

Left-libertarianism and Left-Hobbesianism

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Summary

This paper provides a comparative analysis of the way in which, as well as the extent to which, two key variables potentially allow for the development of more left-wing versions of libertarianism and hobbesianism. It turns out that hobbesianism, while disposing of ways to extend the scope of what should be seen as the “cooperative surplus”, is in trouble when it comes to justifying “equal division” as a general rule to divide up such a surplus. In contrast, libertarianism can meaningfully rely on strategies extending the notion of external resources as well as on an equal division rule. We then explore what this entails with respect to the capacity of such theories to offer more redistributive versions than their standard forms. We also briefly look at how to map such left-wing versions, and especially left-libertarianism, once they are compared with other theories such as luck egalitarianism or sufficientarianism.

Resumo

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Biographical note

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Introduction

Among the recent developments in the field of philosophical theories of justice, attempts at defining and defending left-wing versions of libertarianism certainly constitute a significant development.¹ From a strictly political point of view, such an evolution may not be entirely good news for the left. For the very possibility of left-wing forms of libertarianism, may let some people think that they are right in continuing to see most taxation as equivalent to slavery – regardless of the fact that defenders of left-libertarianism themselves would not

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¹ See e.g. Vallentyne & Steiner (2000)

endorse such a view.² At a conceptual level, however, the development of left-libertarian theories is undoubtedly a positive phenomenon. For it forces us to further refine our views about what justice requires. And it offers still another opportunity to try and find out whether, how, and to what extent, given visions of how we should organize society can indifferently be phrased in the language of property, freedom or equality. It also constrains right-libertarians to provide further reasons as to why their commitment to central concepts of libertarianism, and notably to self-ownership, would prevent them from moving towards a more redistributive theory. Finally, it encourages versions of sufficientarianism and egalitarianism to locate themselves even better on the map of theories of justice. By egalitarianism, we understand a theory of justice that is concerned either about the reducing the gap among people, or improving the situation of the least well off members of society, from the perspective of a given metrics (equality of welfare, of opportunity for welfare, of capabilities, of real freedom, etc).³ Sufficientarianism is a form of egalitarianism that is “capped” in a particular way: redistribution is only required up until a given level is reached, typically when we reach the level of access to resources sufficient to see one’s basic needs met (food, accomodation, basic education, etc).

This article pursues a limited and twofold goal. On the one hand, we wish to point at the key variables allowing libertarians to pull their theory towards the left. On the other hand, we shall ask ourselves whether similar strategies are equally available to Hobbesians (represented in the field of theories of justice by e.g. Gauthier)⁴ wishing to defend left-wing versions of their view. This twofold project will in turn aim at setting the stage for beginning to answer two broader questions. *First*, do libertarianism and hobbesianism exhibit *conceptual* features such that they would allow, without major internal consistency loss, for the development of genuinely distributive versions of their views? *Second*, are there any good reasons to believe that left-libertarianism would have a lesser ability to propose left-wing versions than other theories such as hobbesianism but also luck egalitarianism or sufficientarianism?

Before proceeding, let us add two further remarks. *First*, there will be no attempt at being exhaustive here, be it as to the authors that would be regarded as libertarians and as to the various trends identifiable within left-libertarianism.⁵ *Second*, we shall understand the prefix « left » as pointing at the *redistributive* nature of a theory of justice.⁶ By this, we refer to a theory advocating *net transfers* within a society, to the benefit of its *least well-off* members (egalitarianism in its *prioritarian* form, defined through *maximin* or *leximin*),⁷ as defined on the

² Fried (2004 : 92)

³ See as well infra notes 7 & 8

⁴ Gauthier (1986). Note that « left-hobbesianism » is not really a standard expression. Perfect symmetry would probably require to use the following couples, i.e. either « left-lockeanism v. left-hobbesianism » or « left-libertarianism v. left mutual-advantage contractarianism ». Left-libertarianism is however much more in use than left-lockeanism, and left-hobbesianism is more convenient than the long « left mutual advantage contractarianism » expression. Note moreover that left-hobbesianism appears more marginal (or at least less structured as a school of thought) than left-libertarianism. Certainly Gauthier himself incorporates left-wing dimensions within his hobbesianism. Heath (2006) is taken here as another example of left-hobbesian, even if he identifies himself rather as a « narrow-scope egalitarian » or a « contractualist egalitarian ». Finally, Van Parijs (1996) develops attempts at producing a more left-wing version of Gauthier.

⁵ See Vallentyne & Steiner, *op. cit.*

⁶ For two recent accounts of the left, see Dély (2005) (sociological data in the French context) and Van Parijs (2006) (philosophical account)

⁷ Instead of « to the benefit of its least well off members », a more precise formulation (avoiding the problem of overtaking effects) is: « in a way such that its least well off members, whoever they are, turn out ending up being better off than the least well off members of society under an alternative

basis of a given *metrics* (i.e. “equality of x” such as Dworkinian equality of *resources*, or equality of *opportunity for welfare*).⁸ Note that while the choice of a given metric is *necessary* to assess the redistributive nature of a theory – as one mode of social organisation may generate more net transfers with respect to one metric and less transfers with respect to another –, such a choice is *not sufficient* as such to fully assess the redistributive nature of a theory. For other variables may enter into play, even leaving aside empirical questions. For example, welfare egalitarianism is in principle more redistributive than Dworkinian luck egalitarianism. However, such a difference vanishes if luck egalitarians empty the « choice » dimension by systematically analysing people’s disadvantages as resulting from their circumstances. In addition, we will not presuppose hereinafter that the larger the net transfers, the fairer our society. Some theories may rightly be considered “over-redistributive”, i.e. unjustly redistributive and luck egalitarians oppose welfare egalitarians in part for that reason. Finally, this also points to the fact that even within sufficientarianism and egalitarianism themselves - often regarded as more left-wing than libertarianisms, there can be right-wing views. Think again about a Dworkinian who, as mentioned earlier, would systematically interpret disadvantages as resulting purely from people’s circumstances. Consider as well a luck egalitarian who, as often, would restrict its material scope to exclude differences in talents, leading to something potentially equivalent to left-libertarianism. Finally, think about a sufficientarian view that would set up an especially low sufficiency level. None of these three views could be regarded as especially left-wing versions of egalitarianism or sufficientarianism.

