

A PARTIAL SOLUTION TO THE SELF-OWNERSHIP CHALLENGE

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ABSTRACT

We all, all of us, without exception, consist of nothing more than property owned by other people: the sperm from our fathers, the egg and nine month's worth of sustenance from our mothers. That being the case, how is it that we come to own ourselves? The present paper attempts to wrestle with this conundrum.

KEYWORDS

Libertarianism; slavery; self-ownership; property; rights; ownership; human beings; contract

I. INTRODUCTION

When we were born, our bodies were made up, entirely, by property owned by other people: our parents supplied the sperm, the egg, and nine month's worth of food. This being the case, and, also, given libertarian private property rights theory, how can any of us, our parents included,¹ claim to be owners of ourselves, given that we are all comprised of material owned by others. This challenge has been thrown at libertarians,

¹ Since they face the same problem as do we, ad infinitum.

in an attempt to undermine their position.² Libertarians have attempted to defend this philosophy,³ but, in our view, not fully successfully. The present paper is an attempt to add to this latter literature. But, before we begin, a few words.

Even if libertarians can never nail this one down, this does not constitute an utter annihilation of this perspective. Other disciplines, too, do not have all the answers. For example, physicists do not know what occurred before the Big Bang, nor how it came to be. As well, they are still quarrelling over whether reality consists of waves or particles. Astronomers have not yet determined whether Pluto is a planet or not. There are unresolved issues, too, in economics, political science, sociology, chemistry, biology, as well. And, yet, these fields of study survive, quite nicely, without a full resolution of all issues.

The same applies in the present case. Even if we cannot bat this one out of the park, libertarianism will still stand. And, indeed, this is not the only puzzle presently challenging the freedom philosophy.⁴

In section II we offer our partial solution to this problem. Section III discusses implicit contracts and IV abandonment. We conclude in section V.

II. A PARTIAL SOLUTION

The conundrum for libertarians is the fact that in this philosophy, private property rights are sacrosanct, and so is human freedom. Yet, the two at least appear to be at odds with one another. Consider the fact that the fetus consists entirely of property owned by two other people: his father and mother. From the former, the baby is created out of, and consists of no more than, the sperm, at least initially. From the mother, ditto for the egg, plus the material with which she furnishes him for the next nine months. But if he consists of nothing apart from material furnished by, owned by, these two other people, then, by all that is sacred and holy about private property rights, he should be owned by them. Where, then, is there any room for human freedom and self-ownership, about which libertarians also pride themselves.⁵ Worse, those two parents suffer from the same malady vis a vis their own parents, and so on, which leads if

² See on this Alstott, 2004; Cohen, 1992; Curchin, 2007; Fried, 2004, 2005; Hicks, 2015; Jeske, 1996; Okin, 1991; Shnayderman, 2012; Woollard, 2016.

³ Block, 2016; Dyke and Block, unpublished; Kinsella, 2006; MacIntosh, 2007; Steiner, 1994A, pp. 242-248, 1994B, 2002, 2008; Vallentyne, 2000, 2002, 2008; Vallentyne, Steiner and Otsuka, 2005; Young, 2015

⁴ Libertarians debate abortion, immigration, the death penalty, without any clear resolution in sight.

⁵ There is of course a seeming exception for voluntary slavery, but, this is, paradoxically, is an embodiment of freedom, not its denigration. In the view of Boldrin and Levine (2008, 254): "Take the case of

not to an infinite regress, to a very long one. It extends at least as far back as the existence of the first human beings.

How can we save our freedom perspective from this philosophical morass?⁹ One easy response is that all parents, everywhere and at all times, make a free gift to their children of the freedom of the latter. The difficulty here is that while this is likely to be the case, we cannot count on it always being true. We offer two responses: implicit contracts and explicit ones.

