

G. A. COHEN ON SELF-OWNERSHIP,
PROPERTY, AND EQUALITY

ABSTRACT: G. A. Cohen has produced an influential criticism of libertarianism that posits joint ownership of everything in the world other than labor, with each joint owner having a veto right over any potential use of the world. According to Cohen, in that world rationality would require that wealth be divided equally, with no differential accorded to talent, ability, or effort. A closer examination shows that Cohen's argument rests on two central errors of reasoning and does not support his egalitarian conclusions, even granting his assumption of joint ownership. That assumption was rejected by Locke, Pufendorf and other writers on property for reasons that Cohen does not rebut.

In a number of articles, G. A. Cohen has set out an intricate set of arguments rebutting attempts to derive property claims in alienable objects ("world ownership") and non-patterned distributions of income ("capitalist inequality") from property claims in one's person ("self-ownership").¹ As Cohen (1995, 14) describes his enterprise in *Self-Ownership, Freedom, and Equality*, "I entertained an alternative to Nozick's 'up for grabs' hypothesis about the external world, to wit, that it is jointly owned by everyone, with each having a veto over its prospective use. And I showed that final equality of condition is as-

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sured when that egalitarian hypothesis about ownership of external resources is conjoined with the thesis of self-ownership." Cohen concludes that "equality had indeed been derived with no breach of the rules of self-ownership" (ibid.), a result that, when conjoined with additional arguments, "succeeded in exploding the libertarian position" (ibid., 15).

The argument—once one gets past Cohen's strange assumptions—is ingenious and has been extraordinarily influential. Will Kymlicka (1990, 118), for example, asks, in his *Contemporary Political Philosophy: An Introduction*, "What would happen if the world was [sic] jointly owned, and hence not subject to unilateral privatization? There are a variety of possible outcomes, but in general they will negate the egalitarian implications of self-ownership."² Kymlicka cites, without rehearsing his argument, Cohen's authority in support of this strong claim. More recently, Justin Weinberg (1997, 324) has reproduced parts of Cohen's argument in an article in *Critical Review*, concluding that "Cohen shows that libertarianism cannot be defended in the way that most libertarian philosophers want to defend it."³

The conclusion that Cohen reaches and that has been so influential is, however, based on errors in Cohen's reasoning. There are numerous steps in the argument that may be open to objection, but even granting all of his assumptions, the logic of the argument fails.

I shall first outline Cohen's aims and general procedure. Second, I shall identify two crucial moves in his influential argument. Third, I shall show that the first move is insupportable. Fourth, I shall show that the second move is based on a confusion. I examine only two steps of Cohen's argument, but they are vitally important to his conclusions and, if they are wrong, his polemic against property in one's person, and against attempts to ground several property on this foundation, is severely weakened.

Finally, I will conclude with some general remarks about where this leaves Cohen and the issue of property rights. Cohen asserts that libertarianism is unjustified if we grant his assumption—offered without any argument whatsoever—that communism is justified. I conclude by rebutting this strange position.

Before turning directly to Cohen's case, I should offer a justification for plunging the reader into an often complicated and technical argument, so much so that few readers have bothered to read it carefully. Cohen's mistakes, although fatal to his enterprise of undermining libertarianism, are instructive. Cohen does not succeed in "ex-

ploding the libertarian position" (1995, 15), but his failed effort does draw our attention profitably to such matters as the role of expectations in determining bargaining outcomes, the limitations of purely hypothetical models for moral and political theory, and the importance of the history of legal and political institutions and of the history of moral, legal, and political thought. In his attack on property, Cohen conjoins the unjustified and untenable assumption of initial communism with faulty reasoning and an argument so convoluted that he becomes entangled in his own scenarios and confuses them, to the destruction of his enterprise.

Joint Ownership

Cohen's principal concern is to defend a thoroughgoing egalitarian distribution of *income*, which he considers to be incompatible with an inegalitarian pattern of *ownership*. He asserts that "a union of self-ownership and unequal distribution of worldly resources leads to indefinitely great inequality of private property in external goods and, hence, to inequality of condition, on any view of what equality of condition is" (1995, 69). His concern is to delegitimize the appropriation of external resources by individuals or groups, by which they might come to have a property in such resources that would exclude the rival claims of others. Cohen takes as his sole target Robert Nozick's remarks on property in *Anarchy, State, and Utopia* and attempts to unravel the relationship Nozick asserts between private (or several) property and individual liberty. In doing so, Cohen affirms the plausibility of (without indicating ultimate agreement with) Nozick's insistence on each person's property in her person.⁴ Cohen then reduces Nozick's entire theory of appropriation to Nozick's version of the "Lockean proviso," which holds that "a process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened" (Nozick 1974, 178). Cohen (1995, 76) considers the proviso, not as a proviso *to* a theory of appropriation, but simply to *be* Nozick's theory of appropriation; thus, the proviso just quoted, "with Nozick's elaboration of it, is Nozick's doctrine of appropriation; or, speaking more cautiously, if Nozick presents any doctrine of appropriation, then the quoted statement is the controversial element in his doctrine, and therefore the element which re-

quires close scrutiny." I shall set to the side questions about whether Cohen has fairly characterized Nozick's proviso as constituting his principle of appropriation,⁵ and will merely reproduce the conclusion of his treatment, as prolegomenon to his central argument that "self-ownership" can be so construed or integrated with other arrangements as to necessitate completely equal distribution of wealth and income.

Cohen (1995, 90) insists that any appropriation will make someone worse off, for no other reason than that someone will no longer be able to appropriate the now-appropriated item: "It is clear beyond doubt that an appropriation of private property can contradict an individual's will just as much as levying a tax on him can." If contradicting one's will is the criterion for a theory that is supposed to be based on liberty, then, according to Cohen, no private appropriation could meet the requirements of a suitably formulated Nozickian proviso, for, even if a latecomer finding no unappropriated resources left to appropriate were to be compensated by greater material wealth, this compensation could not undo the fact that the latecomer's will has been overruled. As Cohen (*ibid.*, 89) argues, "Nozick disallows objectively paternalist use of people's private property. But he permits objectively paternalist treatment of people in other ways. For, since he permits appropriations that satisfy nothing but his proviso, he allows *A* to appropriate against *B*'s will when *B* benefits as a result, or, rather, as long as *B* does not lose." If someone were to chop off my arm, even if he later made me better off, we would still say that my rights had been violated.

