

Are Chamberlain and Gretzky entitled to their earnings? Accessing the debate between self-ownership and taxation

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1. Introduction

The concept of self-ownership is critical to understand the ethical issues regarding the redistribution of wealth in contemporary societies and is as complex as its own content. Its necessary isolation from the notion of freedom and the possibilities of reconciliation between the two conceptual spheres is crucial to addressing the political and philosophical debate on theories of justice. The very clarification of self-ownership allows us to identify two important constituents: firstly, the respect and assertion of the importance of each individual to act depending on his will and judgment, using his own faculties. This element can be understood as sovereignty of the self; secondly, self-ownership can be understood as the relation of the individual with his legitimately acquired material private property that can only be alienated on the basis of his will.

The idea of sovereignty of the self is related to the necessary agreement between one's isolated and independent judgment and the possibility of accepting the opinions of others. Indeed, the rejection of

external advices which may conflict with an individual's judgment of his own coherent action implies that the correlation between his independent will and his actions is essential to achieving harmonization and coherence of will and action. The notion of *ousia*, of respect for the authority of everyone over oneself, in its essence, is presented by Plato in the *Gorgias* dialogue, with an analogy to material property: "But I, all alone, don't agree; for you don't compel me, but you produce all these false witnesses against me and try to dislodge me from my property and truth".¹ In the same dialogue, Socrates, speaking with Callicles, admits that "it is superior to have my lyre out of tune and discordant, and any chorus I might equip, and for most men to disagree with me and contradict me, than for me just one man to be discordant with myself and contradict myself".² Life in accordance with one's own nature (*homologia*) is presented also as a way of understanding the relevance of sovereignty of the self.³ So, sovereignty of the self implies an exposure to truth.

The second distinctive element of the concept of self-ownership is the main problem addressed in this article: the importance of material property and its relationship to the possibility of accessing a relevant level of freedom.⁴ What is at issue is, in fact, the relationship between the ideas of self-ownership and genuine freedom, avoiding purely formal considerations. A possible solution is the one found in egalitarian literature, which addresses the problems of reconciliation between these two notions. In the science fiction classic *The Dispossessed*, the anarchist Shevek peremptorily claims to a group of

¹ Plato, *Gorgias*, 472b3-6.

² Plato, *Gorgias*, 482b6-c3.

³ Sovereignty of the self as part of a robust concept of self-ownership is presented by Jan Narveson when he affirms: "everyone is 'boss' over his own mind, on the self-ownership view", Narveson, 1998, 18.

⁴ To access the prolific discussion on the relationship between self-ownership and material ownership see Christman, 1991, 28-46; Ryan, 1994, 241; Narveson, 1998, 1-26 and Brenkert, 1998, 53-55.

skeptical onlookers: "Because our men and women are free – possessing nothing, they are free. And you the possessors are possessed. You are in jail. Each alone, solitary, with a heap of what he owns".⁵ What the scientist of Anarres admits is crucial for a definition of freedom that is independent of the concept of self-ownership: the total antagonism between the idea of personal or individual freedom and the legitimacy of private property. There is no possibility of freedom on autonomous self-ownership, as there is a complete mismatch between the two ideas. Shevek faithfully follows Proudhon's assertion of declaring property the primary enemy of the liberation of the self and therefore confirming "property is theft".⁶ However, there are other responses more favorable to the connection between liberty and self-ownership and it is imperative to evaluate them.

The appreciation of the concept of self-ownership is a key element of the libertarian theory.⁷ However, its conception dates to the definition detailed by John Locke in his *Second Treatise on Government*, and implies that each individual has possession of his body, faculties and talents or his "constitutive ontological properties".⁸

It should be necessary to determine whether the condition set by Locke (called the Lockean proviso) ensures individuals an unlimited appropriation of material resources, an interpretation that Robert Nozick apparently accepts, or if the clause can be understood from an egalitarian perspective.⁹ So, it becomes necessary to evaluate if it is

⁵ Le Guin, 1994, 299.

⁶ Proudhon, 1840, 2.

⁷ Murray Rothbard considers that any act of restricting the rights of self-ownership consists of a limitation of individual freedom. Rothbard presents his vision on self-ownership as follows: "In either case, the aggressor imposes his will over the natural property of another – he deprives the other man of his freedom of action and of the full exercise of his natural self-ownership", Rothbard, 1982, 45.

⁸ Uyl and Rasmussen, 2003, 50.

⁹ As Hillel Steiner and Michael Otsuka try to demonstrate. It should be noted that both Steiner and Otsuka have different views on the lockean proviso:

possible to achieve equality, preserving self-ownership, through the enforcement of a Lockean proviso with egalitarian features.

The libertarian tradition advocates that an extensive state can never be justified. Robert Nozick in his work *Anarchy, State and Utopia* states that a minimal state is necessary to preserve property rights, but a more extensive configuration should be rejected because it neglects individual rights, particularly those relating to self-ownership.¹⁰ This is evident in the opening of "Beyond the Minimal State": "The minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights".¹¹ Thus, he

Steiner believes that all individuals have rights to equal parts of material resources (see Steiner, 1977, 49) while Otsuka states that an appropriation may only be regarded as morally just when it reveals an improvement of the well-being of all members of society. Otsuka rejects Nozick's proviso, because it is harmful to individuals who didn't appropriate a lion-share of worldly resources. So, he tries to modify the proviso in an egalitarian fashion with a welfarist specification: "You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources", Otsuka, 2003, 24. A weaker version of this proviso will leave some individuals with more advantages than others. Even an equal redistribution of worldly resources would guarantee an unequal distribution of goods in a society or a decrease in the well-being of some individuals. See Otsuka, 2003, 28-30.