Let us now move to the substance of the argument, unfolding in two steps. *First*, we focus on attempts at extending the scope of the *distribuendum*, at proposing a broad conception of the tax base (to use a fiscal concept) on which redistribution should be based, both for libertarians and hobbesians (« The extension »). *Second*, we look more closely at the possibility of defending an allocation rule applying to such extensively defined goods, that would be as redistributive as possible (« The division »).⁹

1. The Extension

Left-libertarianism and external resources

At the heart of a typical libertarian theory, there is a strong commitment to preserving people’s self-ownership¹⁰. Most left-libertarians stick to such a commitment. However, there are two respects in which they may differ from right libertarians. *First*, against extreme right libertarians, they will consider restrictions on just appropriation of “external resources” that go beyond a mere “first come, first serve” rule. It is worth noting however that even Nozick, who is generally not regarded as a left-wing thinker in the distributive sense, does not endorse a mere “first come, first serve” rule.¹¹ *Second*, and more importantly, some of the left-libertarians will adopt an *extensive* conception of the goods that qualify as external resources,

mode of social organisation ». On the « equality/priority » distinction: Raz (1986, chap. 9), Mc Kerlie (1994), Parfit (1995) and Temkin (1993 : chap. 9). On leximin: Sen (1970 : 138)

⁸ Dworkin (2000)

⁹ Fried identifies three variables rather than two in the case of left-libertarianism. She writes that the egalitarian nature of left-libertarianism will depend on “what is included in “external resources” subject to an egalitarian sharing rule; how much of the value of those external resources is subject to redistribution; and in what fashion that value is to be redistributed”. (2004: 68). In fact, this threefold distinction is problematic, because 1 and 2 can be coupled and be part of the definition of the tax base, and 2 and 3 can be coupled and be integrated in the definition of the lockean proviso.

¹⁰ See e.g. Cohen (1986)

¹¹ Nozick (1974 : 178ff.)

going beyond mere *natural* external resources. This extensive notion may – but does not need to – affect in turn the treatment of what are to be regarded as “the fruits of one’s labour”, or at least the possibility of taxing such fruits, since the production of artefacts will involve in most cases some mixing with external resources.

We shall return in the second part of this paper to the debate regarding the legitimate appropriation of external resources and the extensive understanding of the latter. Let us say a few words first on self-ownership. Admittedly, the notion has limitations, for example insofar as it does not tell us *per se* how to deal with conflicts of self-ownerships.¹² Yet, we can say that the notion of ownership refers to a comprehensive bundle of rights. This bundle applies to a thick notion of “self”, i.e. not one that would be a purely reflexive and formal one. It is clear that the notion of self-ownership has tight connections with the negative side of freedom (i.e. being free *from*). For libertarians across the whole spectrum, self-ownership certainly prevents the State as well as fellow citizens to impose forced labour, conscription for war, the taking of non-vital organs or compulsory blood donation on individuals¹³. So, we are facing an extensive entitlement covering a substantive scope of internal resources.¹⁴ The left-libertarians project may then somehow be described as an attempt at preserving a sufficiently extensive scope for the “negative” side of freedom (free *from*) while making sure to grant to each of us (and therefore to redistribute) the means of positive freedom (free *to*), a goal captured e.g. by Van Parijs’s notion of *real freedom*.¹⁵

In other words, how to proceed with redistributive taxation in full respect of self-ownership? By extending the scope of what should be seen as external resources without abandoning the idea of self-ownership. How can this be done? Let us begin with Paine’s land tax.¹⁶ As a farmer, one may tax me at a level equivalent to the land’s full competitive price. I would thus have to pay to society as a whole an amount equivalent to the highest price that anyone else would be ready to offer for this very plot of land at an (hypothetical) auction.¹⁷ It does not follow that this farmer should be taxed on top of that, e.g. proportionally to the amount of onions she would have been able to grow. So, left-libertarians may be willing to impose a land tax, without necessarily being ready to adopt the idea of an income tax – at least as a first best option. For the latter would inevitably reflect not only the competitive value of the land, but also the extent to which a given farmer would be hard working and/or talented, the two latter dimensions clearly belonging to the realm of self-ownership.

The challenge, for those among left-libertarians who are willing to go beyond a notion of external resources constituted « merely » of natural resources and inherited artefacts, is to show that Paine’s strategy can be applied to the treatment of other objects. Van Parijs’ approach is paradigmatic of such a possible move. He shifts from land plots to job slots.¹⁸ The analogy can best be presented in three steps. Let us assume *first* that we live in an economy

¹² Fried (2004)

¹³ There is of course room for discussion here since e.g. guaranteeing people’s self-ownership may turn out being impossible without some degree of conscription in the specific circumstance in which no one wants to become a policeman or a soldier for example. See also for a recent and non-libertarian treatment of these issues : Fabre (2006)

¹⁴ Dworkin uses the distinction “personal v. impersonal” (2000: 322). Compare with Otsuka, below at note x (personal v. worldly).

