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Do We Own Ourselves?

When, in 1993, Michael Jordan announced his retirement from basketball, Chicago Bulls fans were bereft. He would later come out of retirement and lead the Bulls to three more championships. But suppose that, in 1993, the Chicago City Council, or, for that matter, Congress, sought to ease the distress of Chicago Bulls fans by voting to require Jordan to play basketball for one-third of the next season. Most people would consider such a law unjust, a violation of Jordan's liberty. But if Congress may not force Jordan to return to the basketball court (for even a third of the season), by what right does it force him to give up one-third of the money he makes playing basketball?

Those who favor the redistribution of income through taxation offer various objections to the libertarian logic. Most of these objections can be answered.

Objection 1: Taxation is not as bad as forced labor.

If you are taxed, you can always choose to work less and pay lower taxes; but if you are forced to labor, you have no such choice.

Libertarian reply: Well, yes. But why should the state force you to

make that choice? Some people like watching sunsets, while others prefer activities that cost money—going to the movies, eating out, sailing on yachts, and so on. Why should people who prefer leisure be taxed less than those who prefer activities that cost money?

Consider an analogy: A thief breaks into your home, and has time to take either your \$1,000 flat-screen television or the \$1,000 in cash you have hidden in your mattress. You might hope he steals the television, because you could then choose whether or not to spend \$1,000 to replace it. If the thief stole the cash, he would leave you no such choice (assuming it's too late to return the television for a full refund). But this preference for losing the television (or working less) is beside the point; the thief (and the state) do wrong in both cases, whatever adjustments the victims might make to mitigate their losses.

Objection 2: The poor need the money more.

Libertarian reply: Maybe so. But this is a reason to persuade the affluent to support the needy through their own free choice. It does not justify forcing Jordan and Gates to give to charity. Stealing from the rich and giving to the poor is still stealing, whether it's done by Robin Hood or the state.

Consider this analogy: Just because a patient on dialysis *needs* one of my kidneys more than I do (assuming I have two healthy ones) doesn't mean he has a right to it. Nor may the state lay claim to one of my kidneys to help the dialysis patient, however urgent and pressing his needs may be. Why not? Because it's mine. Needs don't trump my fundamental right to do what I want with the things I own.

Objection 3: Michael Jordan doesn't play alone. He therefore owes a debt to those who contribute to his success.

Libertarian reply: It's true that Jordan's success depends on other people. Basketball is a team sport. People would not have paid \$31 million to

watch him shoot free-throws by himself on an empty court. He could never have made all that money without teammates, coaches, trainers, referees, broadcasters, stadium maintenance workers, and so on.

But these people have already been paid the market value of their services. Although they make less than Jordan, they voluntarily accepted compensation for the jobs they perform. So there is no reason to suppose that Jordan owes them a portion of his earnings. And even if Jordan owes something to his teammates and coaches, it is hard to see how this debt justifies taxing his earnings to provide food stamps for the hungry or public housing for the homeless.

Objection 4: Jordan is not really being taxed without his consent. As a citizen of a democracy, he has a voice in making the tax laws to which he is subject.

Libertarian reply: Democratic consent is not enough. Suppose Jordan voted against the tax law, but it passed anyway. Wouldn't the IRS still insist that he pay? It certainly would. You might argue that by living in this society, Jordan gives his consent (at least implicitly) to abide by the majority's will and obey the laws. But does this mean that simply by living here as citizens, we write the majority a blank check, and consent in advance to all laws, however unjust?

If so, the majority may tax the minority, even confiscate its wealth and property, against its will. What then becomes of individual rights? If democratic consent justifies the taking of property, does it also justify the taking of liberty? May the majority deprive me of freedom of speech and of religion, claiming that, as a democratic citizen, I have already given my consent to whatever it decides?

The libertarian has a ready response to each of the first four objections. But a further objection is less easy to dismiss:

Objection 5: Jordan is lucky.

He is fortunate to possess the talent to excel at basketball, and lucky to live in a society that prizes the ability to soar through the air and put a ball through a hoop. No matter how hard he has worked to develop his skills, Jordan cannot claim credit for his natural gifts, or for living at a time when basketball is popular and richly rewarded. These things are not his doing. So it cannot be said that he is morally entitled to keep all the money his talents reap. The community does him no injustice by taxing his earnings for the public good.