In the process of making this move, allegedly showing that Nozick's approach cannot justify appropriation by individuals (or groups) from an unowned commons, Cohen suggests that Nozick's baseline of comparison—what one could get in a condition of no appropriation or ownership at all—is arbitrary, and that a variety of collective ownership arrangements should be considered as candidates for the baseline, as well.⁶ There are, according to Cohen (1995, 78), "other intuitively relevant counterfactuals, and . . . they show that Nozick's proviso is too lax, that he has arbitrarily narrowed the class of alternatives with which we are to compare what happens when an appropriation occurs with a view to determining whether anyone is harmed by it." The alternative that he singles out as "intuitively relevant" is that of joint ownership, according to which a resource

is owned, by all together, and what each may do with it is subject to collective decision. The appropriate procedure for reaching that decision may be hard to define, but it will certainly not be open to any one of the joint owners to privatize all or part of the asset unilaterally, no matter what compensation he offers to the rest. . . . So if joint ownership rather than no ownership is, morally speaking, the initial position, then *B* has the right to forbid *A* to appropriate, even if *B* would benefit by what he thereby forbids. (*Ibid.*, 83)

In setting up the problem, Cohen (1995, 92) strives to "reconcile self-ownership with equality (or not too much inequality) of condition, by constructing an economic constitution which combines self-ownership with an egalitarian approach to raw worldly resources." (Cohen never makes clear what "not too much inequality" can or should mean, or how one might know how much was too much.) The principle of joint ownership, according to Cohen, when combined with strict "self-ownership," would: 1) preclude individual or subgroup property rights (or property in severalty through subdivision) through free agreement, and 2) generate completely equal distributions of income (or, if any inequalities were to be allowed, they would not reflect differences in control over productive powers, i.e., they would not be due to one's property in one's person). Cohen tries to base both of those conclusions on the rationality of the parties. The point of Cohen's exertions is to attempt to show that self-ownership would not entail rights to several property, or world-ownership, under conditions of initial joint ownership of resources other than labor. Cohen claims that no individual or subgroup appropriation can meet a properly formulated Nozickian proviso against harm, so there can be no legitimate individual or subgroup appropriation from a condition of no-ownership. His next two steps are to argue that rationality would preclude mutually agreeable individual or subgroup division of the jointly owned assets, and that it would be irrational for joint owners to agree to unequal distribution of their joint product. These are the steps I will now contest.

Is Unequal Division of Jointly Owned Resources Irrational?

The first of Cohen's two rationality-based arguments concerns the division of assets ("appropriation"). He rejects individual or subgroup

division or appropriation of jointly owned assets on the grounds that "B might have good reason to exercise his right to forbid an appropriation by A from which B himself would benefit. For, if he forbids A to appropriate, he can then bargain with A about the share of output he will get if he relents and allows A to appropriate. B is then likely to improve his take by an amount greater than what A would otherwise have offered him" (Cohen 1995, 84). According to Cohen, B does not seek a more equal distribution of assets, but the improvement of his "share of output" of the jointly owned asset.

It is not at all clear from the text how B's veto threat would "improve his take" unless B might later relent and allow A to appropriate, in which case the output would no longer be jointly owned and subject to distribution. The argument that B might forbid A's appropriation in order to hold out for a larger share of output is thus incoherent, for if A were to be allowed to appropriate, there would be no joint product to share.

Setting aside the above confusion, it bears noting that Cohen is careful to indicate that an agent "might" have good reason to refuse an appropriation, for the agent *also* might very well have good reasons to agree to such an appropriation. There are many observable cases, after all, in which jointly owned resources (e.g., in business partnerships and in marriage partnerships) are divided on the basis of free agreement. These occasions happen when some one or more of the following situations obtain:

(A) The parties no longer wish to cooperate, because of differences unrelated to the physical productivity of cooperation. (They may, for example, mutually prefer not to be subject to the veto powers of joint owners over the disposition of jointly owned assets.)

(B) The size or composition of the group of joint owners entails transaction costs, in coming to agreement over the disposition of the jointly owned asset, that are greater than the sum of the losses that would be suffered by even the worst off under a loss of the right to an aliquot portion of the income stream generated by a jointly owned asset. This would entail that those who would fare worst under division could still be compensated for their losses from the resources freed up by the elimination of the high transaction costs attributable to joint ownership. Under such conditions, and assuming that the transaction costs of a one-time negotiation and arrangement of a division were not prohibitively high, then it would be rational for the joint owners to agree to division of their jointly owned assets.

(C) One or more of the parties believe that she or they could manage a subdivided portion of the currently jointly owned resource better than the collectivity could, thereby generating a surplus. From this surplus she or they could offer the other joint owners compensation for the lost aliquot portion of the income stream they would have received from the asset were it to remain jointly owned.

(D) The joint owners differ in their discounting of future income streams, and have correspondingly different preferences for savings versus consumption, such that a division into several property would allow them to allocate income between investment and consumption differently. For example, if *A* prefers a policy of "Eat, drink, and be merry, for tomorrow we may die," whereas *B* prefers a policy of "A penny saved is a penny earned" (or if *A* simply has a shorter time horizon than *B*, due to advanced age or impending death, for example), then they may find it impossible to agree on whether to sacrifice current consumption for future satisfaction, and if so, what would be the best tradeoff; whereas with division, each would be able to satisfy her own preference, even if it were to come at the cost of a lower aggregate physical product.