¹⁵ For a good discussion on the negative (“freedom from”) v. positive (“freedom to”) freedom concepts: Swift (2001 : part II). For an articulation of real freedom on the one hand, with negative v. positive freedom on the other: Van Parijs (1995: 17-24).

¹⁶ Paine (1796)

¹⁷ Van Parijs (1995 : sect. 4.2)

¹⁸ See Van Parijs (1995 : chap. 4)

with perfect competition and in which all people are equally talented (case 1). Even in such a context, job rents may obtain due to the existence of efficiency wage phenomena. In other words, if productivity is at least in part endogenous, the employer will not necessarily adjust the wage offered to the clearing wage level at which offer and demand would meet. This means that unemployment will obtain and that job rents will exist. Now, let us imagine for a moment a *second* type of situation in which various causes would make us depart from a situation of perfect competition (case 2). Among such causes, let us mention : state intervention (aiming e.g. at guaranteeing minimum wage), initiatives from trade unions, imperfect information, monopolies, discriminations (be they economically justifiable or not). Such sources of market imperfection (and/or instances of government failure) prevent a perfect matching of supply and demand, and generate unemployment as well as job rents. Finally, let us envisage a *third* type of situation in which talents are *not* uniformly spread among the population and in which some internal resources are scarcer and/or more on demand than others (case 3). Here, the idea is that economically more valued talents allow their beneficiaries to access jobs to the detriment of other job seekers. In this third type of case, the exclusion from job slots of definite individuals would not be due only to causes of type 1 or 2, but also to inequalities in talents.

Let us limit ourselves first to situations 1 and 2. In such cases, the proposed extension of Paine's strategy consists in requiring from each individual holding one of the available job slots to pay a tax to society as a whole because of advantages that are in no way due to the particularity of her talents. This tax corresponds to a *percentage* (as opposed to the full value in the case of Paine)¹⁹ of the job rent, which is the difference between the worker's current wage and the clearing wage for this precise type of job. The latter is the *lowest* wage (as opposed to the highest price in the case of Paine) that an alternative job seeker would have been ready to accept as remuneration for the job (reservation wage), in the absence of factors preventing the market to clear. As we said earlier, this is very different from taxing the fruits of this person's labour, - even though for practical reasons, the idea of auctioning access to jobs may have to translate in real world as an income tax.²⁰

Moreover, even if one moves to case 3, the idea is rather for Van Parijs to tax employment rents derived from the *scarcity* of people's talents rather than to tax their talents *as such*.²¹ Yet, while taxing employment rents in cases 1 and 2 is compatible with self-ownership, taxing them to the extent that they would result from differences in talents probably goes beyond what self-ownership allows for. In other words, if the strategy consisting in taxing job rents in cases 1 and 2 can fit nicely within the left-libertarian family, the fact that Van Parijs also applies it to case 3 contexts indicates one respect in which his real-libertarian theories is not just a left-libertarian theory. In what follows, we limit ourselves to cases 1 and 2.

What should we then think about Van Parijs's extensive strategy ? Two things at least. On the one hand, his approach opens the gate to other possible extensions of the notion of external resources. He applies it himself to love relationships, whenever there is a scarcity in (good) « partners »²². In a less anecdotic way, it could also be applied to issues of access to *citizenship*. The latter has something in common with Paine's land plots since citizenship generally allows for access to a given territory as well as to various social programs, beyond

¹⁹ Van Parijs (1995 : 114-115)

²⁰ Van Parijs (1995: § 4. 6)

²¹ Van Parijs (1996 : 174). A view echoing Rawls's « left-libertarian » claim that « what is regarded as a common asset is the distribution of native endowments and not our native endowments » (1990 : sect 21.3)

²² Van Parijs (1995 : 127-130)

recognition of political rights. And it also has something in common with access to job slots since access to citizenship often amounts to getting a lifelong green card.²³

On the other hand, there are also *limitations* to the possibility of going beyond the job rent strategy. One of these has to do with the hypothesis that such a strategy could only apply to artefacts whose producers are individual or collective actors that are hard to pin point and/or do not benefit from well defined property rights on the goods at stake. The example of goods produced by earlier generations is a case in point. Similarly, if the genesis of job slots could properly be traced back to the action of well-defined individuals rather than to a web of market interactions, the job rent strategy would probably be harder to defend. Another potential limitation of the extensive strategy has to do with *non-rival* goods, i.e. goods the consumption of which does not diminish at all the possibility for other individuals to consume it at the very same time. This second limitation should not be overestimated though. For the use of non-rival goods can still be rendered *exclusive*, for example through the introduction of patents on inventions. Such an exclusivity reintroduces the possibility of extending this strategy to non-rival goods, as long as we can show that making them exclusive is needed (e.g. because of the need for incentives). The exclusion of others from consuming such goods will then obtain and require compensation in the same way as for land plots or job slots.

As we can see, further research is definitely needed to identify precisely to which types of goods such an extensive strategy could possibly apply, as well as which types of limitations it may have to face. Let us now have a closer look at hobbesianism, with the aim of assessing whether similar extensive avenues are available there as well.

Left-hobbesianism and the cooperative surplus

Turning now to hobbesians, the characteristic feature of their mutual advantage contractarianism, when it comes to social justice, is that people can only owe each other something that would remain within their so-called “feasible set”. The latter refers to the domain covering all possible cooperative agreements leading to a gain, be it limited, for each and every of the cooperating members. The typical starting point is the counterfactual situation in which a person would find herself in, were all other people *absent* (autarkic counterfactual). A potential cooperator will then only engage in cooperation if he has something to gain from it against the baseline of this autarkic counterfactual. Here, what echoes the libertarian commitment to self-ownership is the hobbesian commitment to not expecting people to engage in transfers that would imply net losses for them. Rather than adopting a cut between the self and the external world, hobbesians endorse one between what a person could have achieved alone and what constitutes she gets on top through her cooperation with others.