¹⁰ Historically, Nozick argues that the concept of self-ownership was theoretically founded by Immanuel Kant: "Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent", Nozick, 1974, 30-31. Uyl and Rasmussen suggest that it requires more than what Nozick affirms to explain the thesis about people being ends in themselves. See Uyl and Rasmussen, 2003, 51-52. Daniel Attas argues that Nozick is incorrect when he approximates Kant and the self-ownership thesis in Attas, 2000, 11-15. Jan Narveson also affirms that John Stuart Mill and Thomas Hobbes present a substantially similar concept of liberty in Narveson, 1998, 4. Furthermore, George G. Brenkert identifies two contemporary accounts of self-ownership. The first one is presented by Richard Arneson and is similar to a principle of negative freedom; Peter Vallentyne offers the second one – which we favor –, focused on the idea of a morally autonomous agent. See Brenkert, 1998, 31; Arneson, 1991, 36-54; Vallentyne, 1997, 321-343.

¹¹ Nozick, 1974, 149.

intends to show that any external coercion is inconsistent with this conception of freedom.¹² This allows Nozick to conclude that any kind of tax on the income of an individual is a violation of their property rights and a minimization of their autonomy.¹³ We intend to determine if self-ownership rights can still be preserved, even if some kind of taxation is applied over the individual's income.¹⁴

Finally, the core of this article addresses a crucial point in the libertarian tradition. If we try to build a theory of justice founded on the notion of freedom, should we accept a robust libertarian right of self-ownership and neglect equality or should we support an egalitarian distribution of resources to assure that everyone has reasonable material conditions to choose what to do with their lives? Or, lastly, is there a third option where equality could be reached voluntarily and without the state's coercion?

¹² Michael Otsuka notes that Nozick uses this analysis as a way to show that a libertarian principle of self-ownership is not compatible with redistributive taxation because "the libertarian's case against redistributive taxation is premised upon a right against being used as a means by being forced (via incursions or threats of incursions upon one's mind and body) to sacrifice life, limb, or labour", Otsuka, 2003, 14.

¹³ In this study we will not address the definition and application of the concept of autonomy. On this subject, see Dworkin, 1988 and Raz, 1986.

¹⁴ These libertarian rights of self-ownership are defined by Otsuka as follows: "(1) A very stringent right of control over and use of one's mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb, or labour, where such force operates by means of incursions or threats of incursions upon one's mind and body (including assault and battery and forcible arrest, detention, and imprisonment); (2) A very stringent 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", Otsuka, 2003, 15.

2. Self-ownership and the Lockean proviso

Material property is crucial to understand what Nozick thinks of a libertarian society and, particularly, to comprehend how can self-ownership become an operational concept. Fundamentally, he tries to identify how can an individual acquire goods without restricting self-ownership. This is possible when we accept Locke's statement that not only "every Man has a *Property* in his own *Person*", but also "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 is his *Property*".¹⁵ So, every individual has "a right to decide what would become of himself and what he would do, and [has] a right to reap the benefits of what he did".¹⁶

In Nozick's analysis of the proviso, property becomes morally legitimate when someone acquires a set of goods through "just steps", which can be described as stages of acquisition or transaction where neither fraud nor external coercion exists.¹⁷ However, Locke argues

¹⁵ Locke, 1988, 287-288.

¹⁶ Nozick, 1974, 171. If someone has a property right over the fruits of his labor and body, the self-ownership thesis faces a paradox: if "all persons are (originally) their own property, and therefore (originally) own the fruits of their bodies and capacities", then they must have property rights over their children. Therefore, this implies that *originally* nobody has property rights over themselves. To avoid this paradox, property rights over the fruits of the body must be rejected. See Attas, 2000, 20.

¹⁷ However, we must not fail to note that unjust situations emanating from a context of just steps may occur, such as G. A. Cohen sought to illustrate with the Rolling Pin example and Diamond Transaction example. He uses the Rolling Pin example to illustrate that not all unjust situations result from a process developed through unjust steps: "Imagine that one of my justly held rolling pins rolls out of my front door and down the hill and through your open door, without your knowledge. You innocently mistake it to be the one you mislaid, and you keep it and use it. Now, so I take it, not everything is justly held, but no one has behaved, or is behaving unjustly. (...) In the rolling pin example a just situation is transformed into an unjust one without any

that this appropriation is only legitimate when it doesn't make "any prejudice to any other Man, since there was still enough, and as good left; and more than the yet unprovided could use".¹⁸ Nozick accepts this proviso, but weakens it: he establishes that anyone can acquire unlimited resources; but he must compensate all the individuals that would be worse-off in this new distribution, than before the original acquisition.¹⁹

It becomes clear that Nozick argues for the rejection of an egalitarian principle in the distribution of material goods: the first grabber or, more precisely, the first person to mix his labor with natural resources, has a legitimate property right over those goods. Even if he must compensate a reasonable share of individuals, he can acquire unlimited commodities.

However, Michael Otsuka claims that Nozick's argument against equality is persuasive in circumstances that don't involve worldly resources.²⁰ Still, worldly resources become important for creating a robust concept of self-ownership and to avoid a comparison between redistribution and forced labor. To accomplish that goal, it is necessary to apply the egalitarian proviso, requiring that each individual have a possibility of acquiring a necessary amount of goods to reach a relevant degree of well-being.²¹

unjust step occurring". However, he shows that the element of luck can be decisive in making a situation unfair, such as the ignorance of an agent in performing his action can contribute to the emergence of a problem with the same origin: "I sell a diamond to you for a pittance, (...) a diamond that we both think is glass. By that (ex Nozick's *hypothesis*) just step, a situation arises in which you hold a diamond. But few would think that justice is fully served if, its true character having come to light, you now hang on to it, even though no one behaved unjustly in the generating transaction", Cohen, 1995, 43-47.

