

Nir Eyal

## If You're an Egalitarian, How Come You're So *Inegalitarian* about Your Body?

Mike: Hi, I am Mike Otsuka. I wrote *Libertarianism without Inequality*.

Righty: Hi! My name is Righty. I am a radical economic conservative.

Lefty: Hello, my name is Lefty. I am a radical egalitarian who thinks that equality of opportunity in the luck-egalitarian sense is a desirable condition. I also happen to be a rabid act-consequentialist, who believes that the state must take whatever means are necessary to promote desirable outcomes. In the case of equal opportunity, one such means is redistributive taxation: coercively transferring money from those with a lot of it to those with little. The state must therefore tax the rich to help the poor and promote equality of opportunity.

Righty: Arrghh! How ethically insensitive! Lefty, you *are* a monster, aren't you? Would you advocate a similar redistribution of a body part from those with two eyes or two kidneys to those with none, just because it would improve outcomes? Would you support the use of forced labor to maximize overall social utility? Look, I am not denying that there is something desirable, other things being equal, about equality of opportunity. But surely we have stringent reasons not to use certain means toward that otherwise noble goal. Sacrificing people—forcing them to lose life, limb, labor, *or income*—to promote other people's opportunities is unacceptable.

This little play was enacted on January 6, 2006, during a symposium on Mike Otsuka's *Libertarianism without Inequality*. I wish to thank Alon Harel and the Forum for Law and Philosophy at the Hebrew University for inviting me to speak at the symposium. Special thanks are due to those who did most of the speaking for me: David Enoch played Mike, and Yuval Eylon played Lefty. I played Righty. I also wish to thank fellow participants and Mike Otsuka for interesting comments on the paper and on the wonderful book on which the paper focuses.

Mike: Righty, why are you assuming that taking away someone's income sacrifices *her*? She is not her income. The word "she" picks out her mind, and often also her body. It does not designate her income. I share your intuitions about the forced redistribution of organs and about forced labor. Such practices sacrifice an individual. But intuitions support only the principle that individuals, including their minds and their bodies, and the products and incomes that these minds and bodies generate, must not be sacrificed — not without these people's consent. I have called that principle "libertarian self-ownership," and I fully endorse it. But libertarian self-ownership does not oppose redistributing an individual's worldly income: the income that she generates from things other than her mind and body alone. Compare, for example, selling one's own hair, or a blanket that one wove out of that hair, with selling vegetables that one produced using not only labor but also seed and farmland — components neither of one's body nor of one's mind. The egalitarian redistribution of worldly incomes like the incomes you raise from farming is fully compatible with libertarian self-ownership. Since the bulk of income is worldly, I believe that "the supposed conflict between libertarian self-ownership and equality is largely an illusion" (6).<sup>1</sup>

Righty: Gosh! Yes — that's convincing. Well done, Mike. Nozick was smart and rigorous, and yet, you've rebutted his views. Good job! I guess that means that I must reject my long-held economic conservatism? Really? Hmm . . .

Mike (turns to Lefty): I guess we've converted another one.

Lefty: Congratulations, comrade!

Righty: Hey, wait! No, I am not converting. Look, it is true, as Mike convincingly points out, that the existence of libertarian self-ownership does not entail the existence of a stringent constraint against redistributive taxation. But it remains perfectly possible that *the best justification* of libertarian self-ownership supports or even entails that a stringent constraint against redistributive taxation exists. In that indirect fashion, commitment to libertarian self-ownership may commit us to rejecting

<sup>1</sup> See also the rest of the introduction and chapter 1. Otsuka shows that egalitarian redistribution of worldly income is compatible even with "robust" libertarian self-ownership. The latter demands that "in addition to having the libertarian right itself, one also has rights over enough worldly resources to ensure that one will not be forced by necessity to come to the assistance of others in a manner involving the sacrifice of one's life, limb, or labour" (32; see also Cohen 1995, 14 and chs. 4–5).

redistributive taxation. It commits us to the best justification of libertarian self-ownership, and that justification (perhaps a principle of autonomy, or one of dignity, or the means/ends formula—whatever it takes to make sense of libertarian self-ownership) may well condemn redistributive taxation. The conflict between libertarian self-ownership and equality may therefore remain very real. Perhaps you should tell us, Mike, what, if anything, justifies being so favorable toward the redistribution of some objects, and so opposed to redistributing all others?

**Lefty:** Right on, Righty! Dual standards are arbitrary! Mike, if you're so egalitarian, how come you're so *inegalitarian* about your body?