Cohen's arguments attempt to show that, under conditions of joint ownership, division (appropriation) resulting in some inequality of assets would be irrational, but his arguments fail to justify that conclusion. Cohen is not clear on whether it is appropriation per se or appropriation that would result in unequal distribution of "output" that matters to him. Whichever it is, though, the argument fails.⁷

Cohen does allow for the possibility, at least under conditions of unanimity, of a precisely equal division of initial assets, in the manner favored by Hillel Steiner.⁸ Joint ownership, unlike equal division, "forbids a Nozickian formation of unequal private property by placing all resources under collective control" (Cohen 1995, 102). Cohen (*ibid.*, 105) admits that, under conditions of unanimity, joint ownership and equal division "may readily be converted into the other." But arrangements other than strict equality, and not including the entirety of the human race, or of all rational agents, seem to be ruled out *tout court*.⁹

Of course, if property in resources were to be divided and several property established, joint ownership could be voluntarily reestablished by the several owners agreeing jointly to recombine their assets into jointly owned assets.¹⁰ But Cohen's insistence that joint owners

would not—or would be irrational to—agree to division is unsupported.

Before proceeding to the next serious error in Cohen's argument, a short digression about Cohen's misunderstanding of Nozick is in order, although this correction is not necessary to show the errors in Cohen's reasoning. Cohen (1995, 84) claims that "Nozick must suppose that the world's resources are, morally speaking, nothing like jointly owned, but very much up for grabs, yet, far from establishing that premiss, he does not even bother to state it, or show any awareness that he needs it." This is untrue; Nozick (1974, 178) clearly states that he believes that any ownership claim must be justified, whether collective or individual or mixed: "It is not only persons favoring *private* property who need a theory of how property rights legitimately originate. Those believing in collective property, for example those believing that a group of persons living in an area jointly own the territory, or its mineral resources, also must provide a theory of how such property rights arise; they must show why the persons living there have rights to determine what is done with the land and resources there that persons living elsewhere don't have (with regard to the same land and resources)." Rather than Nozick being guilty of "not even bothering to state . . . or show any awareness that he needs" such a theory, it is Cohen who fails to provide a theory of how or why joint ownership might be, or might have been, justified, beyond asserting that it is "intuitively relevant."

Again, however, this clarification is not essential to showing the error in Cohen's argument. Even granting Cohen's assumption of initial joint ownership, he has failed to show that it would be irrational to agree to divide ownership of assets.

Is Unequal Division of Jointly Produced Output Irrational?

Cohen's second and more complex argument is an attempt to show that, assuming inescapably joint ownership (i.e., insisting that, contrary to historical experience and the considerations listed above, it would be irrational to agree to division), unequal contributions to a jointly produced product (i.e., a product to which all factor inputs save one—labor—are jointly owned) will result in precisely equal distribution of the joint product ("final equality of condition"). (This conclusion further assumes equal preference for leisure over labor;

what Cohen is concerned to show is that unequal marginal productivity, under such conditions, will not result in an unequal distribution of the joint product.) Cohen assumes, like Rawls, that all income is jointly produced and that the distribution of the joint product is to be the result of some sort of agreement among the joint owners. Where Cohen differs from Rawls is in granting, for the sake of his attempted refutation of Nozick, that the parties to the agreement know what their productive abilities are and have property in those natural talents. Joint ownership of external resources means that each owner has a full veto right over any proposed distribution of the joint product, because each has a veto right over the disposition of the factor inputs, other than labor, that contribute to the production of the joint product. Thus, Cohen writes that "I entertained an alternative to Nozick's 'up for grabs' hypothesis about the external world, to wit, that it is jointly owned by everyone, with each having a veto over its prospective use. And I showed that final equality of condition is assured when that egalitarian hypothesis about ownership of external resources is conjoined with the thesis of self-ownership" (14). Careful examination demonstrates, however, that Cohen's arguments do not show that "final equality of condition is assured."

Cohen (1995, 94) proposes that we consider a two-person world, populated by "Able" and "Infirm," in which there is an asymmetry in the productive capabilities of the two parties, who are jointly owners of all available external resources. In this situation, "Each owns himself and both jointly own everything else." Cohen (*ibid.*, 95) then describes three cases in which bargaining between the two parties is impossible:

- i. Able cannot produce per day what is needed for one person for a day, so Able and Infirm both die.
- ii. Able can produce enough or more than enough for one person, but not enough for two. Infirm lets Able produce what he can, since only spite or envy would lead him not to. Able lives and Infirm dies.
- iii. Able can produce just enough to sustain both himself and Infirm. So Infirm forbids him to produce unless he produces that much. Able consequently does, and both live at subsistence.

In these three cases there is no surplus over which to bargain. The two cases in which bargaining over a surplus might take place are described as follows:

iv. If Able produces at all, then the amount he produces is determined independently of his choice, and it exceeds what is needed to sustain both Able and Infirm. They therefore bargain over the distribution of a fixed surplus. The price of failure to agree (the 'threat point') is no production, and, therefore, death for both.

v. Again, Able can produce a surplus, but now, more realistically, he can vary its size, so that Able and Infirm will bargain not only, as in (iv), over who gets how much, but also over how much will be produced. (Cohen 1995, 95)

Cohen (1995, 96) acknowledges that Able and Infirm may differ in their preferences for leisure or labor (which he rather oddly characterizes as "the disutility of labour for Able and the disutility of infirmity for Infirm"),¹¹ and that this asymmetry may be a factor in the bargaining process, presumably allowing divergences from complete equality of product. Such differences in preferences, Cohen asserts, are unrelated to abilities. Thus, "the crucial point is that Able's talent will not, just as such, affect how much he gets. If the exercise of his talent is irksome to him, then he will indeed get additional compensation, but only because he is irked, not because it is his labour which irks him" (*ibid.*).