¹⁸ Locke, 1988, 291.

¹⁹ On the comparison between the Lockean and the Nozickean proviso, see Cohen, 1995, 74-79.

²⁰ Otsuka, 2003, 18-19.

²¹ This reconciliation between a robust libertarian right of self-ownership and egalitarianism, which avoids forced labor, is defined by Otsuka as follows: "in

This solution assures a welfarist distribution of worldly resources.²² This distribution requires that resources are not equally allocated between all the individuals; in reality, there must be an unequal distribution of worldly resources to guarantee that the disabled can improve their condition to a similar level of the able-bodied.²³ This will result in something similar to an equality of opportunities.²⁴ So, according to Otsuka, if we apply the egalitarian

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. If it could be shown that the egalitarian proviso could be rendered consistent with a libertarian right of self-ownership only when the able-bodied are deprived of so many resources that their right is not robust and they are forced, on pain of starvation, to work for the disabled, then one will have achieved nothing more than a Pyrrhic reconciliation of self-ownership and equality", Otsuka, 2003, 32. However, Narveson strongly disagrees that a libertarian principle of self-ownership can be conciliated with a positive right to natural resources. See Narveson, 1998, 9-13. The validity of this "no-proviso" argument is questioned in Cohen, 1998, 58-60.

²² This welfarist distribution will avoid forced assistance or redistributive taxation to accomplish equality: "The holdings of the able-bodied would be sufficiently generous that the disabled would be able to support themselves through truly voluntary exchanges with the able-bodied that did not involve forced assistance", Otsuka, 2003, 33. As Otsuka admits, in a society where resources are distributed in this fashion, self-ownership rights can be preserved. See Otsuka, 2003, 35. An important contribution against this welfarist egalitarianism and more favorable to an equal distribution of resources (which have some similarities with the distribution proposed by Hiller Steiner) is presented in Ronald Dworkin, "What is Equality? Part I: Equality of Welfare"/"What is Equality? Part II: Equality of Resources," *Philosophy and Public Affairs*, Vol. 10, No 4 (1981). Against this idea of equal distribution of natural resources because it is not "usefully definable" (and also because it attempts against self-ownership), see Narveson, 1998, 20-22.

²³ Otsuka notes that if John Roemer is right and "labour is ten times more important to production than natural resources", then "it will be possible to reconcile equality with robust self-ownership by the means that [he] has proposed so long as the disabled constitute less than 5.5 per cent of the population", Otsuka, 2003, 34.

²⁴ To achieve this state of equality of opportunities, Otsuka proposes a coercive tax for the unjust: "coercive taxation of only those amongst the able-bodied who have been properly convicted of performing justifiably criminalized acts that it was reasonable to expect them to avoid committing, and which they

proviso, it is possible to reconcile a robust libertarian right of self-ownership and an egalitarian distribution of goods.

However, two criticisms can be presented to this perspective. Right-wing libertarians develop the first one. David Gordon argues that Otsuka is sustaining a "dictatorship of the poor and disabled"²⁵, when he guarantees broader property rights to the incapacitated, forcing the able-bodied to work for them. An egalitarian distribution of welfare would harm the able-bodied, who would be better off under a *non-egalitarian proviso*, where they could preserve their self-ownership rights. Gordon uses a Nozickian-type analogy to show that this distribution is on par with forced labor, when he states "slavery remains slavery even if the slave owners are physically disabled".²⁶ He concludes that Otsuka values egalitarianism too much, neglecting the preservation of self-ownership rights, failing in his attempt to reconcile the two concepts.

The second criticism could be made by liberal egalitarians: Otsuka fails to attain a vigorous egalitarianism because he insists in the distribution of natural resources. If an unequal distribution of goods develops, it would be impossible to rectify that problem since all individuals would be rightfully entitled to all their owned commodities, enabled by the egalitarian proviso. To redistribute those goods would suggest that self-ownership rights could be restricted.

In the next section we will reveal an egalitarian and more skeptical set of arguments on the confrontation between self-ownership rights and equality. Also, the hostility of self-ownership to a real freedom-based theory of justice will be discussed.

committed even though they knew that they would be subject to such taxation for doing so", Otsuka, 2003, 43.

²⁵ Gordon, 2003, 12.

²⁶ Gordon, 2003, 7.

3. G. A. Cohen's Critical Analysis of the Arguments of Robert Nozick

G. A. Cohen, one of the most important thinkers in modernizing Marxist thought, having applied it to the new social, economic and political problems of the end of the 20th century and early 21st century, argues that it is possible that a voluntary contract is not sufficient to justify a fair distribution; also, he tries to demonstrate that a libertarian thesis of self-ownership is not compatible with an egalitarian distribution of external resources.²⁷ Furthermore, Cohen intends to illustrate that Nozick's theoretical construction is not predicated on real freedom, but on a merely formal one, where individuals have rights over their body but don't have rights over external resources.

Cohen identifies a material omission in Nozick's argumentative structure: it does not consider the possibility of a contract between Wilt Chamberlain and his fans that may potentially affect the position of a third party, not involved in this free agreement. Thus, it is necessary to follow the Wilt Chamberlain argument to understand its limitations.