**Mike:** My book justifies libertarian self-ownership without relying on a comprehensive ethical theory.<sup>2</sup> Strong, widespread, commonsense intuitions also support libertarian self-ownership. We all feel—I bet even consequentialist Lefty secretly does—that acts that sacrifice non-

<sup>2</sup> During the symposium, Otsuka maintained that he grounds libertarian self-ownership in an ideal of self-determination (he may have suggested that that ideal makes Frances Kamm's ethical framework especially suitable for the moral treatment of people's bodies and minds, and Tim Scanlon's framework especially suitable for the moral treatment of worldly incomes). As far as I can tell, such grounding is not fully worked out in the book. It is true that Otsuka defends one aspect of libertarian self-ownership, namely, the alienability of basic rights and freedoms, as "consistent with full respect for [people's] status as autonomous, rational choosers" (126). See my criticism below. However, libertarian self-ownership clearly involves much more than that single component. That the rights that self-ownership defends are alienable reveals virtually nothing about the determinate content of these rights. An adequate grounding of self-ownership would clarify why such determinate rights should exist. Let me also add that respect for our autonomous natures is a problematic basis for libertarian self-ownership. Admittedly, the forced sacrifice of a sum derived from hair sales affects the autonomous formation and pursuit of plans and other aspects of personal autonomy. But it affects them similarly to how the forced sacrifice of a worldly sum affects them. Moreover, I doubt that even the forced sacrifice of hair (as opposed to mere hair sales-based income) or even a monetary fine for practicing one's faith always affects the autonomous pursuit of plans and other aspects of autonomy more than the forced sacrifice of a worldly sum does. Surely the worldly origin of income does not affect its instrumental value, including its value for the pursuit of a plan or for sustaining other aspects of personal autonomy. The crude difference between all components of the mind and the body, on the one hand, and all other realms, including realms of great import, on the other, does not successfully define when an invasion is highly opposed to personal autonomy. See also Cohen 1995, 236ff.; Kocsis 1999; Fabre 2003; Eyal 2005, 197–99.

volunteers on the altar of social goals are highly problematic. Libertarian self-ownership captures that strong intuition successfully—so we should accept it.<sup>3</sup>

Lefty: Libertarian self-ownership conflicts with some core intuitions.

Mike: Like which?

Lefty: Consider the intuition that sacrificing people is nothing like sacrificing income—not even like income that these people generate exclusively from their own bodies and persons. As you construct it, libertarian self-ownership encompasses much more than the intuitively very stringent right not to be instrumentally forced to lose life, limb, or labor. Libertarian self-ownership also includes the far less intuitive “right to all of the income that one can gain from one’s mind and body (including one’s labour) either on one’s own or through unregulated and untaxed voluntary exchanges with other individuals” (15). You describe the latter right as “very stringent” as well—in exactly the same terms that you use to describe the strength of our right not to have our organs redistributed. But surely the intuition is that our rights over our non-worldly incomes are far weaker than our rights over our minds and bodies. Suppose that someone—call him *Wilt Hairberlain*—shaves his hair off for fun, and then realizes that many citizens will pay hefty sums for a strand of his beautiful and unique hair. He sells all his hair and accumulates a fortune. Everyone suffers from unequal opportunities and from their bad consequences. Intuitively, is it really nefarious to tax part of Hairberlain’s hair-based income in order to equalize opportunities?

Mike: Presumably we tolerate taxing his hair-based income only because the end is important enough to justify transgressing the merely finite constraint against redistributing worldly incomes (19).

Lefty: But the commonsense intuition is that any constraint against taxing income that comes from hair sales is far less stringent than the constraint against sacrificing a person, or even a person’s hair. The former constraint is roughly on a par with the fairly weak constraint against taxing worldly income. In John Christman’s (1991) terms, our “control rights” over ourselves intuitively seem far more stringent than any such “income rights”

<sup>3</sup> See, e.g., Otsuka’s emphasis on the prima facie plausibility of libertarian ownership over one’s body and his statement that “a presumption in favor of such a right of ownership over any bit of land has a good deal less prima-facie plausibility” (2003, 21, including n. 27).

over ourselves and over other things. Unfortunately, your formulation of libertarian self-ownership, which purports to reflect intuition, does not reflect that intuitive difference.

Mike: You may have overlooked my answer to Christman, on p. 16. I said there that Nozick would have rejected Christman's distinction.

Lefty: But in the following pages you refute Nozick's response, and yet, even having done so, you fail to allow Christman's cogent distinction to inform your definition. If I may suggest, perhaps you uphold libertarian self-ownership for reasons that go beyond our intuitions about forced labor and about redistributing organs.

