrict access to property by imposing enforceable obligations on non-owners to keep off what they do not own. It is this fact which is pointed to by some of those who raise questions about libertarianism on the grounds of liberty.

CHAPTER 3

PRIVATE PROPERTY AND LIBERTY

Now that we have a decent understanding of what libertarianism is and what its commitment to private property consists of, we are in a position to evaluate the charge that libertarianism countenances restrictions on liberty and Narveson's defense against this charge. In several writings Cohen argues that private property limits liberty and that unfreedom is inherent to private property relations ("Capitalism" 12; "Illusions" 226-227). This is so because private property relations place legal constraints on the use of bits of the world. Let us suppose that I wish to pitch a tent in your backyard. If the state intervenes on your behalf, namely by preventing me from pitching the tent on your property, I will have been made less free (Cohen, "Illusions" 226-227). That is, I will not have been able to do some things that I otherwise could have done (pitching my tent on your property), and legitimately so, according to the libertarian's commitment to private property. Libertarians like Narveson maintain that preventing me from doing what I want to do in cases like that is compatible with the prohibition on interfering with others' liberty. Not only that, Narveson also thinks that private property rights are *generated* by the prohibition on interfering with others' liberty "as a straight implication thereof" ("Social Contract" 232).

One may be forgiven for wondering whether Cohen has not misunderstood what libertarians like Narveson mean to assert, and whether he wants to say that private property interferes with liberty in exactly the same sense in which liberty

is interfered with when somebody's private property rights are violated.

Regarding the latter question, it appears that Cohen *does* want to assert that. For consider that in one writing Cohen appears to endorse the claim that “capitalism is, all things considered, inimical to freedom *in the very sense* of ‘freedom’ in which . . . a person's freedom is diminished when his private property is tampered with” (“Illusions” 235). Regarding the former question, it is not clear that the central commitment of libertarians like Narveson—the right to liberty—really is just a prohibition on *merely* making it the case that somebody cannot do what they wanted to do. Perhaps the way Narveson explains libertarianism sometimes makes it look like that is all he thinks the central commitment of libertarianism amounts to. In many places throughout his writings, however, he makes it abundantly clear that his view is a bit more subtle than that.

Recall that I characterized the right to liberty as a prohibition on the initiation of force. A person is free in the libertarian's sense to the extent that force is not used against them by some agent, and a person is made unfree *unjustly* if that use of force is an initiation of force. Narveson appears to concur with exactly this characterization. According to Narveson, libertarianism is “essentially the affirmation of a general right against the initiation of force and the use of fraud by others against any person” (“Property and Rights” 114). Now, the grammar of the phrase just quoted seems to suggest that it is not *just* the initiation of *force* that's prohibited by libertarianism since it is pointed out that the use of fraud against others is also prohibited by libertarianism. I do not, however, think

that Narveson means to suggest that the use of fraud is prohibited for some reason quite apart from the prohibition on the initiation of force. For consider that in another fairly recent writing he characterizes libertarianism when he says merely that “the initiation of force is what is wrong” (“Libertarianism vs. Marxism” 4). Furthermore, as we will see later, one of the ways that Narveson defends against the charge that private property limits liberty is by maintaining that the relevant concern is whether people are having force initiated against them by the mere existence of private property relations. Thus, it is plausible to suppose that Narveson thinks the prohibition on the use of fraud can in some way be assimilated to the prohibition on the initiation of force. As a matter of fact, he *does* argue for exactly that view (“Libertarianism vs. Marxism” 35n).

Narveson holds that all rights are rights to act. On this view, there is no separate right to *have*. Thus, a property right in X is, according to Narveson, analyzable as the right to *do* what one wants with X (“Property and Rights” 113; *The Libertarian Idea* 80). The libertarian thesis of self-ownership, that is, the right to do what one wishes with any part of oneself, is equivalent to the right to liberty, or non-interference, according to Narveson (“Libertarianism vs. Marxism” 9). What gets us from ownership of the self, i.e., the right to liberty, to property in things external to the self? The answer seems to be that many, or perhaps all, of our actions require the use of things external to ourselves, so a general prohibition on interference with liberty requires that we refrain from interfering with actions that involve the use of those things (Narveson, “Property and Rights” 114). But