The argument is presented in the form of a justification of what freedom is: in a situation where there is equal distribution of resources (D1), one million individuals voluntarily decide to pay 0.25\$ to watch Chamberlain play. He shall then receive a yield of 250,000\$

²⁷ According to Brenkert, a full thesis of self-ownership – which G. A. Cohen rejects – consists in four rights: (i) everyone has property rights over his own person; (ii) everyone has property rights over the fruits of her labor, which are exchanged as goods in a market; (iii) everyone has rights against external coercion; (iv) everyone has absolute property rights against others, except if one uses his "property aggressively against others". See Brenkert, 1998, 27-55. In Cohen's view, an egalitarian distribution of external resources could only be accomplished through a system of joint ownership, where substantive self-ownership becomes merely formal. See Cohen, 1995, 92-115.

per year and a new distribution emerges in which Chamberlain accumulates more wealth than his fans (D2). Nozick believes that breaking the pattern of D1 is morally justified because D2 is the result of a set of voluntary exchanges. Cohen recalls that third parties (the other individuals who did not pay to watch Wilt Chamberlain play, but are part of the same society) are now in a relatively *worse* position than before. Although the third parties preserve their portions, they are comparatively worse than before. However, Nozick does not ignore the relevance of the contract in modifying the material conditions of third parties. He also wonders about the possibility of unintended side effects as a result of the transaction: "Might not a transfer have instrumental effects on a third party, changing his feasible options?".²⁸ Notwithstanding, in the course of his argument he disregards its importance, rejecting the possibility of involving the consequences for third parties in his libertarian theory of justice.

For this reason, Cohen believes that it is not possible to determine whether this distribution is fair – not even within Nozick's framework – since the D2 distribution penalizes a group of individuals who did not voluntarily participate in the transfer process and thus were forced to act in different ways from what would have happened if the initial D1 distribution had been preserved. The commitment between the contractors and the third parties must, according to this view, be relevant for discussing the potential restriction of property rights, as Cohen intends to demonstrate.

Indeed, to emphasize that a contract created by voluntary transactions may be unfair – because it restricts the freedom of third parties – Cohen concludes that unlimited property rights contradict the principle of freedom itself. Consequently, it is difficult to assume that individual freedom remains intact and is possible to argue that, as

²⁸ Nozick, 1974, 162.

Cohen states, Robert Nozick's libertarian theory of justice sacrifices freedom for the sake of a capitalist distribution.²⁹

To refute Nozick's fundamental aim of establishing a new political philosophy based on the notion of freedom, G. A. Cohen also notes that he draws a logical framework that appears to be supported by this concept, although in reality this is not the case; there is, rather, an attempt to confuse the concepts of freedom and self-ownership. To achieve this, Nozick restricts the notion of freedom to willingness and confines it to a merely formal condition defined only by the thesis that self-ownership is untouchable. This proposal combines formal property rights with free will: the ability to decide what to do with the body and the willingness of each individual would exclusively depend on the property rights of everyone over themselves; if these property rights are respected, it must be concluded that any decision that any individual may make on a voluntary basis is morally justified.

However, is anyone really free, even if they are *materially* coerced to act in a specific way, as selling their labor power to survive? According to G. A. Cohen, the answer must be negative, since those who believe that the concept of freedom is broader than the one presented by Nozick must conclude that the principle of self-ownership is not sufficient *per se* to ensure that a theory of justice is actually founded on liberty and, as Cohen says, will eventually conflict

²⁹ Cohen argues that Nozick does not present a liberty-based theory of justice: "*Anarchy, State and Utopia* is routinely characterized as *libertarian*, an epithet which suggests that liberty enjoys unrivalled pride of place in Nozick's political philosophy. But that suggestion is at best misleading. For the primary commitment of his philosophy is not to liberty but to the thesis of self-ownership, which says that each person is the morally rightful owner of his own person and powers", Cohen, 1995, 67. Narveson argues that Cohen fails to make a clear point about the contradiction between self-ownership and a liberty-based theory of justice. See Narveson, 1998, 9. Brenkert says that Cohen is not capable of rejecting the libertarian view of freedom, because he sees limitation on self-ownership only as limitations on one's negative freedom. See Brenkert, 1998, 33-35.

with this purpose.³⁰ Actually, what Cohen is arguing is that this definition of self-ownership as a type of negative freedom (any external law must be rejected to protect liberty) is too restricted: this libertarian view of freedom must be rejected; but to reject libertarian freedom, Cohen must "switch to a normative argument, rather than a conceptual argument".³¹ To accomplish that, he must distance himself from a negative freedom approach to a more autonomous one, where self-ownership is related with "the more substantive circumstance of control over one's life".³² Nevertheless, Cohen claims that self-ownership and this autonomous freedom cannot co-exist.³³ So, to achieve a comprehensive freedom, one must restrict self-ownership.³⁴

It is therefore important to address the key argument that Nozick uses to support his libertarian theory of justice: is the justice of a distribution of goods evaluated by the willingness of the actions of individuals? Is it sufficient to consider that justice emanates from the absence of external coercion to the choices of each person? Should, as Nozick believes, any kind of egalitarian distribution and taxation on workers' income be outright rejected since these always minimize the freedom of each individual? Finally, is it incoherent to think that a tax could allow a fairer distribution of wealth in society, making people freer?

30. Exclusively from a formal point of view, the proletarian can be considered a free individual: "For the proletarian forced daily to sell his labor power is nevertheless a self-owner, indeed must be one in order to sell it, and is, therefore, nevertheless free, in the relevant sense", Cohen, 1995, 68.

³¹ Brenkert, 1998, 39.

³² Brenkert, 1998, 38.

³³ Brenkert notes that Nozick and Cohen have different analyses of the concept of autonomy: "by «autonomy» he [Nozick] means one's self-control as captured in various rights of self-ownership. (...) But by «autonomy» Cohen means that individuals have self-control in the sense of an effective (and acceptable) range of choices", Brenkert, 1998, 42.