Cohen thus tries to establish that under conditions of joint ownership of assets, the more productive would never receive a share of output proportional to productivity or otherwise unequal to purely egalitarian division, i.e., simple division of the total product by the number of joint owners. If Able works 10 hours and picks 100 bushels of apples and Infirm works 3 hours and picks 10 bushels of apples, their mutual rationality demands that at the end of the day Able will receive 55 bushels and Infirm will receive 55 bushels. Perhaps because this is so wildly implausible, Cohen tries to suggest a reason why Able might get more than 55 bushels after all, to wit, that picking apples is unpleasant (it "irks" her). This may be the strangest part of Cohen's exposition and simply heaps confusion on confusion, as he tries to make a distinction without a difference. Cohen conjures up the distinction between one's abilities and one's preferences in order to justify, on the basis of pure rationality, divergences from strict egalitarianism. In effect, he argues that if joint owners were to agree to unequal division, it could only be because of different preferences for leisure (the irksomeness of labor) and never because of unequal talents or abilities.

Thus, Cohen (1995, 96) states that "if the exercise of [Able's] talent is irksome to him, then he will indeed get additional compensation, but only because he is irked, not because it is his labour which irks him." But there is no meaningful sense to the term "additional" here, since the questions are what amount of product will be produced and the ratio at which it will be shared between Able and Infirm. Infirm may be able to demand a price for her consent to the use of the jointly owned assets, but whether she will be successful in doing so and how much she will get depend on her bargaining abilities. Given that in Cohen's model leisure and labor are directly convertible, at least above the mutual subsistence baseline, an irksome *decrease* of leisure is precisely convertible into an irksome *increase* of labor, so if Able is irked, it *must* be because of the irksomeness of labor.¹² Cohen's distinction between labor and the irksomeness of labor is both confusing and confused. It fails to make his argument any more plausible.

Cohen also assumes that the outcome will be in the form of a percentage share and argues that a 50/50 split is the only rational outcome. A percentage split in the case of Able and Infirm would be unlikely in scenario v, in any case, since, for any percentage split (40/60, 50/50, or whatever) of output and any quantity of labor input, a lump-sum distribution to Infirm would be preferable from both Infirm's and Able's perspectives. Consider the case of Cohen's preferred 50/50 split at the expenditure of Able's labor that produces 100 units of product. Infirm and Able will each receive 50 units, meaning that Able faces a 50 percent average tax rate and a 50 percent marginal tax rate. By accepting a lump-sum payment of 50 units plus 1, Infirm is made better off and Able's marginal tax rate over 51 units is reduced to zero, which, if he has a normally shaped supply curve for labor, will generate a larger expenditure of labor. Thus, both Able and Infirm would be better off by substituting a lump-sum payment to Infirm for her agreement to allow Able to labor on the jointly owned resources; hence, Cohen's insistence on a 50/50 split of output, regardless of the amount of output, is not to the advantage of either party. Cohen's argument for a strictly egalitarian (50/50) distribution of income fails even at the level of insisting that a percentage of final product is rationally preferable to a lump-sum payment.

I now turn to the most serious confusion in Cohen's convoluted argument. The fact that Infirm has a full veto power over Able's ef-

forts entails, according to Cohen, that the distribution of the product will not be influenced by Able's greater ability. Able

gets nothing extra just because it is he, and not Infirm, who does the producing. Infirm controls one necessary condition of production (relaxing his veto over use of the land), and Able controls two, but that gives Able no bargaining advantage. If a good costs \$101, and you have one hundred of the dollars and I only have one of them, then, if we are both rational and self-interested, you will not get a greater share of the good if we buy it jointly just because you supply so much more of what is required to obtain it. (Cohen 1995, 96)

This claim is based on a confusion, however, as it assumes that "a good costs \$101" (my italics), i.e., that there is no variability in the ratio of inputs and outputs. (For \$101 you get the minimal amount of the good, but for \$100 you get none, and for \$102 you get no more.) Cohen is here confusing cases iii and iv with case v, which is the more normal and certainly the most interesting case. Cohen has stipulated in cases iii and iv that Able cannot decide to produce more or less, so the total product to be divided is rigidly fixed.

Both of these scenarios are radically different from the situation described by case v, for in this (most realistic) case the input of labor is variable, so there is not "a good" costing a fixed amount, as there is in cases iii (where the maximum possible product is the minimum necessary to sustain both Able and Infirm) or iv (where the only possible output is greater than the minimum necessary to sustain both Able and Infirm, but variation of neither input nor output is possible). In case v, both factor input and product are variable. Able has the option of varying her expenditure of labor in return for varying product; if the \$100 were to represent the amount of labor necessary to sustain both Able and Infirm, and the \$1 were the relaxing of Infirm's veto over Able's activities, then the interesting question is what would happen to the increased production made possible by Able's additional investments of \$5, \$30, \$68.43, etc., since Infirm has nothing other than the magical \$1 (necessary to make production possible) to contribute. All that we can say with certainty is that, given Cohen's assumptions, Infirm will receive at least the minimum necessary to sustain her, as she would not, under any circumstances, agree to less; above that it is a matter of bargaining. *Pace* Cohen, there is no reason to insist that any increased production over the input of Able's \$100 and Infirm's \$1 would be shared equally. The distribution de-

pendes not only on Able's preferences for leisure over labor, but also on the expectations of the parties, and this involvement of expectations by itself entails a radical indeterminacy of result, for, as Thomas Schelling (1960, 21) points out, such situations "ultimately involve an element of pure bargaining—bargaining in which each party is guided mainly by his expectations of what the other will accept. But with each guided by expectations and knowing that the other is too, expectations become compounded."

In a case of the sort that Cohen describes, in bargaining over a surplus the bargainer who can precommit credibly will get the share she prefers, so long as the other party has not precommitted simultaneously.¹³ What Cohen's remarks tell us is that G. A. Cohen has committed himself, through the vehicle of his published writings, to a certain strategy (fully equal division) in the sorts of cases that he describes (as it would, presumably, entail a loss of face or of academic reputation if he were to practice other than he preaches). Anyone who finds herself in a pure bargaining situation with G. A. Cohen may expect that the only viable move will be to demand one-half of whatever is at stake—no more and no less—which is the complementary equilibrium strategy to an irrevocably committed strategy of demanding one half.¹⁴ But that strategy may not work with bargainers other than G. A. Cohen. Strict egalitarianism is not the uniquely rational bargaining strategy that Cohen claims it is.