that would seem partly to require that we do not steal, damage, or otherwise tamper with those things on Narveson's view. For when we initiate an activity using various external things, and project into the future that course of action, it is required that those things "be here or there, in this or that condition, at those later times" (Narveson, "Libertarianism vs. Marxism" 11). Ownership of things outside the self stems from the need for the things people possess and use not to be interfered with ("Social Contract" 233). When one begins using, or comes into possession of, an unowned thing, one acquires the right to thenceforth determine the disposition of that thing (acquiring ownership of an unowned thing is typically referred to as "initial acquisition.") Narveson supports a first-come, first-served rule regarding acquisition, which he defends thusly:

The individual who occupies an area or uses a resource before anyone else is declared to be the owner. Other persons who arrive later would have to interfere with the first-comer's use in order to use it themselves at this point, whereas when first-comers arrive, there is no one already there, and therefore no one who is then interfered with. ("Liberal-Conservative" 177)

Don't such acquisitions interfere with your right to act? After all, if I acquire X, and restrict your access to it, couldn't I legitimately interfere with your ability to do something with X? Why should we think that my use of X, or my attempting to acquire it, interferes only if X is already in use? Perhaps Narveson would want to say that initial acquisition only *prevents* the future use of external things, but

does not interfere with anybody's use. I will examine this idea later in the discussion, but first I want to examine a different line of defense available to Narveson. As I already pointed out, Narveson wants to flesh out the notion of interference by appeal to the notion of force. By fleshing out the notion of interference in this way, Narveson might have a way of rebutting the charge that private property limits liberty in a way disallowed by the right to liberty. Let us see how this works out for him.

CHAPTER 4

THE INITIATION OF FORCE

We saw that Narveson needs to show that acquisition does not restrict liberty in any way that is ruled out by the right to liberty, and this defense will need to be an argument for the claim that acquisition does not initiate force. One way that he might be able to defend his position in this connection would be to argue in the following way: For any X, if force is used against X, then X is harmed. Initial acquisition, properly understood, does not harm X. Therefore, initial acquisition, properly understood, does not involve the use of force against anyone and is therefore compatible with the right to liberty. Some of the things Narveson says seem to indicate that he would endorse the first premise of this argument. For instance, he says that “we come into the world equipped with the right not to be harmed, not to have our liberty violated” (*The Libertarian Idea* 100).⁵ As we have seen, to violate somebody’s liberty is to initiate force against them. Narveson also supplies us with an argument for the second premise. He maintains that acquisition of something does not involve taking anything from anybody since, *ex hypothesi*, nobody has the thing in question prior to acquisition. Since one does not take anything that anybody possesses in that situation, then acquisition is not harmful (Narveson, “Property and Rights” 109-110, 118).

⁵ The prohibition on harm needs to be appropriately qualified. Just as we wouldn’t want to say that the right to liberty prohibits the restriction of the assailant’s liberty involved in repelling his assaulting behavior, we wouldn’t want to say that the prohibition on harm requires that we not inflict upon the assailant the harm involved in repelling him.

One might reasonably ask whether placing a restriction on the use of X is harmful to A only if A *possesses* X. Consider, for instance, the fact that there are some things one is free to use which one in no obvious sense *has*. I am free to use the public library, but I am not in possession of it. If the library were “taken” from me and my use of it subsequently prohibited, presumably that would be harmful to me. That is to say, I would be harmed in that I would no longer be able to use something which I was able to use before. I take it that this may be harmful to me even if I had never used the library in the past. In such a case, it is hard to see how my welfare is *not* reduced, assuming that access to the library is good for me. What principle, then, makes taking something that somebody has harmful but the “taking” in the case just described *harmless*? Of course, even if Narveson’s argument does not succeed, that does not prove that property acquisition violates the right to liberty (understood, of course, as the prohibition on the initiation of force against persons). In order for the claim that property acquisition is harmful to be shown incompatible with the right to liberty, it would have to be true that property acquisition involves the use of force against others. A straightforward way of showing that to be the case would be to argue that all instances in which harm to X occurred are, as a matter of necessity, instances in which force was used against X. If that is true, and if acquisition always harms somebody, then it follows that property acquisition involves the use of force against others. But the claim that all harms must be uses of force is not altogether intuitive. Consider the following case. Suppose I alone know about a shameful secret of yours. Now,