Mike: You are right. Additional intuitions support libertarian self-ownership and the integrated right to reap the benefits of what we do using strictly our bodies and our minds. One intuition is that the theory itself is attractive. As my co-authors and I recently put the point, "there is something theoretically plausible about the thesis of self-ownership: we—and not others—are morally in charge of our bodies and our persons."<sup>4</sup>

Lefty: If we trusted *that* intuition, though, we would wind up endorsing full self-ownership, which your book rejects (13f). The book endorses only what you call "libertarian self-ownership," which condemns only determinate and harmful ways to treat people as not in charge of their bodies and persons.

Righty: Then perhaps Mike should not reject full self-ownership. After all, he does substantiate self-ownership on the basis of intuitions that would support full self-ownership far more readily than libertarian self-ownership.

Mike: What intuitions are you thinking about?

Righty: You emphasize that

The anti-paternalistic and anti-moralistic implications of [a Lockean right of self-ownership] will be attractive to anyone who finds himself in sympathy with the conclusions which John Stuart Mill draws in *On Liberty*. When it comes to such things as freedom of expression, the legalization of euthanasia, of sexual relations of any sort between consenting adults, of the possession of cannabis and other recreational drugs, of gambling, and the like, I am completely at one with other libertarians. (2–3)

<sup>4</sup> Vallentyne, Steiner, and Otsuka 2005, 207–208. Compare with Justice Cardozo's plausible-sounding statement that every adult has a "right to determine what shall be done with his own body" (*Schloendorff v. Society of NY Hospital*, 211 NY 125, 129–30, 105 N.E. 92–933 (1914)).

The rights proclaimed in such passages are very different from the determinate right that libertarian self-ownership covers. They are rights of self-control that condemn much more than being forcibly and instrumentally killed, injured, enslaved, or having non-worldly income withheld. Such passages reveal your support for a fuller version of self-ownership that rules out even benign—sometimes even beneficial—trespass into a personal sphere that should remain within one’s exclusive control. You really ought to endorse full self-ownership, and not mere libertarian self-ownership.

Mike: I cannot endorse full self-ownership. It generates the wrong conclusions in the standard *trolley* case<sup>5</sup> and in numerous other contexts. Harming someone as a foreseeable by-product of an important pursuit often seems perfectly permissible (13–14).<sup>6</sup>

Lefty: If our intuitions support full self-ownership, and they also tell against full self-ownership, why trust our intuitions so much in the first place?<sup>7</sup>

Mike: I still trust our intuitions about sacrifice. These intuitions are particularly strong. Few acts are intuitively as repulsive as the killing or the severe injury of innocents as a means to goals that these innocents do not share.<sup>8</sup>

<sup>5</sup> In *trolley*, a run-away trolley is hurtling toward five people who are tied to the tracks. The only way to save them is to push a button that automatically diverts the trolley onto a side track. Unfortunately, one person is tied to the side track. Diverting the trolley there would kill that one person. Is it permissible to push the button? Most respondents feel that it is. Saving the five with the foreseeable by-product of killing the one strikes them as fully acceptable.

<sup>6</sup> Recently, Otsuka and his co-authors proposed a different approach toward the failure of full self-ownership to generate accurate conclusions: “Full self-ownership admittedly has some counterintuitive implications. . . . This, however, is true of all principles. A full defense of a principle requires a balancing of the abstract theoretical considerations with the plausibility of the concrete implications (e.g., as in reflective equilibrium). Our claim, undefended here, is that at least loose full self-ownership is justified by such a balancing procedure” (Vallentyne, Steiner, and Otsuka 2005, 208).

<sup>7</sup> See also Daniel Attas’s contribution to this issue.

<sup>8</sup> Otsuka’s canonical statement of a libertarian right of self-ownership, on p. 15, does not specify that the relevant right bearer is innocent. But part II of the book, on punishment and self-defense, reveals the importance for Otsuka of the difference between innocent agents and blamable ones. Fully blamable criminals and fully blamable aggressors can legitimately lose their freedom of movement or even their life.

Lefty: Hey! This sounds like a version of, or a variant on, the doctrine of double effect. Mike, if you hold that self-ownership is right only insofar as it overlaps with a variant on the doctrine of double effect, perhaps you should endorse that variant directly. Why call it “self-ownership”?