Hence, for hobbesians (or mutual advantage contractarians), there is no room for “distributive” justice outside the realm of cooperation. And no cooperation will take place (given people’s rationality) in the absence of gains from cooperation for each of the co-operators, i.e. in the absence of a cooperative surplus, defining the size of the cake to be divided among co-operators in one way or another. Importantly enough, the larger the cake,

²³ Further questions include:

- Are heavily indebted countries not providing potential creditors with “investment slots” that should receive a treatment analogous to job slots, the reimbursement capacity of the world being a limited resource?
- Is the idea that handicap is as much the result of biological features as of the environment (e.g. lack of appropriate access for wheelchair) not relevant to the construction of a strategy analogous to the one of job slots?

- keeping the division rule constant -, the better the situation of the least well off. Note moreover that while for a libertarian, the limitation of the tax base to external resources is based on the existence of some (natural) rights (self-ownership), the reason why hobbesians limit the tax base to the cooperative surplus has rather to do with their attempt at deriving justice out of a given sense of “mutually disinterested” rationality – to take a Rawlsian expression. Yet, while the “right-based” motive for limiting the scope of distributive justice might be dominant in the case of libertarianism, the willingness to travel “motivationally light” is central for hobbesians.

Hobbesians may only hope to demonstrate that the least well off could end up as well off as under an egalitarian ruling if they manage, not only to argue for a redistributive division rule, but also to promote an extensive construal of the cooperative surplus. This is a move analogous to interpreting external resources extensively and it involves comparable strategies. Developments based on the idea of « factor rent » are one example.²⁴ Demonstrating that the division of labour has more significant impacts than one may think at first sight is also a relevant strategy.²⁵ Still a different line of argument has been recently defended by Heath, aiming as well at offering a broad notion of cooperation and of what constitutes the surplus from such cooperation.²⁶ His strategy differs from the one of Gauthier in the way they define the counterfactual (or initial bargaining position). For Gauthier writes that « (i)f you seize the products of my labour and then say ‘Let’s make a deal’, I may be compelled to accept, but I will not voluntarily comply ». ²⁷ Since cooperation should be voluntary, threats of adverse interaction forcing us into cooperation would make such cooperation non-voluntary according to Gauthier. In contrast, Heath claims that we should not only understand non-cooperation as opposed to an *absence of interaction* but also as a *renouncement to adverse cooperation*. We should thus not only oppose it to the absence of « productive » interaction, but also to adverse interaction. Hence, once we understand renouncement from adverse interactions such as dispossession or physical violence as forms of cooperation by voluntary abstention, we extend accordingly the number of those who could be considered as potential co-operators. And we automatically extend the realm of interactions that could be seen as surplus-generating in this now broad sense.

To put things differently, the counterfactual (or initial bargaining position) is not anymore to be defined as « in the absence of others » (autarkic definition), but as « in the absence of cooperation from and with others » (which includes both opposites of cooperation, i.e. the deprivation and the real one). In the quote above, Gauthier is worried about the fact that including adverse interaction as an a priori rational move would automatically transform cooperation – or at least compliance with the terms of cooperation - into something involuntary. In contrast, Heath is implicitly equally worried about the fact that as a strict hobbesian, there is no reason to expect from a rational agent that renouncing to the possibility of adverse interaction be seen as voluntary in the absence of counterpart. In fact, Heath claims to be more hobbesian than Gauthier, the exclusion of the possibility of adverse interaction by Gauthier being seen as Lockean. Heath drops “a strict deontic prohibition against the deployment of any « negative » talents”.²⁸

²⁴ See Van Parijs’ fine-grained discussion of factor rents (1996: 169ff.)

²⁵ Dietsch (2007)

²⁶ Heath (2006). Other extensive strategies consist e.g. in emphasizing the importance of the division of labour, of factor rents (Van Parijs, 1996)

²⁷ Gauthier (1986 : 15). Contrast this however with: « Among unequals, one party may benefit most by coercing the other, and on our theory would have no reason to refrain. We may condemn all coercive relationships, but only within the context of mutual benefit can our condemnation appeal to a rationally grounded morality » (1986 : 17).

²⁸ Heath (2006 : 29). See as well Gauthier’s treatment of parasitism and free-riding (1986)

Heath's move is consistently hobbesian. Interestingly enough, it somehow echoes Van Parijs's crazy-lazy strategy, e.g. when the latter writes about job slots : « those who, for whatever reason, give up their share of that asset and thereby leave more of it for others, should not therefore be deprived of a fair share of its value ». ²⁹ Van Parijs sees competition among potential job applicants as legitimate and considers the need for some compensation to those not getting any job (or getting less attractive ones), regardless of whether they didn't get the job through failing as an applicant, or through simply not applying for it. Similarly, Heath would consider that, as a hobbesian, renouncing to dispossess someone from a good should be seen as an act of cooperation and, therefore, lead to some compensation for such an abstention. Of course, our commonsense intuitions will lead us to treat differently these two forms of abstention, i.e. the renouncement to compete for a job (because of laziness) and the renouncement to dispossess someone (by those renouncing adverse interaction). Yet, for a Hobbesian, in the absence of pre-cooperation moral rights, such a differential treatment would be unjustified. In other words, one may be unwilling to adopt Heath's move. But this would simply be because one is not really hobbesian, rather than referring to an alleged internal inconsistency of the hobbesian view.