suppose that I reveal this secret to others. It is clear that this sort of thing can harm somebody. Depending on how others react, this revelation may be quite harmful to you indeed. Perhaps you will lose your job. Perhaps no employer in town will want to hire you. Perhaps many others will be unwilling to interact with you at all. Clearly you can be made worse off in this sort of case, but in no straightforward sense have I forced you to do anything. The point here is that there are cases in which somebody may be harmed, yet in no straightforward sense does it seem that force is used against the person. If it is true, then, that not all harms are uses of force against a person, then some independent argument for why acquisition involves the use of force against persons needs to be produced.

Narveson may appeal directly to the concept force to defend his position, as he does when he responds to Allan Gibbard. Gibbard argues, similarly to Cohen, that property restricts liberty (23). In response, Narveson says:

What is surely essential to our comparison if we are comparing x and y with respect to liberty, in particular, is whether those in Sx who have things *got* them by forcing others to do this or that, that is to say, got them *by* restricting the liberties of others, and whether their use of the things they have is *to restrict* the liberties of others . . . If Jones got a certain item without restricting anyone's liberty in any way in the process, then the fact that having it entails having the right to prevent others from using it does not show that there is

now a restriction on others' liberty which there wasn't previously.

(*The Libertarian Idea* 77-78)

Is the response above compelling at all? The fact that X is *gotten* without force does not obviously show that a property right in X does not limit liberty or is not coercive. Getting X is one thing, while establishing restrictions on the use of X and enforcing those restrictions is quite another thing. If I come into possession of X while you're going about your merry way not caring that I got X, it is still the case that you are in *some* sense made less free when restrictions on X's use are established and enforced. Furthermore, using X *to restrict* the liberty of others would seem to involve restrictions beyond those which constitute my property right. Why think that if the particular sort of restriction mentioned by Narveson is absent, then there are no limits on liberty here at all? If I don't use my net to capture you and make you work for me, it does not follow that my private ownership of the net does not in some sense limit your liberty.

Narveson claims that "To use force is to preclude voluntary action; to coerce is to impede the operation of individual choice by revising the options available to someone without that individual's consent" (*The Libertarian Idea* 49).⁶ Some of the ways of revising the options of others are, according to Narveson, interferences with freedom when they are performed (*The Libertarian Idea* 34). Now, any action I perform trivially revises your options. If I am

⁶ I presume that Narveson uses the terms "coercion" and "force" interchangeably. At any rate, I do not see any reason why he would want to do otherwise.

standing 5 feet away from you and I move back by 1 foot, I make it the case that you cannot now be 5 feet away from me without moving. This sort of case does not appear to involve the preclusion of voluntary action, since it does not appear to involve *compelling* you to do or to refrain from doing anything. Suppose, however, that I am a first-comer to some patch of land. Narveson would say that it is my right to appropriate that patch of land. My appropriation endows me with the right to forcibly restrict its use by others who are not there yet. That is to say, once I legitimately appropriate something, I am thenceforth endowed with the right to compel others to keep off. But suppose that others who are not there yet object to my appropriating that patch of land and revising their options by forcibly restricting their future use of it. This should be just fine on Narveson's view as long as my revising the options of others does not amount to *initiating* force against them.

We saw that to coerce is not *merely* to revise somebody's options without their consent. When force is used against somebody, what happens appears to be either that the revision of their options is brought about *in a certain manner* or that at least one of the post-revision options *is of a certain specific type*. Suppose I invent a device that can control your actions remotely. Suppose that I use the device to make you yell "fire!" in a crowded theater in which you are sitting at the moment. In that case, I revise your options in such a way that your only option is to yell "fire!" and the specific way in which I make that your only option is by compelling you with my device. Or suppose that you are trying to enter a building