Libertarian reply: This objection questions whether Jordan's talents are really his. But this line of argument is potentially dangerous. If Jordan is not entitled to the benefits that result from the exercise of his talents, then he doesn't really own them. And if he doesn't own his talents and skills, then he doesn't really own himself. But if Jordan doesn't own himself, who does? Are you sure you want to attribute to the political community a property right in its citizens?

The notion of self-ownership is appealing, especially for those who seek a strong foundation for individual rights. The idea that I belong to myself, not to the state or political community, is one way of explaining why it is wrong to sacrifice my rights for the welfare of others. Recall our reluctance to push the heavy man off the bridge to block a runaway trolley. Don't we hesitate to push him because we recognize that his life belongs to him? Had the heavy man jumped to his death to save the workers on the track, few would object. It is, after all, his life. But his life is not for us to take and use, even for a good cause. The same can be said of the unfortunate cabin boy. Had Parker chosen to sacrifice his life to save his starving shipmates, most people would say he had a right to do so. But his mates had no right to help themselves to a life that did not belong to them.

Many who reject laissez-faire economics invoke the idea of self-ownership in other domains. This may explain the persisting appeal of libertarian ideas, even for people who are sympathetic to the welfare state. Consider the way self-ownership figures in arguments about reproductive freedom, sexual morality, and privacy rights. Government should not ban contraceptives or abortion, it is often said, because women should be free to decide what to do with their own bodies. The law should not punish adultery, prostitution, or homosexuality, many argue, because consenting adults should be free to choose their sexual partners for themselves. Some favor markets in kidneys for transplantation on the grounds that I own my own body, and should therefore be free to sell my body parts. Some extend this principle to defend a right to assisted suicide. Since I own my own life, I should be free to end it if I wish, and to enlist a willing physician (or anyone else) to assist. The state has no right to prevent me from using my body or disposing of my life as I please.

The idea that we own ourselves figures in many arguments for freedom of choice. If I own my body, my life, and my person, I should be free to do whatever I want with them (provided I don't harm others). Despite the appeal of this idea, its full implications are not easy to embrace.

If you are tempted by libertarian principles and want to see how far you would take them, consider these cases:

Selling kidneys

Most countries ban the buying and selling of organs for transplantation. In the United States, people may donate one of their kidneys but not sell it on the open market. But some people argue that such laws should be changed. They point out that thousands of people die each year waiting for kidney transplants—and that the supply would be increased if there existed a free market for kidneys. They also argue that

people in need of money should be free to sell their kidneys if they wish.

One argument for permitting the buying and selling of kidneys rests on the libertarian notion of self-ownership: If I own my own body, I should be free to sell my body parts as I please. As Nozick writes, “The central core of the notion of a property right in X . . . is the right to determine what shall be done with X.”¹² But few advocates of organ sales actually embrace the full libertarian logic.

Here’s why: Most proponents of markets in kidneys emphasize the moral importance of saving lives, and the fact that most people who donate one of their kidneys can manage with the other one. But if you believe that your body and life are your property, neither of these considerations really matters. If you own yourself, your right to use your body as you please is reason enough to let you sell your body parts. The lives you save or the good you do is beside the point.

To see how this is so, imagine two atypical cases:

First, suppose the prospective buyer of your spare kidney is perfectly healthy. He is offering you (or more likely a peasant in the developing world) \$8,000 for a kidney, not because he desperately needs an organ transplant but because he is an eccentric art dealer who sells human organs to affluent clients as coffee table conversation pieces. Should people be allowed to buy and sell kidneys for this purpose? If you believe that we own ourselves, you would be hard pressed to say no. What matters is not the purpose but the right to dispose of our property as we please. Of course, you might abhor the frivolous use of body parts and favor organ sales for life-saving purposes only. But if you held this view, your defense of the market would not rest on libertarian premises. You would concede that we do not have an unlimited property right in our bodies.

Consider a second case. Suppose a subsistence farmer in an Indian village wants more than anything else in the world to send his child to college. To raise the money, he sells his spare kidney to an affluent

American in need of a transplant. A few years later, as the farmer's second child approaches college age, another buyer comes to his village and offers a handsome price for his second kidney. Should he be free to sell that one, too, even if going without a kidney would kill him? If the moral case for organ sales rests on the notion of self-ownership, the answer must be yes. It would be odd to think that the farmer owns one of his kidneys but not the other. Some might object that no one should be induced to give up his life for money. But if we own our bodies and lives, then the farmer has every right to sell his second kidney, even if this amounts to selling his life. (The scenario is not wholly hypothetical. In the 1990s, a California prison inmate wanted to donate a second kidney to his daughter. The ethics board of the hospital refused.)