Cohen believes that his example of the \$100 and the \$1 necessary jointly to purchase a good proves that "there will be no . . . inequality, or its source will not be Able's ownership of his own powers, but the influence of the parties' utility functions on the outcome of the bargaining process." This conclusion has not, however, been supported by Cohen's arguments.

Cohen proceeds to consider what he calls "a relatively minor objection to the argument" which is, however, fatal to Cohen's claim that "self-ownership" conjoined with joint ownership of everything else will necessarily result in equal income.

The objection is that an owner of a factor of production could threaten to destroy the factor or, what amounts to the same thing (all relevant effects being relative here), to allow it to decay in value or to fail to augment its productivity. Able, in the cases considered above (iv and v), "has it in his power to let (part of) his talent decay" (Cohen 1995, 97). However, according to Cohen (*ibid.*, 97), "What is unclear, because of difficulties in the concept of rationality, is whether

such a Schellingian threat would be credible, and, therefore, effective, *under the assumption that everyone is rational*. If it would be, then those with greater power to produce could get more in a jointly owned world for reasons which go beyond the consideration that their labour might be irksome to them" (emphasis original). (In an earlier published version of the essay Cohen [1986, 82] had written, "What I do not know how to assess, because of my uncertain grasp of bargaining theory, is whether such a Schellingian threat would be credible. . . .")

Cohen (1995, 97) dismisses this objection as "minor" because "it achieves purchase only in the rather peculiar case in which Able can indeed diminish his own productive power." Cohen implies that Able would threaten to diminish her own present powers, perhaps by cutting off her feet or blinding herself; and Cohen seems to believe that such a strategy may be less than credible. But let us look at the cases Cohen describes in which such a threat might be made. Such a strategy would be pointless in cases i and ii, and would not be credible in case iii, since the maximum product is stipulated to be only enough to sustain Able and Infirm, with no surplus available for bargaining, so that the outcome is clear: Infirm will insist that Able work and produce the maximum possible, which is precisely enough to sustain them both (regardless of whether it is distributed equally), but no surplus is available for distribution above survival level. Such a strategy may or may not be credible in case iv, in which labor inputs cannot vary but there is a surplus available for distribution; the credibility is entirely a matter of Able's ability to commit herself and to convince Infirm that she will abide by the threat, which may be difficult to do in the absence of a third party with whom to contract for enforcement, or some other way to limit Able's post-agreement options. (It bears noting that Infirm could also precommit to demanding one-half, or a greater-than-one-half share, as well; nothing in case iv stops Infirm from precommitting to exercise her veto in order to extract a greater-than-equal share of the surplus potentially available for bargaining.) But Cohen cannot conclude from the unavailability of such a strategy in case iii, and the questionable credibility of such a strategy in case iv, that it is not credible in the much-more-realistic scenario of case v, in which labor inputs can vary over the amount necessary to ensure that both Able and Infirm are sustained and that a correspondingly variable surplus can be generated by Able's labor; all that Able has to do in case v is exercise her claim rights and liberty rights *not to work*, i.e., to withdraw her labor from the productive process.

Given the disutility of labor that Cohen presupposes, i.e., that each unit of disvalued labor can be converted into a unit of valued leisure, and the fact that only Able has the power and the right to decline to work, Able's threatened refusal to work is a highly credible strategy, indeed. Thus, it is *not* incredible that Able would refuse to work beyond the labor necessary for both Able and Infirm to subsist without being compensated in accordance with, say, her marginal product.

To clarify matters further, we can distinguish two cases. In the first, one allows one's ability to decay by eliminating one's own options. (Burning one's bridges can increase one's bargaining power, and such moves are neither irrational nor otherwise objectionable; they are quite common to bargaining situations.) In the second case, on which I have focused, one simply withdraws one's labor, but without diminishing one's productive capacity or otherwise limiting one's options. Either is a credible strategy, although the latter is certainly more commonly observed. It is precisely the strategy of "going on strike" that Cohen (1995, 250) condemns—consistently for a socialist "saddened" by what looked, at the time Cohen wrote one of the essays in the book, "to be the impending final abandonment of the Bolshevik experiment." Strikes, after all, were not allowed in the Soviet Union. In response to the libertarian challenge, Cohen seeks to root out of socialist theory the idea that one has a right to property in one's person, in one's labor, or in one's product.

The Reality of Socialist Practice

Cohen writes as if his experiment has never in fact been carried out in practice and that we have only his a priori speculation as the basis for thinking rationally about the joint-ownership scenario that he describes. But there is ample experience of joint ownership being imposed on people, and it does not bear out Cohen's conclusions in any way. The English colony at Jamestown offers a clear example of what happens when joint ownership is imposed on those living on land that was "good and fruitfull." As one eyewitness wrote:

So great was our famine, that a Savage we slew and buried, the poorer sorte tooke him up againe and eat him; and so did divers one another boyled and stewed with roots and herbs. It were too vile to say, and scarce to be beleaved, what we endured: but the occasion was our

own, for want of providence, industrie and government, and not the barrenesse and defect of the Country, as is generally supposed. (In Bethell 1998, 34)

Sir Thomas Dale, upon his arrival in Virginia in May of 1611, noted that the colonists were bowling in the streets rather than working. It was the introduction of several property that put an end to the "starving time" that resulted from joint ownership of assets and egalitarian distribution of the joint product.