and I thwart your attempts by pushing you out of the way. I make it the case that you do not enter the building, and I bring this state of affairs about by applying physical force to your body. Let us call these cases instances of *direct* force. In such cases, I bring it about that you cannot do other than what I compel you to do by actually applying force against you or some part of you. These are paradigmatic examples of coercion, and one thing that is common to such cases is that they involve doing something *to* somebody else by manipulating a part or parts of them, i.e., their body. These cases do not simply involve the manipulation of things external to the person being coerced. Now consider a case in which the state threatens you by declaring that if you do not hand over 30% of this month's income, you will be hauled off to jail. Let us call this case an instance of *indirect* force. In this sort of case your options are revised in such a way that your post-revision options include having direct force employed against you should you fail to abide by the threat. Indirect force does not involve the application of direct force against an individual. Rather, it is, as I have said, a threat (or, a declaration, if one prefers that term). It is force in a derivative sense, since one applies indirect force to another by making it the case that *if* a threat is not abided by, *then* direct force will be employed. The existence of a legal system for the enforcement of property rights compels potential violators of property rights indirectly through the threat to employ direct force against them, and the actual enforcement of legal rules of property involves employing direct force against violators. Whether this involves initiatory force will be discussed below.

With the above conception of force in hand, we can now see exactly how Narveson may defend the legitimacy of private property on libertarian grounds. Recall that Narveson maintained, in response to Gibbard, that if we want to know if private property restricts liberty, we need to know if the people who own things got what they own by forcing others to do this or that. But, Narveson might say, since merely coming into possession of something does not involve the direct or indirect application of force against anybody, then acquisition does not restrict liberty. Thus, private property does not necessarily restrict liberty. I have already pointed out the difficulty with Narveson's response to Gibbard, but let us grant him this premise: Merely coming to possess something does not involve using force against anybody. For it does not involve doing anything *to* anybody the way direct force does, nor does it involve a threat to anybody, so it cannot be indirect force either. At most it involves doing something to things external to other individuals. But even if we grant Narveson this premise, he is not out of the woods yet. Defending private property in the way just described would leave Narveson without a clear way of saying how property rights violations are unjust by libertarian standards. According to the characterization of force given above, property rights violations are *not* essentially uses of direct or indirect force against anybody, the reasons for which will be given below. This fact is problematic for the libertarian, because non-coercive actions are not prohibited by the right to liberty.

The libertarian is committed to the legitimacy of private property and holds that the sole basic right that individuals have is the right to liberty. Violations of property rights are violations of the right to liberty on this view. If the right to liberty is interpreted as a prohibition on the initiation of force, then property rights violations have to be initiations of force in order to be disallowed by the libertarian's central commitment of justice. Part of the libertarian's objection to the state on the grounds of liberty is precisely that much of what the state does violates individual private property rights. In arrogating to itself the right to dispose of its citizens' holdings without their consent, the state violates the liberty of its citizens—citizens who do not initiate force against anybody simply by owning things. But the libertarian cannot rely solely on the claim that the state engages in this sort of behavior to show that the state violates the right to liberty; more than that is needed. What we need to know is whether or not acts of stealing, intruding upon, or otherwise tampering with property coerce property owners. For if property rights violations are not coercive by their very nature, then on what grounds can the libertarian endorse a prohibition on such violations?

As we have seen, the libertarian view, properly understood, does not disallow threats of force per se, nor does it disallow the use of direct force. What the libertarian view disallows are uses of indirect and direct force that amount to *initiations* of force. The libertarian's preferred sense of "initiation of force" should not entail that a threat to use force against potential rights violators counts as an initiation of force simply because such a threat occurs prior to any violation.

If it did, then proposals to defend one's rights would be disallowed by the right to liberty. Such threats, then, have to be considered by the libertarian to be mere proposals to defend against initiations of force rather than themselves *being* initiations of force. Thus, we do not know whether the state, or any other potential property rights violator, violates the right to liberty simply by observing that they threaten to coerce currently peaceful property owners. Nor do we know whether or not property rights violators violate the right to liberty simply by the observation that they employ direct force against those who defend against invasions of property. For the question here is whether or not those who defend against invasions of property are themselves initiating force. If property rights violations are not by their very nature uses of force, then such violations should be perfectly alright according to the libertarian's own professed commitment. As we have seen, the libertarian's commitment is that "the only purpose for which (coercive) force may properly be used against people is to counter the aggressive use of force by those people against yet other people, if the latter are not themselves aggressors" (Narveson, "Libertarianism vs. Marxism" 4).⁷

In order to determine whether or not those who enforce property rights engage in initiatory force, we need to isolate what property rights violations essentially are. Let us consider some cases. Suppose that I break into your house while you are at work and make off with your television without your consent.