It is possible, of course, to permit only those organ sales that save lives and that do not imperil the life of the seller. But such a policy would not rest on the principle of self-ownership. If we truly own our bodies and lives, it should be up to us to decide whether to sell our body parts, for what purposes, and at what risk to ourselves.

Assisted suicide

In 2007, Dr. Jack Kevorkian, age seventy-nine, emerged from a Michigan prison having served eight years for administering lethal drugs to terminally ill patients who wanted to die. As a condition of his parole, he agreed not to assist any more patients in committing suicide. During the 1990s, Dr. Kevorkian (who became known as "Dr. Death") campaigned for laws allowing assisted suicide and practiced what he preached, helping 130 people end their lives. He was charged, tried, and convicted of second-degree murder only after he gave the CBS television program *60 Minutes* a video that showed him in action, giving a lethal injection to a man suffering from Lou Gehrig's disease.¹³

Assisted suicide is illegal in Michigan, Dr. Kevorkian's home state, and in every other state except Oregon and Washington. Many coun-

tries prohibit assisted suicide, and only a few (most famously the Netherlands) expressly permit it.

At first glance, the argument for assisted suicide seems a textbook application of libertarian philosophy. For the libertarian, laws banning assisted suicide are unjust, for the following reason: If my life belongs to me, I should be free to give it up. And if I enter into a voluntary agreement with someone to help me die, the state has no right to interfere.

But the case for permitting assisted suicide does not necessarily depend on the idea that we own ourselves, or that our lives belong to us. Many who favor assisted suicide do not invoke property rights, but argue in the name of dignity and compassion. They say that terminally ill patients who are suffering greatly should be able to hasten their deaths, rather than linger in excruciating pain. Even those who believe we have a general duty to preserve human life may conclude that, at a certain point, the claims of compassion outweigh our duty to carry on.

With terminally ill patients, the libertarian rationale for assisted suicide is hard to disentangle from the compassion rationale. To assess the moral force of the self-ownership idea, consider a case of assisted suicide that does not involve a terminally ill patient. It is, admittedly, a weird case. But its weirdness allows us to assess the libertarian logic on its own, unclouded by considerations of dignity and compassion.

Consensual cannibalism

In 2001, a strange encounter took place in the German village of Rotenburg. Bernd-Jurgen Brandes, a forty-three-year-old software engineer, responded to an Internet ad seeking someone willing to be killed and eaten. The ad had been posted by Armin Meiwes, forty-two, a computer technician. Meiwes was offering no monetary compensation, only the experience itself. Some two hundred people replied to the ad. Four traveled to Meiwes's farmhouse for an interview, but decided they were not interested. But when Brandes met with Meiwes

and considered his proposal over coffee, he gave his consent. Meiwes proceeded to kill his guest, carve up the corpse, and store it in plastic bags in his freezer. By the time he was arrested, the “Cannibal of Rotenburg” had consumed over forty pounds of his willing victim, cooking some of him in olive oil and garlic.¹⁴

When Meiwes was brought to trial, the lurid case fascinated the public and confounded the court. Germany has no law against cannibalism. The perpetrator could not be convicted of murder, the defense maintained, because the victim was a willing participant in his own death. Meiwes’s lawyer argued that his client could be guilty only of “killing on request,” a form of assisted suicide that carries a maximum five-year sentence. The court attempted to resolve the conundrum by convicting Meiwes of manslaughter and sentencing him to eight and a half years in prison.¹⁵ But two years later, an appeals court overturned the conviction as too lenient, and sentenced Meiwes to life in prison.¹⁶ In a bizarre denouement to the sordid tale, the cannibal killer has reportedly become a vegetarian in prison, on the grounds that factory farming is inhumane.¹⁷

Cannibalism between consenting adults poses the ultimate test for the libertarian principle of self-ownership and the idea of justice that follows from it. It is an extreme form of assisted suicide. Since it has nothing to do with relieving the pain of a terminally ill patient, it can be justified only on the grounds that we own our bodies and lives, and may do with them what we please. If the libertarian claim is right, banning consensual cannibalism is unjust, a violation of the right to liberty. The state may no more punish Armin Meiwes than it may tax Bill Gates and Michael Jordan to help the poor.