Is Heath's extensive strategy likely to lead to a more redistributive version of hobbesianism? The answer is negative once we adopt a maximin (or leximin) approach of redistribution. The reason is that the extensive move cuts both ways. On the one hand, it allows us to broaden the circle of potential co-operators, i.e. of people with whom cooperation might be mutually advantageous. In particular, it makes cooperation with totally unproductive people potentially mutually advantageous insofar as their unproductivity does not necessarily entail that such people are incapable of adverse interaction. This leads to a more inclusive approach. Yet, on the other hand, it is doubtful that each and everyone is capable of adverse interaction in a minimally significant way. At least some forms of extreme handicap prevent individuals not only from being significantly productive, but also from constituting any danger for others (e.g. being unable to assault or dispossess them). Consider an extremely dependent quadriplegic. This person will not only be unproductive, *ex hypothesi*. She will also be incapable of adverse interaction. She will thus remain excluded from the circle of potential co-operators, even under Heath's broad view. Still, one could stress that fewer of the least well off people will be excluded under the Heathian interpretation than under the autarkic one, which is relevant from a leximin perspective. True, but there is an extra problem: The Heathian extension of the notion of cooperation presupposes that we *relax the pre-cooperative prohibition on coercive relationships*, moving away from the autarkic counterfactual. It follows that the situation of these extremely vulnerable individuals will even become potentially *worse* under this extensive interpretation. This is a major drawback, for both maximin and leximin redistributivists. For the potential improvement of those who are disadvantaged while not being the very least well off comes at a cost : the degradation of the situation of those who are the very least well off. The extensive construal of « cooperation » may thus serve the poor, but it will simultaneously allow to worsen the situation of the poorest among them. Hence, even if we leave aside the more general problem of selective cooperation (« defection by the elites ») left equally unresolved, ³⁰ from the « extension » perspective, the prospect of coming up with a left-hobbesian theory look gloomier at this stage than those of ending up with a consistent left-libertarian theory. What about the « division » dimension ?

²⁹ Van Parijs (1995 : 109). See as well : « There is no reason whatever, from this standpoint, why those who do not insist on having a physical share of it and therefore leave more for others, should receive nothing at all, letting the land-greedy or job-greedy appropriate the whole value of these assets » (1995 : 110)

³⁰ Heath (2006 : note 27)

2. The division

2.1. Otsuka's "inegalitarian redistributive" proviso

Moving now to the division dimension, libertarians who reject the "first come, first serve" approach to the fair appropriation of external resources will typically propose one formulation of a lockean proviso and tax the use and/or appropriation of external resources accordingly. Nozick will typically formulate the lockean proviso as requiring to leave to others at least as much (including in external resources) as *what they would have had in the state of nature*.³¹ A second version would adopt as a counterfactual the current situation in my absence rather than the state of nature, leading to the following requirement: leaving to others at least as much in external resources as *what they would have had today in my absence*. The problem with this more demanding proviso is that as soon as the number of people raises, any of our actions become more likely to reduce the enjoyment that *at least* another person would otherwise have of the Earth and of what we inherited from our ancestors. As a result, unless we reformulate it, such a "deprivation-based" proviso is likely *never* to be satisfied.³² One solution is to rely on compensation in equivalent, leading to something that could be called an "equivalence proviso" requiring each of us to leave to others at least as much in external resources (or equivalent) as *what they would have* in terms of external resources, hence dropping the reference to a counterfactual "in my absence". Paine's tax and its descendants, given the manner in which the tax yield is distributed, can be read in exactly this way.

Michael Otsuka's proposal goes one step further. He defends the view that we should leave to others as much in *external* resources (or equivalent) as would be needed to equalize both the external *and internal* resources of everyone.³³ The idea is simple: those who are especially disadvantaged in terms of external resources (because of handicaps, valueless talents, etc.), will benefit from a larger share of external resources, allowing to compensate for such disadvantage. External resources will thus be distributed unequally, with a redistributive purpose. In other words, his proposal of an internal-sensitive division of external resources allows for a more redistributive version of left-libertarianism since those with less internal resources will get more in terms of worldly resources. And it does so without renouncing a commitment to self-ownership.

Otsuka's elegant proposal faces two limitations as well as two serious risks of inconsistency. Let us start with the two former ones. The first limitation is that a redistribution of the value of worldly resources along such lines may under some circumstances still be insufficiently distributive for a luck egalitarian, as it *may* leave part of people's handicaps uncompensated. The second limitation is that some people may be so disabled as to become unable to derive by themselves any welfare from the share of worldly resources that would have been allocated to them. They would then need to rely on the voluntary help of more able-bodied people, and, were the former insufficient, on the assistance of criminals as argued for by Otsuka.³⁴ This may in turn raise a set of difficulties, e.g. in countries in which not only able-bodied people would not be interested in accumulating more worldly resources in exchange of assisting disabled people, and in which criminality rates would be extremely low.³⁵ Note however that one may anticipate such a difficulty by allocating external resources in such a way that the most able-bodied themselves would receive *so little* of the external resources

³¹ Nozick (1974: 178f.) ; Cohen (1986 : 258f.)

³² Cohen (1986: 262)

³³ Otsuka (2003 : 24-25). Compare. Van Parijs (1995 : 84).