Righty: Mike evidently takes the *trolley* problem very seriously, Lefty. I doubt that the doctrine of double effect deals very well with trolley when it involves a loop.<sup>9</sup>

Lefty: Please—no analysis of *trolley* today. Let’s talk instead about an intuition that conflicts with Mike’s view in a clearer way: the intuition that basic rights like the freedoms of speech, thought, association, movement, and physical integrity are inalienable. Endorsing either full or libertarian self-ownership unfortunately commits Mike to viewing these basic rights as alienable. In fact, Mike embraces and defends this highly counterintuitive commitment in chapter 6 of the book (122ff). There, he claims that enslavement is legitimate if the victim freely forwent her right not to be enslaved. This claim conflicts with exactly the same intuition on which Mike earlier builds his case for libertarian self-ownership, namely, the intuition that forced labor is always wrong. So Mike is in the unenviable position of having to undermine our trust in that intuition, without undermining our trust in it too much.

Mike: Don’t you feel that a moral system that permits us to do anything we freely will, that permits us even to risk becoming slaves, respects us as free agents more than a system that bans that free choice? (126ff)

Lefty: In one respect, sure: having the freedom to sign such “Ulyssian contracts” that risk loss of basic rights shows high regard for our freedom (see Elster 2000). In another respect, the rights in question remain basic *freedoms*, and being allowed to lose these rights shows low regard for

<sup>9</sup> In *loop*, the side track described in note 5 above winds back behind the one person back into the main track. Therefore, a trolley diverted onto the side track would return to the main track and kill the five if the trolley did not first hit the one. However, the one is known to be so fat that hitting and killing him is bound to stop the hurtling trolley. Most people feel that, even in *loop*, it remains permissible to push the button and divert the trolley onto the side track. For philosophers like Judith Thomson and Frances Kamm, that intuition undermines the doctrine of double effect. The sacrifice of the one, who never volunteered to be hit by a trolley, seems like a means intended in order to promote an end that he need not share: saving the five.

our freedom. Appeal to respect tends to be very arbitrary. In our context, liberty, which upsets many things, can upset a person's future liberty. The value of respect for one's liberty cannot weigh for or against assigning one the liberty to lose liberty. Naturally, our intuitions on these matters are confused: far more confused than either advocates of alienable rights or advocates of inalienable rights currently take our intuitions to be.<sup>10</sup> Take another example of such confusion. Contemporary declarations of the rights of medical research subjects always demand more than simply free and informed consent. They reflect the intuition that more is owed to autonomous adults who participate in research than simply the real opportunity to refuse to serve as guinea pigs: our regulations often demand that subjects be given a chance to benefit from participation; that risk to subjects remain at the minimal level vital for a trial that is itself truly necessary; and so forth. But we also have the intuition that fully voluntary and rational choice on the part of autonomous adults—including research subjects' free and informed consent—is sufficient for legitimate interventions. I do not see how we can make sense of such apparently incompatible intuitions. The truth is that our intuitions are confused. Commonsense morality is largely the product of morally blind factors like our socio-biological makeup, or the ideologies behind recent modes of production.

Righty: Please, no Marxist rhetoric today! Why not follow Edmund Burke and take intuitions that come from our cultural heritage and innate humanity seriously? I agree that some intuitive criteria for deciding what forms of trespass are especially wrongful seem a wee bit arbitrary. For instance, we regard stealing someone's hair as a fairly despicable violation of individual rights; far more despicable, I believe, than stealing her inventions and other profitable ideas. Stealing inventions, we might explain, violates "mere" intellectual property rights. But inventions, which are the products of a person's intellect, are surely closer to constituting parts of that person than is the replaceable, dead protein that sticks out

<sup>10</sup> For attempts to ground alienable rights in respect for our dignity as free persons, see Nozick 1986, 30–33 (for Nozick, the rights to which side constraints give rise are alienable); Otsuka 2003, 126ff; Taylor 2004. For attempts to ground inalienable rights in respect for our dignity as free persons, see Attas 2000; Freeman 2001, 110ff.; Pateman 2002 (she reserves the name "property in the person" for what we have called "self-ownership" throughout); Ingram 1995, ch. 2.; Kocsis 1999, 24.

of her head. What we regard as central parts of the self is admittedly affected by rich traditions and other factors that have little “objective” importance. And yet, it would greatly impoverish our morality to disregard these factors altogether. When we protest against an occupying army’s arbitrary decision to hold a search in the bedroom of a family, against the army’s arbitrary occupation of the family’s balcony, against the army’s unwarranted destruction of the family’s olive grove, we do not first inquire whether in an ideally egalitarian world these worldly resources would indeed belong to that family. The moral constraint against such invasions into worldly resources rests in part on present legal arrangements and on our rich cultural status quo, which assigns bedrooms to their present occupiers. But if we overlook that constraint only because it lacks “objective” validity, it might be inconsistent to heed constraints against the invasion of someone’s body. They too may rest on our heritage: isn’t it ultimately arbitrary that we forbid invasion of the entire body, and not only of the mind or only of the central nervous system — arguably the more genuine seats of the self? When it comes to self-ownership, we view the entire body as part of the “self.” But body parts like hair and a single kidney are often replaceable without a change of identity or even a huge deficit.<sup>11</sup> Think about invasion of someone’s inessential kidney; invasion of her hair; invasion of her bedroom; invasion of her olive grove. The farther we are from the perceived center of the self, the weaker the relevant constraint against invasion. But the constraint does not altogether vanish once we cross the borders of the body and the mind. All the aforementioned types of invasion are to some degree problematic. In my view, invasion of a person’s bank account is only a step away. Redistributive taxation remains problematic.