³⁴ Cohen, 1995, 102.

4. Taxation or Forced Labor?

G. A. Cohen seeks to show that there is a deep rift between the ideas of freedom and taxation, as Nozick presents them. This gap can be observed in the analysis of his approach to the Wilt Chamberlain argument: to tax Chamberlain's income, in fact, reduces his freedom because he is forced to work for the entertainment of his fans.³⁵ Nozick himself states that "taxation of earnings from labor is on par with forced labor. Some persons find this claim obviously true: taking the earnings of n hour's labor is like taking n hours from the person; it is like forcing the person to work n hours for another's purpose".³⁶

Nozick defines slavery as a non-contractual obligation for an individual to work for others, but Cohen claims that a time variable must be added to the argument to ensure that it is valid. As the latter reminds us, it would be dishonest to consider a slave someone who is forced to work for others for just five minutes. Also, Brenkert suggests that Cohen can also object to this indiscriminate use of the term "slavery", because it "is both morally offensive and conceptually questionable".³⁷ Two objections could be made against this

³⁵ Cohen agrees with Nozick as far as the apparent contradiction between self-ownership and redistributive taxation is concerned: "I am here showing agreement with the view of Robert Nozick that differentially high taxation of the market income of unusually productive people contradicts the principle (which he affirms and I reject) that each person is the legitimate owner of his own powers, and may therefore not be forced to use them to help others, as redistributive taxation requires", Cohen, 1995, 216.

³⁶ Nozick, 1974, 169. Cohen reconstructs Nozick's argument of regarding taxation as forced labor as follows: "(1) If X is non-contractually obliged to do A for Y , then Y has a right of disposal over X 's labour of the sort that a slave-owner has; (2) If Y has a right of disposal over X 's labour of the sort that a slave-owner has, then X is, *pro tanto*, Y 's slave; (3) It is morally intolerable for anyone to be, in any degree, another's slave. Therefore (4) It is morally intolerable for X to be non-contractually obliged to do A for Y ", Cohen, 1995, 230-231.

³⁷ Brenkert, 1998, 45.

hypothetical reorientation of Nozick's argument: (a) Nozick distinguishes redistributive taxation from the tax burden that is strictly necessary to keep the coercive apparatus of the minimal state, and, in fact, the two types of taxes limit self-ownership, as he himself presents it;³⁸ (b) Nozick does not explain why there is a more serious or deeper slavery in non-contractual slavery than in contractual slavery. A voluntary contract between individuals seems to be insufficient to consider that someone is more a slave in a non-contractual context than in a contractually agreed-upon relationship.³⁹

Cohen asserts that if self-ownership rights are limited, this does not necessarily mean that person is a slave, for it is not certain that anyone has the right to make arbitrary use of his own body or will.⁴⁰ In fact, he explicitly states that slavery exists only when there is a "non-contractual obligation, and, when I lack a right with respect to some aspect of my power or activity, then that may indeed be because I have

³⁸ Otsuka believes that paying for public goods (the founding ground of the minimal state) can be justified by the principle of fairness, although Nozick rejects it (see Nozick, 1974, 90-95). This principle could show how this kind of taxation is different from a taxation that implies an egalitarian distribution of goods: "If, *contra* the egalitarian, Nozick's argument soundly condemns taxation for the purposes of realizing an egalitarian distribution as a violation of one's property rights in itself, why doesn't it similarly condemn taxation for the purposes of providing for the national defense, police protection, and the judicial system? A libertarian does not object to coercive taxation for these purposes. But here one is forced to pay for goods that one has received. (...) In the case of the goods of national defense, etc. one never entered into any voluntary agreement. Nevertheless, one has received goods. I believe that payment for these goods can often be justified by the 'principle of fairness', according to which one may be forced to pay for 'public goods' from which one has benefited and which it is impossible selectively to exclude people from receiving", Otsuka, 2003, 19.

³⁹ Cohen, 1995, 235-236.

⁴⁰ According to Daniel Attas, Nozick is affirming a fallacy of exhaustive ownership when he considers that everything must be owned by someone. See Attas, 2000, 6-11.

such an obligation. But it does not follow that then I am a slave, for it does not follow that then another has the right that I lack".⁴¹

This hypothesis could be applied to the relationship between two individuals in a social state where A is required to assist U. In this context, even if the self-ownership rights of A are restricted, it seems incorrect to say that A is the slave of U since U does not enjoy A's rights of self-ownership.⁴²

The respect for self-ownership rights and their full acceptance would lead to the rejection of absolute moral legitimacy in the taxation of an individual. Chamberlain's freedom is actually reduced because the rights of self-ownership are restricted – which does not mean that he has become a slave. Nevertheless, both Cohen and Nozick state that one must determine whether any type of redistributive taxation is in fact in conflict with the notion that all individuals have full property rights over their own body and work.

However, there are two possible ways to approach this problem: the first is defined by the Rawlsian tradition and is characterized by the acceptance of taxes with a redistributive purpose, assuming that this alternative favors individuals who are in a worse position.⁴³ The

⁴¹ Cohen, 1995, 232-233. On the subject of non-contractual obligations not being necessarily slavery inducing, see Brenkert, 1998, 43-45.

⁴² Cohen considers that some individuals may have their rights of self-ownership restricted in the context of a social state and agrees with Nozick as far as the relation between redistributive taxation and self-ownership rights is concerned. However, he does not conclude that redistributive taxation may be compared to slavery: "In that state, there are also no self-ownership rights with respect to certain dimensions of the capacity to assist, but there are also no slave owner/slave relations", Cohen, 1995, 234.