³⁴ Otsuka (2003 : chap. 2)

³⁵ Gosseries (2004)

that they would have no choice but to interact with their disabled fellow citizens in order to survive.³⁶

Moreover, there are two potential consistency problems with Otsuka's proviso.³⁷ First, is such a move towards an "inegalitarian redistributive" proviso compatible with the original ownership status of external resources that lockeans will generally ascribe to external resources?³⁸ For the standard left-libertarian strategy generally consists in rejecting both the idea of "res nullius" (generally unable to impose any justice-based restrictions on acquisition) and the idea of "joint ownership" (generally granting each of us a *veto* right on use and/or acquisition by others) to account for the status of external resources. Instead, they will apply them the concept of common ownership, allowing for appropriation and/or use by single individuals, provided that others be compensated (which would not be required if external resources were a *res nullius*), but without the need for the approval of each and every other members of society (which would be required by *joint ownership*). The difficulty with Otsuka's view is that if we consider external resources as common property, there is no reason to allocate access to such resources *unequally* (be it for redistributive purposes). This only means that, as Otsuka does it, the most promising option for him, if he is committed to a distinction between external and internal resources (or, to use his words "personal" and "worldly" resources), and he we stick to his proposed proviso, is definitely to consider external resources as "initially unowned" (*res nullius*).³⁹ Does this raise in turn any difficulty?

Yes, it does. The initial ownership status of external resources could be seen as playing a justificatory function. It would then *add further grounds* to justify a given mode of allocation of external resources. This is probably so for many left libertarians defending both the idea of common ownership and an equal division of the value of these external resources (be it in kind or cash), as well as for e.g. right libertarians justifying weak (or the absence of) provisos by reference to the initially unowned status of external resources. Alternatively, one could see the ownership status of external resources as a mere *alternative formulation* of an intuition developed on separate grounds. Again, this can be true of the two examples just provided. In the case of Otsuka, things are less clear. For the idea of initially unowned status can certainly neither be said to *support*, nor be regarded as an *alternative formulation* of his "inegalitarian redistributive" proviso. Yet, the *res nullius* status is *compatible* with the proviso he proposes. Should we be satisfied with mere compatibility? Probably not, for the following reason. When it comes to internal resources, the idea of ownership plays a central role (self-ownership).⁴⁰ It would probably be unsatisfactory not to symmetrically grant at least some role to the concept of ownership when it comes to the treatment of external resources. The very weak link subsisting between the ownership status proposed by Otsuka to deal with external resources and his proviso thus generates a strong tension with the importance attached to ownership when it comes to the treatment of internal resources.

As to the second potential inconsistency, it is pointed at by Fried. She rightly insists on the fact that Otsuka's attempt to preserve self-ownership while not renouncing redistribution leads to a schizophrenic approach ready to do on the tax spending side what it is unwilling to do on the tax levying side: "If the just state may not take more from the talented by virtue

³⁶ Otsuka (2003 : 32)

³⁷ Here, we focus on problems of consistency, rather than or coherence. On the consistency/coherence distinction and for a coherence-focused critique of left-libertarianism: Risse (2004)

³⁸ On ownership status : Risse (2004 : 343ff.)(including a re-characterization inspired by Wenar as equal freedom (initially unowned), equal voice (common ownership) and – one could add – equal veto (joint ownership)).

³⁹ Otsuka (2003 : 22, note 28)

⁴⁰ On the importance of self-ownership in Otsuka's theory : (2003 : e.g. 15)

of their unequal talents – the premise of left-libertarianism – why may it give more to the untalented by virtue of their unequal talents?”⁴¹.

These two sources of inconsistency – or at the very least strong internal tension – suggest that the most robust left-libertarian position is the one advocating an equal division of external resources, rather than an “inegalitarian redistributive” one. The equal division view, as translated by proposals such as Paine’s or Van Parijs, is perfectly consistent with the idea of common ownership of external resources. And it is also not subject to the risk of schizophrenia identified by Fried. If this is right, Otsuka’s view on the proviso indicates an avenue that libertarians are unable to take. Hence, a limitation of strategies aiming at sifting libertarianism as much as possible to the left.

2.2. A hobbesian equal division?

As we can see, Otsuka’s proposed proviso is not devoid of serious difficulties. What about division strategies on the hobbesian side? Gauthier admittedly discusses the possibility of an *equal division* of the cooperative surplus. As he puts it: “since neither can gain any part of this surplus without the other, then each is equally responsible for making it available, and so each is entitled to an equal share of it”.⁴² And Gauthier adds that “If there is a single transferable good, produced in fixed quantity and divisible in any way among the co-operators, then rationality and impartiality require its equal division”.⁴³ Other passages of *Morals by Agreement* indicate however that an equal division of the cooperative surplus should not be regarded as a *general rule*.⁴⁴

For the very idea of equal division as a general rule to divide up the cooperative surplus faces two serious difficulties. On the one hand, even if hobbesians were considering equal division as a possibility in some cases, they would remain unable to justify - while remaining within the mutual advantage paradigm – why this possibility is the one that cooperators *should* go for. As Heath admits, “The only constraint that the commitment to “mutual advantage” imposes upon outcomes is that it precludes agreements that are outside of any individual’s feasible set. It says *absolutely nothing* about what agreements they will accept within that set. In principle, self-interest will lead them to accept any agreement that gives them any amount of the cooperative surplus whatsoever, as long as they believe that the cooperation of the others is conditional upon their willingness to accept this payoff”.⁴⁵ Thus, the division could as well be equal or unequal. And there are good reasons to expect it to be unequal in various cases.

A plausible type of context (of broad relevance) is one in which the cooperator, aware of the value of her input, would not be ready to accept equal division and threaten to select other potential cooperators. Not only would division be unequal. But the very possibility of selecting the best possible cooperators⁴⁶ may well leave cooperators of low potential aside from any division, or at least from the division of the surplus of the most fruitful cooperative efforts. It is thus hard to derive an equal division from hobbesian premises. This leads us to another difficulty. Could an unequal *and* redistributive division be envisaged by hobbesian? Again, not only is the hobbesian theory incapable in most cases to provide reasons why such an “inegalitarian redistributive” division would precisely be the one that would turn out

⁴¹ Fried (2004: 90)

⁴² Gauthier (1986:152-153). See as well Dietsch (2007)

⁴³ Gauthier (1986: 153)

⁴⁴ Gauthier (1986 : e.g. 138-139)

⁴⁵ Heath (2006 : 28) (our emphasis)

⁴⁶ Gauthier (1986 : 153-154)

constituting the *general* rule. Moreover, if the possibility of an unequal and redistributive division cannot be excluded in some cases (as long as it remains within the ambit of the feasible set), the same holds from a non-redistributive and unequal division.