Cohen's experiment was also tried at Plymouth Colony a few years later. As Governor William Bradford noted:

The experience that was had in this common course and condition, tried sundry years and that among godly and sober men, may well evince the vanity of that conceit of Plato's and other ancients applauded by some of later times: that the taking away of property and bringing in community into a commonwealth would make them happy and flourishing; as if they were wiser than God. For this community (so far as it was) was found to breed much confusion and discontent and retard much employment that would have been to their benefit and comfort. For the young men, that were most fit and able for labour and service, did repine that they should spend their time and strength to work for other men's wives and children without any recompense. The strong, or man of parts, had no more in division of victuals and clothes than he that was weak and not able to do a quarter the other could; this was thought injustice. The aged and graver men to be ranked and equalized in labours and victuals, clothes, etc., with the meaner and younger sort, thought it some indignity and disrespect unto them. And for men's wives to be commanded to do service for other men, as dressing their meat, washing their clothes, etc., they deemed it a kind of slavery, neither could many husbands well brook it. Upon the point all being to have alike, and all to do alike, they thought themselves in the like condition, and one as good as another; and so, if it did not cut off those relations that God hath set among men, yet it did at least much diminish and take off the mutual respects that should have been preserved amongst them. And would have been worse if they had been men of another condition. Let none object this is men's corruption, and nothing to the course itself. I answer, seeing all men have this corruption in them, God in His wisdom saw another course fitter for them. (In Bethell 1998, 41)

When Cohen's thought experiment has been run in reality, it turns out that Able ("the strong, or man of parts") does *not* agree to work

hard and then share equally with Infirm (“he that was weak and not able to do a quarter the other could”), but simply refuses to work, resulting in starvation for all.

The extreme egalitarian typically blames the moral failings of the parties involved, rather than the abolition or attenuation of several property for the failures of such collectivist schemes. Thus, Cohen (1995a, 396) has criticized the reliance on incentives, in the form of the possibility of unequal holdings or unequal division, with which Rawls amends purely equal division of assets and income, on the grounds that it effectively institutionalizes immorality:

My principal contention about Rawls is that (potential) high fliers would forgo incentives properly so-called in a full compliance society governed by the difference principle and characterized by fraternity and universal dignity. I have not rejected the difference principle in its lax reading as a principle of public policy: I do not doubt that there are contexts where it is right to apply it. What I have questioned is its description as a principle of (basic) justice, and I have deplored Rawls's willingness to describe those at the top end of a society governed by it as undergoing the fullest possible realization of their moral natures.

Recall, however, Governor Bradford's observation that joint ownership and enforced equal division failed miserably “amongst godly and sober men” and “would have been worse if they had been men of another condition.” To what, then, are we to attribute the fact that such schemes result, not in harmony and prosperity, but in famine and cannibalism? Who or what bears the blame? The question was never put more directly than by Vasily Grossman (1986, 164), a witness to the imposition of joint ownership on the peasant farmers in Ukraine:

Some went insane. They never did become completely still. One could tell from their eyes—because their eyes shone. These were the people who cut up and cooked corpses, who killed their own children and ate them. In them the beast rose to the top as the human being died. I saw one. She had been brought to the district center under convoy. Her face was human, but her eyes were those of a wolf. These are cannibals, they said, and must all be shot. But they themselves, who drove the mother to the madness of eating her own children, are evidently not guilty at all! For that matter, can you really find anyone who is guilty? Just go and ask, and they will all tell you that they did it for the sake of virtue, for everybody's good. That's why they drove mothers to cannibalism!

It would require too long a digression to offer a full critique of what is wrong with blaming the victims of communism for failing to live up to its "high" moral standards. I will merely suggest an hypothesis that seems simpler and more straightforward than the claim that human beings have not yet proven good enough for socialism: socialism is not good enough for human beings.

Cohen errs in thinking that rational parties would never refuse to work or bargain or allow their abilities to decay if they were not compensated unequally. He simply dismisses the possibility: "No libertarian would want to defeat the Able/Infirm argument (for the consistency of equality and self-ownership) on so adventitious a basis" (Cohen 1995, 97). According to Cohen (*ibid.*, 97–98), the libertarian "would want, instead, to overcome it by pressing . . . [a] more fundamental objection . . . that to affirm joint ownership of the world is, as the story of Able and Infirm might be thought to show, inconsistent with achieving the purpose and expected effect of self-ownership." But Cohen's hypothetical opponent need not choose on which basis to refute Cohen's arguments, for the Able/Infirm story does not show what Cohen claims that it shows. Cohen has not demonstrated that joint owners would not or should not agree to division of their assets; nor that the distribution of a surplus over what is necessary to sustain both Able and Infirm must be evenly divided; nor that Able could not bargain for a greater share on the basis of a threat to diminish her productivity or her productive effort. Finally, real-world experience with joint ownership contradicts Cohen's rosy egalitarian description and raises the issue of why joint ownership should ever be seriously considered in the first place.

Positive vs. Negative Community

Cohen's conclusions are frequently repeated, but his arguments are rarely read. Those arguments fail to show that property in one's person is irrelevant to the distribution of wealth and income, even accepting their underlying assumptions.

Cohen does direct our attention, perhaps contrary to his intentions, to the question of why joint ownership should be assumed in the first place. No argument is given as to why such assets should be assumed, even for the sake of argument, to be jointly owned; they

may be, but why must or should they be? Classical liberals and libertarians are open on the question of whether particular bits of land or other resources should be considered jointly or individually owned.¹⁵ What is unargued for by Cohen (aside from asserting that it is “intuitively relevant”), but is of dubious plausibility, is the idea that every resource other than our own persons should be considered the joint property of all human beings, or perhaps of all rational agents. If rational agents were to be discovered on Mars, would the joint owners of Earth be required to obtain the permission of every rational Martian before any terrestrial resource might be used, and would the agreement have to be unanimous across species? This would be a strange basis on which to build a theory of jurisdiction over scarce resources. As almost all previous writers on property have emphasized, requiring the permission of everyone before anyone could pick an apple would result in the extinction of humanity. Joint ownership requiring unanimous approval to every act of transformation of resources is ultimately rejected by Cohen, on the ground that it interferes with any reasonable sense of autonomy, but it is not clear why it should even be entertained in the first place.