⁷ Once again, I presume that Narveson treats "coercion" and "force" as synonymous, and it's not clear why he would want to do otherwise. Thus, it's not clear what is supposed to be meant by "(coercive) force" as opposed to simply "force."

Next, consider a case in which I decide to take an afternoon nap on your front lawn even though you object to that. Lastly, imagine a case in which I throw a rock through one of the windows of your house, thereby destroying your window. These acts—*theft, trespass, and destruction*—are as clearly in violation of property rights as any, I think, so the libertarian cannot maintain that a violation of a property right has to involve the sort of activity that the state engages in, e.g., threatening to use direct force against you if you do not give up what you have acquired. Furthermore, the libertarian cannot simply assume that what occur in the cases under consideration are acts of direct force against the property-holder; that has to be argued for. So *do* the cases under consideration involve acts of direct force against the property-holder? Clearly they do not, since to use direct force against somebody involves doing something *to* them. All that I do in the above cases is something *to* something that you purportedly own. These considerations suggest that force as I have characterized it is not essential to our idea of what it is to violate a property right.⁸ What, then, makes it the case that a violation of your property rights necessarily involves the use of force against you? The libertarian might object at this point by claiming that when I engage in the acts described above, I make it impossible for you to do things that you wanted to do; I force you to do something else by manipulating these things around you –

⁸ Some actions performed upon external objects seem hard to separate conceptually from actions performed upon persons' bodies. For instance, the thief who wants to steal the coat that somebody is wearing has to do something to the victim's body to get it. This fact would not show that the right to liberty grounds full-blooded property rights; it would only show that it grounds extremely limited use rights.

things that you purportedly own. Perhaps I make it impossible for you to come home and enjoy your television, or to determine the disposition of your lawn such that I do not take a nap on it, or to sit next to where your window was without the wind hitting your face. However, this reply is problematic, because when I simply appropriate private property, I make it impossible for other people to do things that they may have wanted to do. Suppose that there is an unowned tree on which you wish to climb. Suppose that before you get a chance to climb on this tree, I appropriate it by cutting it down and turning it into a canoe. Obviously, in this situation, I make it impossible for you to do something that you wanted to do. If the libertarian wants to maintain that property rights violations are coercive in the sense described above, it is hard to see how private property rights could get off the ground in the first place, since appropriation appears to be coercive in the same sense. Moreover, if merely violating a property right is not coercive, then the enforcement of private property rights initiates force against those who choose to merely violate private property rights. The state's threats to use direct force against those who defend private property claims are presumably, then, just proposals to defend against coercive interference with non-coercive behavior. In defending *acquisition* and *possession* by appealing to the concept of force, Narveson ends up with the result that the enforcement of property rights initiates force, thereby violating the right to liberty. These considerations reinforce a point I made earlier: Showing that getting X occurred without the use of force does not show that defending a property right in X does not initiate force. Critics of

libertarianism such as Cohen and Gibbard do not need the claim that coming to possess something initiates force in order to make their case. All they need to show is that property rights violations do not count as uses of force against the right-holder and that the enforcement of property rights is coercive.

Now, there is an obvious move one can make in response to all of this, which would be to say that property rights are assimilable to body rights. On that view, a violation of a property right would count as a violation of a body right. This response is significant because my conclusion that property rights violations do not necessarily violate the right to liberty and that the enforcement of property rights involves initiatory force relies partly on the claim that property rights violations need not involve doing anything to any *part* of anyone. An argument for the assimilation of property rights to body rights would involve the denial of that claim. Samuel C. Wheeler III makes this sort of argument. He argues that there is no line between what counts as one's property and what counts as a part of one's body and that, for instance, to coerce the owner of the world's food supply to part with any of his food is "on a par with taking the flesh of the only robust person against his will to feed the starving" (181, 186). Although I won't get into how Wheeler arrives at these conclusions, it is worth emphasizing how strong these claims are. The argument is not—indeed, *can't* be—merely that the various items of "external" property are body parts and belong to somebody. For if I were to amputate my arm and preserve it, it would still be a body part, and if I owned it, it would be *my* body part. But after it is amputated it is not, one would