In short, while it may be worth investing further time to spot the exact circumstances in which a rule of equal division is likely to be selected within a given cooperative scheme, there is hardly any hope that the latter could be shown to be a general rule to divide the cooperative surplus along hobbessian lines.

Conclusion

Let us conclude in two steps, a short and a long one. *First*, do conceptual resources obtain within libertarianism allowing it to offer a significantly left-wing version of its view? Yes and no. The extensive approach of the notion of external resource is certainly the most promising axis. In contrast, Otsuka's attempt at going beyond an equal division of such external resources seems to fail, due to two serious consistency problems (asymmetric role of the ownership concept when comparing the treatment of internal and external resources, schizophrenic dimension as spotted by Fried). While left-libertarianism still constitutes a real option in the landscape of theories of justice, the possibility of developing forms of left-hobbessianism seems less real, both under the "extension" and the "division" angles. Heath's proposal consisting in an extension of the idea of cooperation to the abstention from adverse cooperation is more likely to worsen rather than improve the situation of the very least well off. And the possibility of deriving from strictly hobbessian premises a general rule of equal division (and *a fortiori* of unequal redistributive division) seems rather out of reach as well.

Second, while it is thus plausible to conjecture that the *conceptual structure* of libertarianism allows it better than hobbessianism does to propose left-wing versions, does it follow that *in practise*, hobbessianism is likely to be less redistributive than libertarianism, and that both of them would be less redistributive than egalitarian and sufficientarian views? In order to compare these four views, we need to return to our two key dimensions, the "division" and the "extension" ones.

As to the extension, each of these four theories embodies a certain approach to the *distribuendum*. Luck egalitarianism, focusing on the choice-circumstance distinction, will require compensation for any disadvantage suffered by someone as a result of her circumstances. It will thus not provide an a priori definition of the tax base from which such redistribution could be fed – at least if we leave aside the constraints resulting from the priority of liberties in liberal versions of egalitarianism, à la Rawls. Similarly, sufficientarianism defines the extent of redistribution, not primarily by circumscribing a tax basis, but rather by setting a goal typically understood in terms of enabling each person to reach a sufficiency level. In contrast, both libertarianism and hobbessianism define a "tax base" first (external resources or cooperative surplus), regardless of the size of the existing problematic inequalities in internal resources. The difficulty is that, even if we abandon Heath's strategy, a hobbessian may still claim that most things we benefit from are in fact part of the cooperative surplus. Hence, the size of what should be regarded as the cooperative surplus may still be such that it would be at least equivalent to the one of external resources for a libertarian. If we were to look at the "extension" dimension alone, it may thus be difficult to answer our practical question as to which theory would be the most

redistributive.⁴⁷ As to egalitarians and sufficientarians there is no comparison at this level since – as we just said – they are rather target-oriented than relying on an a priori definition of the tax base.

Each of these theories also has its own approach of the *division* aspect. For a luck egalitarian, we should redistribute in such a way as to improve the situation of the least well off by erasing out any disadvantage that would have resulted from people's circumstances. Similarly, sufficientarians will typically define a threshold and divide up the tax yield in such a way that each of us would reach it. In contrast, a left-libertarian, at least if we leave aside Otsuka's approach, will not be able to take inequalities in internal resources into account. They are only able to divide access to external resources in an *equal* way. Such a division, if the tax base constituted by the external resources is significant enough will admittedly help improving the situation of those who are the least well off in terms of internal resources. However, not only will it not contribute to the reduction of the gap separating those least well off from the better off in terms of internal resources. More importantly, both the limits set to the tax base and the unavailability of an unequal distributive division render that theory most probably less redistributive than luck egalitarianism, at least if the definition of internal resources by the relevant left-libertarian theory is comparable to the egalitarian definition of our internal *circumstances* (disabilities, talents). As to hobbesianism, it is also less promising on the division side from a left-wing perspective since the equal division is in no way guaranteed. It follows that unless the hobbesian tax base were significantly larger than the libertarian tax base, and that even divided in a less redistributive way, the smallest shares of the hobbesian cake were still larger than the (equal) shares of the libertarian one, it is hard to see how hobbesianism could provide us with a theory that would be more redistributive than a left-libertarian one.

Hence, the division of the tax yield as well as the definition of the tax base are more directly dependent on the *goals* pursued by fiscal policies in the case of egalitarians and sufficientarians. In contrast, for a libertarian or a hobbesian, both the yield division and the tax base definition are the result of predefined constraints, i.e. a strong commitment to self-ownership and a given definition of the ownership status of external resources (libertarianism) or the reference to a given notion of rationality (hobbesianism). This difference is significant. It should not be overestimated however, as goal-oriented theories are perfectly aware of what pursuing them may correspond to in terms of means. And theories defending limited goals (e.g. sufficientarianism rather than egalitarianism, leaving aside the metric dimension) or defining these goals through a given metric (e.g. opportunity for welfare rather than welfare) may of course do so because of the need for the required means not to impede excessively on other dimensions they may value (e.g. the need to preserve a certain sphere of negative freedom within an egalitarian theory, leading to the choice of a given metric).