There may be good reasons to believe that very early in its actual history, property took one of various forms of positive community, principally familial, as Fustel de Coulanges (1864), Maine (1888), and other anthropologists and historians of property have shown; but that is not Cohen’s argument. Nor are the forms of positive community described by legal historians consistent with the egalitarian ownership described by Cohen as “joint ownership,” for they did not encompass all humans or all rational agents, but were always forms of community that established rights against all nonmembers of the owning communities. As Locke noted of common property, “And though it be common, in respect of some Men, it is not so to all Mankind, but is the joint property of this Country, or this Parish” (*Two Treatises*, II.35). In this respect, “negative community,” i.e., the idea that all have a right to appropriate unowned objects, is a far more egalitarian starting point than any form of “positive community,” which in every form ever observed was a nonuniversal, group-limited right. This issue was carefully considered by the modern natural-law writers on property, who distinguished between negative community and positive community, the latter corresponding to the joint ownership that Cohen proposes as the proper baseline.¹⁶

It is remarkable that figures such as Cohen persistently overlook

the distinction between negative and positive community when considering claims, by Locke and other writers on several property, that, prior to appropriation, the world was open to mankind in common. As Pufendorf (1994, 178) noted quite explicitly,

It is plain that before all human agreements there was a communion of all things. Not a positive communion, of course, but a negative one; that is, all things were available to all and belonged no more to one person than to another. But since things are not useful to men unless at least their fruits are laid hold of, and indeed, since this is done in vain if others are in turn allowed to seize what we have already actively intended for our own use, the first agreement among mortals concerning things is understood to have been this: Whatever anyone had taken for himself from the common stock or its fruits, with the intention of using it for himself, would not be seized from him by another.

Cohen reproduces the argument against liberal property put forth by Sir Robert Filmer (1991, 234), an apologist for royal absolutism:

Certainly it is a rare felicity that all the men in the world at one instant of time should agree together in one mind to change the natural community of things into private dominion. For without such an unanimous consent it was not possible for community to be altered. For if but one man in the world had dissented, the alteration had been unjust, because that man by the law of nature had a right to the common use of all things in the world, so that to have given a property of any one thing to any other had been to have robbed him of his right to the common use of all things.

Locke, who was replying to Filmer, rejected joint ownership of this sort (in which each joint owner has a veto right, requiring unanimity for anything to be appropriated and consumed) as a baseline: "If such a consent as that was necessary, Mankind had starved, notwithstanding the Plenty God had given him" (*Two Treatises*, II.28). By asserting property in one's person, Locke managed to avoid the trap set by Filmer, for

Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his

Labour with, and joynd to it something that is his own, and thereby makes it his Property. (Ibid., II.27)¹⁷

It is property in one's person that justifies the appropriation of that to which everyone earlier had a right. Cohen's attempted rebuttal does not shake this connection; Cohen's case against libertarianism rests on basic errors of reasoning and fails on its own terms.

There are certainly many observable scenarios in which one or another form of joint ownership is highly desirable, such as partnerships, co-ops, various sorts of clubs and religious institutions, and marriages, but there is no reason to posit that joint ownership is the only rational or desirable arrangement, nor that property in severalty is irrational or immoral. Nor does Cohen even offer any good reason as to why joint ownership should be seriously entertained at all; the *only* justification that Cohen offers for attempting to work through the logic of joint ownership is that joint ownership is "intuitively plausible." To say that one's intuition tells one that a claim is reasonable or probable is hardly to offer an *argument* on its behalf; and, in any case, "joint ownership" or "positive community" has certainly been considered by defenders of several property and decisively rejected for very good *reasons*, as opposed to mere intuition. Finally, Cohen has failed to demonstrate that the unequal division of joint products is irrational (much less that it is immoral).

The central pillars of Cohen's polemic against conjoining property in one's person with several property rest on errors of reasoning; his argument against the conjunction of property in one's person with several property will have to proceed without his often-cited but erroneous claims about the bargaining situation of self-owners who own the world jointly. His bare assertion of the "plausibility" of positive community is not an argument for a policy that has been rejected for clear and compelling reasons by many other writers on the topic.

It may be that libertarian claims about the conjunction of property in one's person and property in the world are false, but, if so, it is not for the reasons that Cohen has advanced.

NOTES

1. Cohen's criticisms have appeared in numerous forms and publications, notably Cohen 1985, Cohen 1986a, Cohen 1986b, and Cohen 1989, and have been revised and collected together in Cohen 1995.

2. Other recent works that have cited without criticism or have incorporated at least some of Cohen's basic claims into their critique of several property include Waldron 1988, Munzer 1990, Ingram 1994, Haworth 1994, Christman 1994a and 1994b, and Sreenivasan 1995. Cohen's approach has been criticized by David Gordon (1990) and by Jan Narveson (1990), although without raising the problems I point out in this critique. Unlike the criticisms of Gordon and Narveson, my refutation of Cohen's central arguments is immanent.
3. Part of Weinberg's claim is that Cohen's critique of libertarian views on liberty is a decisive refutation of libertarians' claims to be defenders of freedom. I deal with that issue in my separate reply to Friedman in this issue of *Critical Review*, in response to his claim that "one stipulative definition is as good as another" (Friedman 1997, 432), so I will instead focus my criticism here on Cohen's critique of "self-ownership," which Weinberg (1997, 324) considers to be, if anything, "too sympathetic an analysis of libertarian concepts." Weinberg cites in support of this claim a particularly outlandish attack on Cohen by Brian Barry for even bothering to address classical liberalism at all. (See Barry 1996 and Cohen's response [1996].)
4. Cohen quite oddly proceeds to define each person's property in herself in terms of its very negation, viz., "According to the thesis of self-ownership, each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way that a slaveholder is entitled, legally speaking, to dispose over his slave" (68). This is a strange way of understanding "self-ownership," one that would not generally be endorsed by defenders of property in one's person, but which has been taken up as paradigmatic by many who have recently followed in Cohen's footsteps. The possibility of the inalienability of certain rights is a clear case in which the (illegitimate) property claimed by a slaveholder in her slaves is misleading, rather than illuminating, as a paradigm of property in one's person. Although misleading in other respects, the definition need not be disputed to show that Cohen's conclusions do not follow from his premises.
5. See for a correction Gordon 1990, 78–80. Gordon (1990, 83) also takes Cohen to task for "seizing on the exact words while ignoring their sense" in misunderstanding Nozick's point concerning redistribution of wealth gained under a determinate system of rights—namely, that "things come into the world already attached to people having entitlements over them" (Nozick 1974, 160)—as a claim about *initial* appropriation.
6. Cohen is demanding, in effect, that it be shown not merely that appropriation may be *permissible*, but that it must be *optimal* as well. See the discussion of the two kinds of justification in Simmons 1994.
7. It is worth noting that even "indivisible" goods can be divided on the basis of agreement, and quite commonly are. H. Peyton Young describes "eight