think, a *part of* me; the arm is at that point *external to* me. If the claim being argued for is only that items of “external” property are body parts in this rather weak sense, then my conclusion stands: violating a property right need not involve doing anything to any part of anyone. So the claim being argued for needs to be the stronger one that items of “external” property are parts of somebody or other just as my currently attached arm is a part of me. If that conclusion were true, then such things as houses, cars, food supplies, and so on, would count as parts of somebody or other in this strong sense if they were owned. Anybody who wants to argue for the assimilability of property rights in the whole cornucopia of things that may be considered property to body rights will have to accept such a conclusion. This conclusion, however, is remarkably counterintuitive. It may even be thought that its counterintuitiveness is a strong enough reason to reject any argument that purports to assimilate property rights to body rights.

Another, less counterintuitive move available to Narveson is one that I alluded to earlier. Narveson can claim that violations of property rights upset activities that are already in train, whereas merely acquiring property does no such thing. Although Narveson does not, as far as I can tell, advance this view as a response to the particular objections that I raised above, he does advance it as a way of showing why property rights violations should be prohibited. This suggests that the view just mentioned may be a way of rebutting the objections I have raised so far. I will evaluate the strength of this view in the next chapter.

CHAPTER 5

INTERFERENCE AND PREVENTION

Narveson may attempt to rebut what I argued in the previous chapter by appealing to the distinction between merely preventing an activity and interfering with an activity. Narveson maintains that the reason that first-comers have the right to what they appropriate is that meddling second-comers “would then be *interfering* with the courses of action initiated and being continued by those first-comers” (“Libertarianism vs. Marxism” 11). Presumably, then, the relevant difference between violating a property right and acquiring property is that the former interferes with courses of action already underway, whereas the latter merely prevents courses of action not yet initiated (Cohen, “Once More” 62). On this view, interference is a kind of prevention. Interference prevents the *continuation* of an activity already underway (or at least the *undisturbed* continuation of an activity), whereas mere prevention prevents an activity from being initiated in the first place. It is fairly easy to see why this is a natural move for Narveson to make. After all, when you legitimately appropriate, there is, *ex hypothesi*, nobody *there* doing anything for you to interfere with by appropriating. On the other hand, the thief goes *there*, where you have this stuff that you own, and takes some of it, thereby interfering with whatever activity you were using your stuff to engage in. This distinction addresses a concern I raised in the last chapter, i.e., the concern that the libertarian cannot consistently endorse *both* a prohibition on the way that property rights violators thwart the ambitions of their

victims *and* the liberty of those who appropriate to thwart the ambitions of non-appropriators. I do not think this distinction works for Narveson's purposes.⁹ The reasons for that will be presented below.

We begin by observing that many activities are decomposable in the sense that they contain other activities as components. For instance, building a house contains as its component activities: laying the foundation, building the roof, installing the windows, and so on. Since activities are decomposable in this way, a mere prevention of one activity may thereby interfere with another activity of which it is a component. Suppose that you acquire an item and begin using it to perform activity A. A consists of sub-activities A₁ and A₂. You initiate A by performing A₁. I come in and do X, which merely prevents you from performing A₂. By merely preventing A₂ I interfere with A, because now you cannot complete A. Do we prohibit X because it interferes with A, or do we allow it because it merely prevents A₂? Since X is an act which exemplifies both interference and mere prevention, we need a criterion independent of the distinction itself for assigning priority to the choice of prohibiting X. Narveson may reply that there is no real problem here. He may answer that X ought to be prohibited simply because it interferes with A. After all, interference is exactly what he thinks ought to be prohibited; he is not committed to the claim that mere

⁹ Cohen agrees that the distinction doesn't work for Narveson's purposes, but for different reasons than the ones I adduce here. Cohen's view is that Narveson needs an acceptable standard for individuating activities, but that no standard available to him satisfies that requirement. The standards available to Narveson are either absurdly generous, absurdly restrictive, or totally arbitrary (Cohen, "Once More" 64-66).