To conclude, we can conjecture that because of its approach to the division dimension, hobbesianism is unlikely to be able to propose a theory as redistributive as a left-libertarian one. And the latter, because of both the division and the extension dimension will probably have a hard time proposing a version as redistributive as a luck egalitarian one (and a fortiori as a welfare egalitarian one), at least if we talk about a luck egalitarian view endorsing a sufficiently balanced distinction between choice and circumstance. In contrast, it may well be that a left-libertarian theory be in many cases more redistributive than a

⁴⁷ One possible avenue for further research in this respect is perhaps the following: does the fact that hobbesian rather put the stress on "production" while libertarians may tend to focus on the consumption of pre-existing goods have any impact on the size of the tax base.

sufficientarian one. The difficulty involved in a “left-libertarianism/ sufficientarianism” comparison is that we need to look both at the level of sufficiency adopted (sufficientarianism can be described as a capped version of prioritarian egalitarianism)⁴⁸ and at the metric (sufficientarians will generally not endorse the choice-circumstance distinction). In case of an atypical luck sufficientarianism (relying this type on the choice-circumstance distinction) adopting a not too high sufficiency level, it may well be that left-libertarianism would end up be the most redistributive theory.⁴⁹ This points again at the difficulties involved in identifying which theory is the most redistributive, without taking into account the full bundle of variables involved as well as the specific factual circumstance of the implementation context. While being complex, this is a necessary enterprise. And it is not the least merit of left-libertarianism and left-hobbesianism to force us to accomplish it with even more rigour.

References

- Brown, C., 2005. “Priority or Sufficiency... or Both?”, *Economics and Philosophy*, vol. 21(2): 199-220
- Cohen, G. A., 1986. “Self-Ownership, World Ownership, and Equality” (I et II), in Vallentyne & Steiner (eds.), *Left-libertarianism and its Critics : The Contemporary Debate*, New York : Palgrave, 2000, pp. 247 f. (chap. 12 et 13).
- Dély, R., 2005. “Une identité chamboulée”, in *30 idées pour réveiller la gauche* (suppl. to *Libération*), Nov. 10, pp. 46-49
- Dietsch, P., 2007. “Distributive Lessons from Division of Labour”, *Journal of Moral Philosophy*, ...
- Dworkin, R. *Sovereign Virtue. The Theory and Practice of Equality*, Cambridge/London: Harvard University Press, 2000
- Fabre, C., 2006. *Whose Body is it Anyway? Justice and the Integrity of the Person*, Oxford: Clarendon press, 232 p.
- Barbara Fried, 2004. « Left-Libertarianism : A Review Essay », *Philosophy and Public Affairs*, Vol. 32(1): 66-92
- Gauthier, D., *Morals by Agreement*, Oxford : Clarendon Press, 1986.
- Gosseries, A., 2004, Review of Otsuka, *Libertarianism without inequality*, *Ethics*, vol. 115(1) : 158-160
- Heath, J., 2006. « On the scope of egalitarian justice », *Les ateliers de l'éthique*, vol. 1(1) : 21-41
- McKerlie, D., 1994. “Equality and Priority”, *Utilitas*, vol. 6(1): 25-42
- Nozick, R., 1974. *Anarchy, State and Utopia*, Oxford : Blackwell
- Otsuka, M., 2003. *Libertarianism without inequality*, Oxford : Clarendon Press, 2003, p. 25
- Paine, Th. (1796) « Agrarian Justice », in P.F. Foner (ed.), *The Life and Major Writings of Thomas Paine*, Secaucus (NJ) : Citadel Press, 1974
- Parfit, D. 1995. “Equality or Priority?”, in *The Lindley Lecture*, Univ. of Kansas: 1-42.
- Raz, J., 1986. *The morality of freedom*, Oxford: Clarendon Press
- Risse, M., 2004 « Does left-libertarianism have coherent foundations ? », *Politics, philosophy & economics*, vol. 3(3) : 337-364
- Sen, A. (1970), *Collective Choice and Social Welfare*, North-Holland
- Swift, A., 2001. *Political Philosophy. A Beginners' Guide for Students and Politicians*, Cambridge: Polity press, 194 p.
- Temkin, L., 1993. *Inequality*, New York: Oxford University Press
- Vallentyne, P. (forthcoming) « Left-Libertarianism and Liberty », in *Debates in Political Philosophy*, Th. Christiano et J. Christman, eds., Oxford : Blackwell

⁴⁸ For a paper on prioritarianism and sufficientarianism : Brown (2005)

⁴⁹ Two further remarks. First, Vallentyne actually envisages a version of the lockean proviso that would be directly sufficientarian and would require that « others be left an adequate share of natural resources (on some conception of adequacy) » (Vallentyne, *forthcoming*). He rightly claims however that such a version of the proviso is not perfectly compatible with the initial ownership status of external resources that would be most plausible from a left-libertarian point of view, i.e. that « natural resources belong to all of us in some egalitarian manner » (Vallentyne, *forthcoming*). Secondly, when he translates his real-libertarianism through a basic income, Van Parijs makes clear that such a basic income may very well be insufficient to cover people’s basic needs (e.g. 1995: 30).

- Vallentyne, P. & Steiner, H. (eds.)(2000), *Left-libertarianism and its Critics : The Contemporary Debate*, New York : Palgrave
- Van Parijs , Ph., 1995. *Real Freedom for All. What (if anything) can justify capitalism?*, Oxford : Oxford University Press
- 1996, "Free Riding versus Rent Sharing. Why even David Gauthier Should Support an Unconditional Basic Income", in *Ethics, Rationality and Economic Behaviour*, Francesco Farina, Frank. Hahn & Stefano Vanucci eds., Oxford: Oxford University Press, pp. 159-181
- 2006. "La gauche doit-elle être socialiste?", *Raison publique*, 4: 25-28