fairly universal techniques for defining ex ante property rights in an indivisible good" (Young 1996, 373).

8. See, for example, Steiner 1994, especially the epilogue on just redistributions.
9. It is worth pointing out that, in many actual cases, joint-ownership arrangements have generated voluntary divisions of land (as also of other resources), and Cohen offers no evidence that the joint owners who have agreed to division were suffering from irrational delusions. For some of the relevant literature and case studies, see Ellickson 1993, especially 1388–92, and Libecap 1989. For a historical study of voluntary division of jointly held common property, see Norberg 1988. Norberg (1988, 268) notes, of popular votes on division of common lands in Revolutionary France, that "whether the peasants voted for or against partition, they generally did so by very large margins, often unanimously." Of communities with commons, 71.95 percent voted for partition in the 1793 referenda (*ibid.*, 271).
10. The conditions under which such arrangements prove mutually beneficial are set out and used to illuminate case studies in Lueck 1993.
11. It is not clear how Infirm's infirmity can be a source of disutility for her in the way that Able's labor is a source of disutility for her, as Infirm cannot, by hypothesis, vary her infirmity in the way that Able can vary her labor effort. Whether it was Cohen's intention or not, such remarks color the situation he describes by engaging natural feelings of sympathy for the unfortunate, thereby introducing elements that are not explicitly acknowledged in the description of the bargaining situation. Such feelings of sympathy are also brought to the fore by the specification of the bargaining situation as one of two persons dealing with one another face to face, and therefore probably on an intimate, and not on an anonymous, basis, rather than the situation of anonymous interaction among strangers who do not meet each other face to face. Thus, although Cohen (1995, 95) stipulates that Able and Infirm are "rational, self-interested, and mutually disinterested," the situation he describes is not the sort in which such motivations are common, and his description evokes sentiments that are common to small-group, face-to-face, and intimate settings. The importance of distinguishing between the two kinds of settings has been highlighted by F. A. Hayek (1988, 18), who points out that "the structures of the extended order are made up not only of individuals but also of many, often overlapping, sub-orders within which old instinctual responses, such as solidarity and altruism, continue to retain some importance by assisting voluntary collaboration, even though they are incapable, by themselves, of creating a basis for the extended order. Part of our present difficulty is that we must constantly adjust our lives, our thoughts and our emotions, in order to live simultaneously within different kinds of orders according to different rules. . . . So we must learn to live in two sorts of worlds at once."
12. A nail is driven into the "preference vs. productivity" coffin by Alexander Rosenberg (1988, 15), who notes that "the economic effects of a talent or a disability may be exactly the same as those of a preference or taste," using the

example of acrophobia or acrophilia and the talent for tree climbing among coconut harvesters; the preference for high places would generate an economic "rent" (or profit) indistinguishable from the "rent" or profit generated by a talent for climbing, and thus preferences and talents are difficult, if not impossible, to distinguish.

13. The party who can make an "irrevocable commitment" will be able to "squeeze the range of indeterminacy down to the point most favorable to him" (Schelling 1960, 24).
14. For a treatment of complementary strategies, see Sugden 1986, 67-69.
15. For an informed discussion of the variety of land regimes possible and consistent with classical liberal views, see Ellickson 1993.
16. The issue is usefully canvassed in Buckle 1991, especially 36, 93, 104-5, 164-67, and 183-87. See also the careful discussion of the issue in Pufendorf 1994, especially 176-85.
17. Alan Ryan (1994) criticizes the notion of "property in one's person," but he does not consider the advantages to the concept of "property in" objects. Contemporary imprecise English usage identifies property and object; thus, I might say that "this land [watch, book, etc.] is my property." The older usage of speaking of having "a property in a thing" is far more precise and reflects the complex multiplicity of property arrangements that are possible and that are fully compatible with the libertarian defense of several property. Thus, it may be that each of many different persons has "a property" in a piece of land; one has the right to live on it, another has the right to walk across it, yet another has the right to the rental income from it, and so on. As the Roman lawyers and the modern law-and-economics scholars realize, "ownership" normally represents a bundle of such rights. Presenting the rights that one has over oneself (not to be raped, not to be killed, not to be beaten, to express one's opinions, to consent to one's marriage, and other bourgeois indulgences) as property in one's person allows the legal system to rest on a coherent and integrated foundation. The transition from the classical formulation ("person X has a property in object Y") to the modern and less precise formulation ("object Y is X's property") has made legal discussion less clear and has led—in the attempt to focus attention on the right rather than the object—to the formation of such concepts as "property rights," which means "right rights." James Madison (1983, 266) made a valiant attempt to retain the precision of the classical formulation, and to relate the rights to freedom of speech and religion to the rights to dominion over land and other objects, in his essay "Property":

This term in its particular application means 'that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.' In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage. In the former sense, a man's land, or merchandise, or money is called his property. In the latter sense, a man has a property in his opinions and the free com-

munication of them. He has a property of particular value in his religious opinions, and in the profession and practice dictated by them. He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

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