⁴³ Otsuka defines Rawls' position as liberal egalitarian: this consists of accepting rights against the threat over one's body or mind, but rejecting that taxation of earnings is on par with forced labor. So, it can be understood that liberal egalitarians accept a limited concept of self-ownership. See Otsuka, 2003, 15-16. However, John Christman argues that Rawls or Dworkin simply reject the principle of self-ownership, "pointing out the moral arbitrariness of differential talents, (...) assuming the *public* ownership of skills", Christman,

second proposal was formulated by David Gauthier and seeks to reveal an alternative redistribution, which can be reconciled with self-ownership rights.

Cohen believes that redistributive taxation is a forced assistance to others and therefore inconsistent with self-ownership rights. To define taxation in this way allows him to refute Rawls' assertion that the principle of difference does not force an individual to help another individual.⁴⁴ He disagrees with the assertion that the principle of difference does not coerce certain individuals to help others, and he provides two possible answers. His interpretation is based on the fact that the Rawlsian theory of justice is incomplete because it does not include the truly unfortunate or those who are involuntarily unable to contribute to the social product. Despite being the most needed, they are excluded from the theory because they are unable to work for the common good. Actually, as they are not able to act, they are not able to *co-operate*.

The second response is part of an attempt to challenge Rawls' conclusion regarding the improvement of the conditions of those with superior talents. Even if they can improve their material situation, they would benefit even more if they were allowed to associate with other very talented individuals. It is crucial that this group of people cannot freely associate with other capable individuals because the principle of difference forces them to participate in a co-operative structure that restricts its hypothetical benefits.⁴⁵ Cohen infers that the distribution

1991, 28. Rejecting self-ownership rights allows egalitarians to embrace taxation as compatible with freedom.

⁴⁴ The difference principle is defined in Rawls, 1972, 75-83.

⁴⁵ Regarding the possibility of a talented individual associating with another person endowed with talent: "The most talented individual in society might benefit even from a flatly equal distribution of the social product, relative to what he can produce entirely on his own, but he is nevertheless likely to get much more than what the difference principle gives him if he withdraws with a suitable set of other talented people", Cohen, 1995, 225.

generated by the application of the principle of difference does not result from voluntary transactions, contrary to what Rawls claims. In fact, he admits that the difference principle should be based on an egalitarian premise and not on the expectation of the welfare maximization of all individuals involved.⁴⁶

However, in reality, this distribution seems to be imposed upon individuals and, as such, may be considered a variant of redistributive taxation that is conflicting with the notion of self-ownership we are looking for.

5. David Gauthier's Response: The Wayne Gretzky Argument

David Gauthier goes further in claiming that the Wilt Chamberlain argument does not demonstrate a fair distribution of goods, contrary to what is stated in *Anarchy*, since Chamberlain is not the rightful owner of the *factor-rent surplus* from his income.⁴⁷

Gauthier rejoins Nozick's argument by creating a parallel example with Wayne Gretzky. People pay to watch Gretzky play because there is an additional demand to watch his skills live. As his features are unique, he is in a position to extract factor-rent, because this surplus is determined by scarcity, and may be defined as a socially constructed

⁴⁶ Rawls favors an egalitarian distribution that opposes itself to the notion of self-ownership: "Then the difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred", Rawls, 1972, 76.

⁴⁷ Gauthier defines the surplus as follows: "Rent is determined by factor scarcity; it is the premium certain factor services command, over and above the full cost of supply, because there is no alternative to meet the demand. [And can be calculated:] (...) the difference between the least amount that would induce him to play as well as he does and his actual remuneration", Gauthier, 1987, 272-273. Gauthier's definition is, therefore, justified by the Paretian concept of rent: "(...) the excess earnings over the amount necessary to keep the factor in its present occupation", Shepherd, 1970, 209-11.

concept: Gretzky's factor-rent is contingent on scarcity, which is created by supply (the relationship between their talents and the talents of other individuals) and demand conditions (relations between their talents and interest shown in them by others).⁴⁸

Cohen, however, has a major objection to Gauthier's argument that can be summarized as follows: if taxing the factor-rent of any individual is consistent with freedom, because rent is a surplus created by social interaction⁴⁹, then if taxation is justified by the social origin of the product, Gauthier needs to recognize that taxes are legitimate when applied to a wide range of goods, as their value is created by consumer demand, and so this argument "would justify taxing virtually all income".⁵⁰

Gauthier questions the possibility of taxing Gretzky's income, particularly the factor-rent surplus, as it is a social creation, and, as such, dependent on the socio-economical context.⁵¹ Therefore, he

⁴⁸ Gauthier, 1987, 274.

⁴⁹ Trying to justify taxation over income, John Christman states that this kind of surplus is "a product of things over which an agent can claim no independent sovereignty", Christman, 1991, 35. If the individual has no full property rights over his income – because he is not the only one responsible for its production – it is impossible to argue that its taxation is morally unjustifiable. As he states, "for income rights to be exercisable, it must be the case that (a) other people have certain preferences, (b) others have certain information, (c) barriers and transaction costs have a certain structure, and/or (d) relatively permanent structures have been set up allowing for (a) through (c) to arise and stabilize", Christman, 1991, 36-37.

⁵⁰ Cohen, 1995, 219.