prevention of one activity is allowable when it interferes with another activity. Narveson is committed only to the claim that mere prevention of one activity is allowable only if some other activity is not thereby interfered with. But it is hard to see how this reply is satisfactory. We must not allow ourselves to be confused by the use of the term “interference” here. We can certainly rephrase Narveson’s view by saying something like “Merely preventing an activity is allowable, but *interrupting* an activity is not.” The question we need to ask, then, is this: Is a prohibition on interrupting activities supported by specifically *libertarian* premises? That is to say, does interrupting an activity count as interference in a sense of “interference” that the libertarian has to be committed to? Per the libertarian’s standard of justice, the way to answer this would be to determine whether or not X is coercive. It seems perfectly intelligible to ask whether an activity was interrupted coercively or non-coercively. We cannot answer this question by appealing to the distinction between interference and mere prevention, because the question we’re asking concerns what interference with an activity *is*. Thus, the distinction between interference and mere prevention of an activity is not by itself able to tell us whether an act should be prohibited on libertarian grounds.

So *are* some interferences with activity non-coercive? Consider the following scenario. Suppose that you appropriate some trees and begin the activity of building a cabin, but only get halfway done because there aren’t enough trees in your neck of the woods. Let us suppose that where I’m at stands

the only unappropriated group of trees that are left. Suppose that I decide to appropriate these trees for a boat-building activity I wish to engage in. By appropriating these trees I interfere with your cabin-building project, since I bring it about that you cannot complete the project. Do I use force against you in this scenario? I do not, according to the way I characterized force in the previous chapter. Consider, for instance, that if I had physically restrained you, I would have applied direct force to you, and that if I had *threatened* to physically restrain you, I would have applied indirect force to you. However, I do no such thing in the case at hand. All that I do is manipulate some objects external to you. Nor do I coerce you by Narveson's professed standards, since he holds that appropriating hitherto unappropriated stuff does not violate the right to liberty. So it looks like there are good reasons to think that there is a distinction between coercive and non-coercive interference with activity. If Narveson accepts this distinction, as I think he should, then he cannot adduce his distinction between prevention and interference to show why property rights violations should be prohibited. For to merely be told that an act interferes with an activity is not enough for us to know if that act is coercive, and to know whether something violates a property right, and hence the right to liberty, requires knowing if it initiates force.

With the above in mind, I can see only two options available to Narveson. Firstly, he can try to resist my claim that there is a distinction between coercive and non-coercive interference with activity and argue that *all* interference with activity is coercive. If he takes that route, then he owes us an explanation as to

how I initiate force in the scenario described above given that he thinks simple appropriation is non-coercive. Moreover, on that view, many initial acquisitions that we may have thought were legitimate on libertarian grounds would turn out to be coercive, since in a situation of competition for scarce resources, the appropriation of some resources will frustrate the activities of others. Secondly, Narveson can agree to my distinction yet continue to maintain that his distinction between prevention and interference supports property rights. But if that is the case, then either he cannot appeal solely to the right to liberty to support property rights, or the right to liberty is quite different from how he characterizes it. That would presumably commit Narveson to a view the consequences of which would look quite different from anything recognizably libertarian. On the other hand, Narveson could reject the claim that his distinction supports property rights, but then it looks like he would have to fall back on appealing directly to the notion of force to support the prohibition on invasions of property. As I argued in the previous chapter, that move will not work for him. All of the options available to Narveson at this point strike me as unacceptable for him.

CHAPTER 6

CONCLUSION

I have argued that Narveson's libertarianism is seriously inadequate conceptually. In Chapter 4, I argued that Narveson's defense of private property by appeal to the concept of force does not work. I argued that, if the right to liberty is understood as a prohibition on initiatory force, then property rights cannot be supported on libertarian grounds, since property rights violations are not essentially coercive. As a result, the enforcement of property rights restricts liberty in precisely the way that is prohibited by the right to liberty. In Chapter 5, I evaluated Narveson's view that the distinction between interference with activity and mere prevention of activity supports property rights. We saw that this distinction alone cannot motivate a prohibition on invasions of property on libertarian grounds, because we must distinguish between coercive and non-coercive interference with activity. If Narveson accepts this distinction, then he either has to return to a direct appeal to the concept of force to explain why property rights violations should be prohibited or he has to significantly revise his fundamental commitment of justice. As I argue in Chapter 4, the former option will not work for him.