Mike: So the two of you really question the existence of a *natural* right not to be sacrificed? Doesn’t it seem to you objectively wrong, for example, to order the execution of an innocent only in order to prevent a lynching?<sup>12</sup>

Lefty: You see, such rights cannot really exist. As philosophers like Harris, Kagan, Unger, and Lippert-Rasmussen have shown us, the best attempts to spell out the rationale behind such rights ultimately founder.<sup>13</sup>

<sup>11</sup> Compare Vallentyne 1998, 613 n. 2.

<sup>12</sup> Otsuka sees the right not to be coercively sacrificed as natural (2003, 3).

<sup>13</sup> Harris 1975; Kagan 1989; Unger 1996; Lippert-Rasmussen 1996, 1999.

Righty: Arrgh! Please remind me, Mike, never to talk to consequentialists again. To quote Elizabeth Anscombe (1981, 40), “if someone really thinks, in advance, that it is open to question whether such an action as procuring the judicial execution of the innocent should be quite excluded from consideration — I do not want to argue with him: he shows a corrupt mind.” Mike, let’s go!

Mike: Yeah, let’s go.

(Righty and Mike leave.)

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### References

- Anscombe, G. E. M. 1981. “Modern Moral Philosophy.” *Collected Philosophical Papers*, vol. 3. Oxford: Blackwell.
- Attas, D. 2000. “Freedom and Self-Ownership.” *Social Theory and Practice* 26 (1): 1–23.
- Christman, J. 1991. “Self-Ownership, Equality, and the Structure of Property Rights.” *Political Theory* 19 (1): 28–46.
- Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge UP.
- Elster, J. 2000. *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints*. New York: Cambridge UP.
- Eyal, N. 2005. “‘Perhaps the Most Important Primary Good’: Self-Respect and Rawls’s Principles of Justice.” *Politics, Philosophy, and Economics* 4 (2): 195–219.
- Fabre, C. 2003. “Justice and the Compulsory Taking of Live Body Parts.” *Utilitas* 15 (2): 127–50.
- Freeman, S. 2001. “Illiberal Libertarians: Why Libertarianism Is Not a Liberal View.” *Philosophy and Public Affairs* 30 (2): 105–51.
- Harris, J. 1975. “The Survival Lottery.” *Philosophy* 50 (191): 81–87.
- Ingram, T. 1995. *A Political Theory of Rights*. Oxford: Oxford UP.
- Kagan, S. 1989. *The Limits of Morality*. Oxford: Clarendon Press.
- Kocsis, M. 1999. “Nozick’s Libertarianism and the Proper Assessment of Self-Ownership.” *Philosophical Writings* 11:11–28.
- Lippert-Rasmussen, K. 1996. “Moral Status and the Impermissibility of Minimizing Violations.” *Philosophy and Public Affairs* 25:333–50.

- . 1999. "In What Way Are Constraints Paradoxical?" *Utilitas* 11:49–70.
- Nozick, R. 1986. *Anarchy, State, and Utopia*. Oxford: Oxford UP.
- Otsuka, M. 2003. *Libertarianism without Inequality*. Oxford: Oxford UP.
- Pateman, C. 2002. "Self-Ownership and Property in the Person: Democratization and a Tale of Two Concepts." *Journal of Political Philosophy* 10 (1): 20–53.
- Taylor, R. 2004. "A Kantian Defense of Self-Ownership." *Journal of Political Philosophy* 12 (1): 65–78.
- Unger, P. 1996. *Living High and Letting Die*. New York: Oxford UP.
- Vallentyne, P. 1998. "Critical Notice of G. A. Cohen, *Self-Ownership, Freedom, and Equality*." *Canadian Journal of Philosophy* 28 (4): 609–26.
- Vallentyne, P., H. Steiner, and M. Otsuka. 2005. "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried." *Philosophy and Public Affairs* 33 (3): 201–22.