III. IMPLICIT CONTRACTS

Suppose you go to a restaurant, order a cup of coffee and drink it down. Whereupon they present you with a bill for \$1 million. Are you obligated to pay this gargantuan amount of money? Of course not. If the proprietors of this establishment really want to charge you this astronomical figure, they may of course do so. Price controls are not compatible with libertarianism. But they are obliged to notify you, in advance, of this fact. They may not be obliged to go through the same intensive rigmarole as if you had purchased a house for this amount of money, but they must be clear, very clear, that this is the cost of a cup of coffee at their eating establishment. Perhaps, even, the contract should be notarized. In the absence of any such explicit agreement, there is an implicit contract that the price of this beverage is a reasonable one. That is, a buck or two; alright, in a fancy eatery, maybe \$5; \$10, tops. Can this implicit contract be overridden by an explicit one along the lines we have suggested? Yes. All capitalist acts between consenting adults are licit under libertarian law.

What is the implicit contract, then, between parents and children? Unless we are barking mad, it is that the former give the latter the aforementioned sperm, egg, sustenance, as a gift. The child is thus a free person, a self-owner, and there need be no regression, let alone an indefinitely large one, as previously supposed.

Does this solve the problem? Not completely, unfortunately.⁶ The flaw in the ointment is that when parents hear that they can indeed over-ride implicit contracts with

slavery. Why should people not be allowed to sign private contracts binding them to slavery? In fact economists have consistently argued against slavery – during the 19th century David Ricardo and John Stuart Mill engaged in a heated public debate with literary luminaries such as Charles Dickens, with the economists opposing slavery, and the literary giants arguing in favor." For more on this rejection of inalienability see Andersson, 2007; Block, 1969, 1979, 1999, 2001, 2002, 2003, 2004A, 2005, 2006, 2007A, 2007B, 2009A, 2009B; Frederick, 2014; Kershnar, 2003; Lester, 2000; Mosquito, 2014, 2015; Nozick, 1974, pp. 58, 283, 331; Steiner, 1994, pp. 232; Thomson, 1990, pp. 283-84.

⁶ It is still worthwhile to publish an incomplete paper such as the present one. Progress, no necessarily perfection, is our motto. Hopefully, this incomplete defense of libertarianism will trigger others to leap upon our shoulders, and complete the task, one fine day.

explicit ones, as in the coffee case, they can do so in this one as well. Presumably, very few parents will do this, and thus be in a position to make literal slaves of their children. The overwhelming majority will do the decent thing and continue to abide by the implicit contract we are positing. They can make no such contract with their child at the time of sexual intercourse; for he is not yet in existence. For a contract to occur, an implicit or an explicit one, there must be two parties to it; in this case, parents on one side of the agreement, the child on the other. No, the overriding here consists of the parents agreeing with one another to override the freedom oriented implicit contract, and substitute for it an enslaving explicit contract. The parents refuse to “give” anything to their child. This solution perhaps is a step in the direction of solving the conundrum; virtually no parents will override the implicit contract granting freedom to their child; but we cannot award ourselves the proverbial cigar, since there could be exceptions to this general rule.

IV. ABANDONMENT

Politician A puts out his garbage at the front of his property. He has a contract with a sanitation firm to come pick it up and dispose of it. But along comes politician B who steals this refuse, with the goal of unearthing embarrassing secrets to A’s detriment. We know that B is a crook.⁷ He stole private property. But who did he rob? A or the garbage removal service? We claim B stole from the sanitation company, not from A. The latter has “washed his hands” of this refuse; yet, it was still on his property at the time of the theft, but it was not owned by the garbage firm. Why do we make this claim? It is because A *abandoned* what would otherwise be considered his property. He left it at the front of this house in order to more easily be picked up, taken away.⁸ He wanted no part of it anymore. If not for the fact that A abandoned this material, in favor of the disposal company, B would have been within his rights to grab it.