⁵¹ Christman presents a more radical argument, which is favorable to a kind of taxation and redistribution of income and surpluses. Firstly, he suggests a division of property rights between *control rights* (the kind of rights that are related to the control of goods that build autonomy of individuals) and *income rights* (conditional to involuntary contingencies, like market fluctuations). In the first type of ownership rights, a person is "the final arbiter over what is to be done with a thing" and there "are aspects of the person's *independent* powers over the things owned". On the other hand, "the right to income has scope over the *increased* income (or welfare) accrued from a holding by virtue of the productive use of that holding, involving, most centrally, trades". So, "the idea here is that a right to gain *extra* benefits from a holding – benefits

introduces two conditions that would nullify the morality of taxing the factor-rent: (1) if the income tax affects the hierarchy of Gretzky's choices, it should not be allowed. In this case, the tax on his income would restrict Gretzky's freedom, which would be forced to opt for alternatives due to the application of the tax. Further, if Gretzky signed a contract and created expectations related to his income, an expropriation of his rent surplus would restrict his rights to his self-ownership. Gauthier, however, does not address this hypothesis, arguing that only Gretzky has the ownership rights to the minimum sufficient income that allows him to continue to play hockey and not for the higher salary that he could earn; (2) this type of tax would be illegitimate if it affected the production of goods.⁵² It would be a waste to introduce a tax that would lead to decreased productivity rates in a society.⁵³

Nozick could argue that Gretzky's right to the income-factor is a constitutive element of his ownership rights. Likewise, Cohen believes that no tax could be justified if Gauthier persists in his belief that each individual has "the right to his basic appropriation"⁵⁴, as this type of income tax conflicts with self-ownership rights.

different from the use value of the object – is captured by the right to the income", Christman, 1991, 29-30. Christman sustains that if *income rights* are justified by "principles that govern the pattern of distribution of goods in the economy" (Christman, 1991, 31), they are not related to the rights over goods that refer to individualistic interests (*control rights*). If *control rights* are the underlying basis of self-ownership, these rights can be preserved even if *income rights* are taxed. This implies "that individuals would be allowed to exercise their talents freely, but all the «profit» from this exercise would be redistributed on a per capita egalitarian basis" (Christman, 1991, 40) through taxation. So, he argues that income rights should be held collectively, to avoid a separation between self-ownership rights and an egalitarian distribution of resources. Self-ownership rights are maintained because "control rights (to utilize one's talents) remain individual and private", Christman, 1991, 41.

⁵² Gauthier, 1987, 273-274.

⁵³ The factor-rent surplus would be determined as follows: *Maximum possible wage - Minimum possible wage = Factor-rent surplus.*

⁵⁴ Gauthier, 1987, 276.

Like Gauthier, Rawls' perspective requires redistribution through the tax system, which favors the division of material goods in society.⁵⁵ This perspective is based upon the conviction that freedom is only an operational concept, assuming that reasonable material conditions for everyone are guaranteed. To ensure the autonomy of the individual, taxing the factor-rent and distributing it among the most disadvantaged should restrict property rights on income.

Gauthier does not agree with the idea that the rent surplus should be distributed among the most disadvantaged and diverges from Rawls on this point, arguing that the factor-rent should only be legitimately divided by individuals who *co-operate* with each other.⁵⁶ Thus, to ensure that freedom is not limited, Gauthier argues that to tax and to redistribute the factor-rent is necessary, but only as part of a network of social co-operation, rejecting the possibility of including the most disadvantaged (who probably would not have contributed to the bonus salary of Gretzky).⁵⁷

Cohen concludes that libertarians like Nozick define freedom as the extent of the choices of a person, making it difficult to reconcile this idea with the notion of self-ownership. To support this conceptual conflict, he expresses the limited autonomy of the proletarian, a

⁵⁵ Conversely, John Rawls would require a social redistribution of the factor-rent, applying the principle of difference to achieve the maximization of the welfare of individuals who were in a worse situation: "The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowment in ways that help the less fortunate as well", Rawls, 1972, 101-102.

⁵⁶ David Gauthier emphasizes the importance of co-operative institutions to correct market failures: "Rather than suppressing the market, what is needed is its supplementation by co-operative institutions and practices that assure the optimal supply of public goods", Gauthier, 1987, 270.

⁵⁷ One must admit that Gauthier understands the principle of difference differently from G. A. Cohen. While the first defines it as a distribution of social resources by the more disadvantaged, the latter rejects this assertion, claiming that Rawls defends a distribution only among the members of a network of co-operative social relations, neglecting disabled people.

consequence of the limited chances that are provided to him. These material conditions are so restricted that the proletarian must sell his labor to survive or to support his family. It would even be dishonest to describe the proletarian as a free man, according to Cohen. To ensure that someone can have as many options as needed to be autonomous it is necessary to restrict the rights of self-ownership and to create an institution that can provide some public goods such as education or health services. Thus, even for Cohen, collective goods should be understood as a set of social conditions that are the building blocks for the individual's autonomy and, therefore, he states that to achieve freedom self-ownership rights should be restricted and must provide a set of collective goods to each individual. This configuration would imply a tax on income to provide essential services for all individuals.

6. Objections to Gauthier

Regarding the Wayne Gretzky argument, outlined by David Gauthier, we believe that three objections can be formulated:

(1) despite not proposing a reduction of freedom, Gauthier is unable to prevent the restriction of the rights of self-ownership, as Cohen points out.⁵⁸ Any type of income tax actually reduces property owned by each individual, for himself and his work. Thus, to tax the factor-rent surplus implies, in fact, a restriction of the individual's freedom, even if it is just because the contract that had guaranteed a salary bonus was legitimate for being voluntarily granted. This result

⁵⁸ Cohen states that Gauthier tries to demonstrate Locke's notion of self-ownership, but applies it to a Hobbesian state of nature, where rights are inoperative: "Gauthier's state of nature, when it is not the threshold of society, is Hobbesian rather than Lockean, with an appropriately diminished conception of self-ownership in place, one in which each person has, in Hohfeld's senses of the terms, the liberty to do anything and the right to do nothing", Cohen, 1995, 222.