Libertarianism's exaltation of freedom is morally appealing on the face of it, and appeals to liberty in the public sphere often make for dazzling rhetoric, but libertarianism cannot get off the ground as a serious normative proposal if it doesn't make sense to begin with. Perhaps there are better ways of defending

libertarianism that are available to Narveson, but I do not know what those would be. I conclude with some circumspection, then, that the variety of libertarianism advocated by Narveson fails to work at a very basic level.

As I pointed out in the first chapter, none of what I am saying seems to undermine *all* versions of right-libertarianism. Nozick, for example, might reply that the enforcement of private property rights is not coercive since it violates nobody's rights (assuming, of course, that there *are* private property rights). Nozick does in fact appear to accept something like this line of reasoning (262-263). If what counts as coercion depends on what rights people have, and if the enforcement of private property rights violates nobody's rights, then, contrary to what I have been maintaining, the enforcement of private property rights is not coercive. If enforcing a private property right does not amount to a use of force, then it most certainly does not initiate force. On this view, then, the enforcement of private property rights does not violate the right to liberty as I have defined it. One problem with this view is that it entails that the justly imprisoned criminal is not forced to be in prison.¹⁰ Another problem is that this version of libertarianism seems to lack some of the attraction that versions based on morally neutral conceptions of liberty and coercion possess if part of attraction of the latter is the prohibition on initiations of force in the morally neutral sense. Depending on what rights people have, a Nozickian type of libertarianism might justify pervasive initiations of force in the morally neutral sense. Then again, if the enforcement of

¹⁰ Cohen offers an objection along these lines ("Illusions" 228).

private property rights initiates force in the morally neutral sense, then even Narvesonian libertarianism endorses pervasive initiations of force against individuals.

WORKS CITED

- Cohen, G.A. "Capitalism, Freedom and the Proletariat." *The Idea of Freedom: Essays in Honour of Isaiah Berlin*. Ed. Alan Ryan. Oxford: Oxford University Press, 1979. 9-25. Print.
- . "Illusions about Private Property and Freedom." *Issues in Marxist Philosophy, Volume IV: Social and Political Philosophy*. Ed. John Mepham and David-Hillel Ruben. Atlantic Highlands, NJ: Humanities Press Inc., 1981. 223-242. Print.
- . "Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkert." *The Journal of Ethics* 2.1 (1998): 57-96. *JSTOR*. Web. 22 Nov. 2010.
- Dworkin, Ronald. *Taking Rights Seriously*. Cambridge: Harvard University Press, 1978. Print.
- Gibbard, Allan. "What's Morally Special about Free Exchange?" *Social Philosophy & Policy* 2.2 (1985): 20-28. Print.
- Kekes, John. "The Right to Private Property: A Justification." *Social Philosophy and Policy* 27 (2010): 1-20. Print.
- Lomasky, Loren E. *Persons, Rights, and the Moral Community*. New York: Oxford University Press, 1987. Print.
- Narveson, Jan. "Liberal-Conservative: The Real Controversy." *Journal of Value Inquiry* 34 (2000): 167-188. Print.
- . "Libertarianism vs. Marxism: Reflections on G.A. Cohen's *Self-Ownership, Freedom and Equality*." *The Journal of Ethics* 2.1 (1998): 1-26. *JSTOR*. Web. 13 Nov. 2010.
- . "Property and Rights." *Social Philosophy & Policy* 27.1 (2010): 101-134. Print.
- . "Social Contract, Game Theory and Liberty: Responding to My Critics." *Liberty, Games and Contracts: Jan Narveson and the Defence of Libertarianism*. Ed. Malcom Murray. Burlington, VT: Ashgate Publishing Company, 2007. 217-240. Print.
- . *The Libertarian Idea*. Philadelphia: Temple University Press, 1988. Print.

Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books, Inc., 1974. Print.

Vallentyne, Peter. "Introduction: Left-Libertarianism – A Primer." *Left-Libertarianism and its Critics: The Contemporary Debate*. Ed. Hillel Steiner and Peter Vallentyne. New York: Palgrave, 2000. 1-20. Print.

Wheeler, Samuel C., III. "Natural Property Rights as Body Rights." *Nous*. 14.2 (1980): 171-193. *JSTOR*. Web. 05 March 2011.