In like manner, the father *abandoned* his sperm. He “disposed” of it. He no longer had any right to it. He now has no more right to this part of his body than A had to his leavings when he set them out at his curbside.⁹

What of the mother? Has she also abandoned her egg? Not at all; it still remains inside her body. She has no more given up her egg any more than A did his garbage before he placed it near the street for pickup. Nor has the mother abandoned the food she gives to the baby for the nine months of her pregnancy. So can we then say that the

⁷ A probably is, too, but that is an entirely different matter.

⁸ For a discussion of abandonment from a libertarian point of view, see Block, 2004B, 2015; Block and Nelson, 2015; Kinsella, 2003, 2009A, 2009B, 2009C, 2011; Long, 1993

⁹ We abstract from the disanalogous contract A had with the garbage removal service.

mother can seize slavery ownership over her child, whereas the father may not? If we said this, we would be halfway forward in the direction of defending libertarian theory against this criticism. But we cannot aver any such claim. Instead, we interpret her continued willingness to remain pregnant as her agreement to give her egg to the being who is now her son. She makes this gift to him right after he is created.¹⁰ She cannot do this at the time of intercourse since the baby does not yet exist at this point. There is no one, yet, for her to give any gift to. But she can and indeed does precisely this as demonstrated (Rothbard, 1956) by her willingness to remain pregnant. So, neither she nor the father of her child may properly claim ownership rights over the latter.

Are we there yet? Have we now fully defended the freedom philosophy against this objection, instead of only partially, as with the implicit contract argument? Unfortunately, we have not. There still remains a loophole through which a determined set of parents can drive the proverbial truck.

Who says that the father must of necessity abandon his sperm? He may well deny it. Politician A can put a sign on his garbage, placed at the edge of his acreage, saying: "This trash is mine. Do not remove it." So can the father make an oath to his wife and others if need be that he is *not* abandoning his sperm. He intends that this former part of his body will now form part of his son, who he will subsequently hold in the bond of slavery. He can have his statement to this effect notarized so that there can be no question of his continued property rights in his sperm.

At first glance, the mother is in a worse position than the father in terms of asserting ownership over her son. As we have seen, by remaining pregnant, we deduce she is making a gift of her egg and the food she confers on her baby. But, cannot she rescind this? Our deduction is merely by way of an implicit contract. Cannot the mother say, in effect, to the child, that unless you agree to be my slave, I'm withdrawing this gift of mine to you? It is now too late to withdraw the egg. This is already part of her child. But she may evict the baby from her premises, whereupon it will die, at least in the first two semesters, given present medical technology (Block, 2014).

It cannot be denied that all this talk about making a contract with a youngster, still in the womb, can only be characterized as lunatic; or, to put a better slant on this, as highly theoretical.¹¹ Suppose, then, that the court appoints new guardian for this baby. This worthy has the best interests of the child at heart, we may not unreasonably posit. He acts in behalf of the baby, since the mother is threatening not to do so, either by acting in such a way that he will die, or become her slave. His guiding principle is to promote the welfare of this still unborn child. "Death before dishonor" has ringing tones, but let

¹⁰ We regard the beginning of the child's existence when the two celled fertilized egg comes into being.

¹¹ We reject the appellation "ridiculous." Why? The mother who makes this threat can no longer be considered his guardian (Block, 2011).

us posit that what is best for this baby is to be the alive slave of his parents, rather than deceased, due to being evicted from the womb before he reaches the safety of the third trimester. Where there is life, there is hope. His parents will likely pre-decease him. Perhaps they will manumit him before that point, although they need not do that, since the proper master of the slave has the right to kill him. This would not be considered murder; e.g, unjustified killing.

V. CONCLUSION

We do not fool ourselves into thinking we have nailed this conundrum. But the perfect is the enemy of the good, and this challenge is a convoluted one. We content ourselves in the thought that an imperfect attempt to solve a problem is better than none. It is perhaps a good first step in that direction. Hopefully, other writers will continue this process and improve the product, just as we have tried to stand on the shoulders of the scholars whose efforts we cite.

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