is similar to that sought by Cohen, but conflicts with Gauthier's aim of reconciling redistributive taxation with a broad notion of self-ownership;

(2) to impose a tax on rent surplus will not reduce inequality, as Gauthier himself points out.⁵⁹ The Wayne Gretzky argument is a challenging one because taxation on income could improve the material conditions of the most disadvantaged. Even though the tax consequences are undesirable in terms of achieving an egalitarian society, the argument itself is disappointing because it also reduces self-ownership. So, the argument put forward by Gauthier does not guarantee greater freedom and actually reduces the rights to self-ownership, minimizing the possibility for a broad concept of freedom;

(3) a practical question that emerges from the Wayne Gretzky argument is related to the difficulty of measuring the factor-rent surplus, because it is difficult to determine the exact amount of demand for a service provided by a hockey player. It is impossible to determine the rent surplus that could be taxed without having access to this information. However, rejecting redistributive taxation allows for the advent of an unequal society where some individuals do not have the material conditions to choose the direction given to their lives: this restriction should be understood as a lack of autonomy and therefore a lack of freedom.

7. Balance of a Debate

If the material autonomy of some individuals is reduced by the Wilt Chamberlain argument, is it possible to consider that Nozick's theory of justice is truly libertarian? We argue that it cannot, because (i) it neglects an effective freedom, where each individual can choose

⁵⁹ Gauthier, 1987, 274.

what to do with their own lives, requiring acceptable material conditions; (ii) it only acknowledges formal freedom; (iii) it also fails to show that his self-ownership-based theory can be advantageous to everyone within a free and voluntary society. However, Otsuka shows a strong argument that conciliates a robust libertarian right of self-ownership with an egalitarian allocation of natural resources, within a welfarist structure of distribution of natural resources and through an egalitarian analysis of the Lockean proviso. Notwithstanding, to achieve a just distribution of resources in the long run (in more than one generation) it would be necessary to accept a strong role of the state.

The libertarian argument concerning taxation can be explored and confronted with alternatives. If the Wilt Chamberlain argument shows that taxation is immoral because it minimizes freedom – and can therefore be compared to forced labor – will it be possible to conclude that any form of taxation limits self-ownership rights?

David Gauthier reformulates Nozick's argument through the Wayne Gretzky example, where the rights of self-ownership are not reduced if the rent surplus of the athlete's income is taxed. We conclude that Gauthier cannot demonstrate that, overall, taxation can be reconciled with the rights of self-ownership.⁶⁰

As Cohen states, to achieve a redistributive mechanism for voluntary transactions it is necessary to create an equal level of conditions that ensures the liberation of the individual; a mechanism that should be harmonious with the idea of full self-ownership rights: the only solution can be found in the nineteenth-century social-anarchist tradition.⁶¹ Only a new ontological conception, through the

⁶⁰ On the inconsistency between self-ownership and taxation, we follow Narveson's considerations that libertarianism is incompatible with this kind of public policies. See Jan Narveson, 1998, 18-19.

⁶¹ Cohen mentions that through a social-anarchist setting capitalist transactions would be willingly discarded: "(...) is it true that a 'socialist society

moral progress of all individuals, could allow the creation of a theory of justice based on true freedom, where: (a) self-ownership rights are preserved; (b) willingness becomes the center of all social relations; (c) the means of production are common property, but each individual owns broad ownership rights over the fruits of his work; (d) the egalitarian principle is implemented through voluntary and individual choice. To this list a fifth element should be added: (e) an utopian/optimistic vision of the overabundance of natural resources, which facilitates the rejection of all the economic problems caused by scarcity.

Despite the difficulties presented in the generation of a theory of justice that reconciles taxation and self-ownership rights, it becomes clear that the coordination between these rights and equality is a key element of real freedom.⁶² We can conclude that restricting rights of self-ownership and allowing the reallocation of resources is the only way to affect the potential freedom of individuals. Paradoxically, minimizing a certain kind of liberty is necessary for applying a broad concept of freedom; in fact, a truly libertarian theory of justice needs to reduce a certain type of freedom to ensure that it is both politically and socially operational.

The commitment to freedom is an obligation of those who are concerned with the definition of a just community. Justice cannot be ensured when freedom is denied to oneself. Given that it is impossible to think of a theory of justice applied to the anarchist utopia of Anarres, this reflection focused on a society comprised of individuals with different life goals, distinct concerns, and who are fairly selfish

would have to forbid capitalist acts between consenting adults?" [Nozick, 1974, 163], Cohen, 1995, 28.

⁶² Against the idea that self-ownership is relevant to accomplish a relevant degree of freedom and that it should be rejected, see Brenkert, 1998, 47-52. Contrary to the idea that self-ownership can be grounded on freedom alone (the right to control oneself as subject), see Attas, 2000, 21-23.

and seek to improve their welfare through their self-effort and capacity, and therefore through the recognition of their value.⁶³ As such, we have questioned how a human society is permeable to an idea of justice of libertarian essence. This idea of libertarian justice will necessarily have to be based on respect for the concept of self-ownership – articulated with a fair distribution of goods, enabling the individual to accomplish the freedom that integrates him *potentially* – and on the notion of sovereignty of the self, rejecting any external interference with the definition of oneself. This is the commitment of a person to others and to oneself. This is the definition of what a society is, ordered on a broad principle of freedom. This is what the elderly Lona Hessel of Ibsen's play said when she admitted that only "the spirits of Truth and Freedom (...) are the Pillars of Society"⁶⁴.

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⁶³ Perhaps this theory of justice would even be irrelevant in a social setting where conflict is overshadowed by a super-socialization of the individual, by recreating it as an altruistic one.

⁶⁴ Ibsen, 1923, XII, 88.

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