

*Entitlement Theory without Entitlements*

Likewise the land is indispensable to our existence, – consequently a common thing, consequently insusceptible of appropriation; but land is much scarcer than the other elements, therefore its use must be regulated, not for the profit of a few, but in the interest and for the security of all. In a word, equality of rights is proved by equality of needs. Now, equality of rights, in the case of a commodity which is limited in amount, can be realized only by equality of possession.

Pierre-Joseph Proudhon, *What Is Property?*

Chapters 3 and 4 have argued that there are no existing property rights. Further, they argued that this conclusion follows independently from two principles that libertarians generally accept, namely, the Lockean proviso and the consent theory of legitimacy. The chapters, thus, articulated the distinctive anarchist thesis that private property ought to be rejected on libertarian grounds. However, this thesis underdetermines which permissions people have vis-à-vis the unowned resources that make up the natural world. One possibility is that, absent property rights, persons remain in the state of nature with respect to natural resources; that is, all persons have a permission to use any unowned resource and no one has a right against any other person using any resource. In this view, the only claims that persons can have vis-à-vis natural resources are the property rights that are generated by acts of initial appropriation. Thus, if practically all attempted appropriations fail because they violate the Lockean proviso or require consent that has not been given, it follows that there are simply no claims against others using any unowned object. Call this the *Hobbesian conclusion*. By contrast, the *anarchist conclusion* proposed in Section 1.6 maintains that people *do* possess certain claims against others using unowned resources. Specifically, these claims correspond to the prescriptions of a luck egalitarian principle of distributive justice such that each person has a set of claims against others interacting with unowned resources in a way that would generate an unjust distribution of holdings (where a

distribution is just if and only if it is either equal or any inequality corresponds to some sanctionable choice on the part of the worse off).

Given that there are multiple conclusions that are compatible with the rejection of private property, why should one accept the anarchist conclusion rather than the Hobbesian conclusion? After all, there is a strong reason for favoring the latter over the former, namely, that the anarchist conclusion appears to be incompatible with the kind of entitlement theory of justice that is both a signature commitment of libertarian thought and seemingly presupposed by the endorsement of ASO in Chapter 1. Briefly, entitlement theories assert that justice is a function of the historical choices that persons have made. While there are many ways of formulating an entitlement theory, most variants approximate Nozick's paradigm account wherein the justice of some set of holdings depends on whether people are entitled to the holdings they possess (1974).<sup>1</sup> Specifically, Nozick's theory of entitlement posits that a person is entitled to some holding if and only if (a) it was unowned and she acquired it in accordance with the relevant principles of justice in acquisition or (b) it was owned by some person from whom she acquired it in accordance with the relevant principles of justice in transfer (1974, 151).<sup>2</sup> Justice in holdings, then, obtains if everyone is entitled to the holdings they possess (151).

In addition to positing this historical account of justice in holdings, Nozick also argues that entitlement theories are incompatible with any non-entitlement principle of distributive justice, where "non-entitlement theories" is inclusive of both "end-state" principles of justice (i.e., principles that make no reference to historical events) and "patterned" principles of justice (i.e., principles that make justice a matter of how much people have relative to some relevant property they possess, such as merit or their having contributed some quantity of labor to the social product) (1974, 153–60). Given that luck egalitarianism is a non-entitlement theory of justice, it follows that entitlement theories are incompatible with luck egalitarianism – and, thus, so are the set of distributive rights posited by the anarchist conclusion.<sup>3</sup>

<sup>1</sup> Some prominent proponents of entitlement theories of justice include Mack (1976), Rothbard (1978), Lomasky (1987), Steiner (1994), Narveson (1988), Feser (2005), and van der Vossen (2009).

<sup>2</sup> Nozick goes on to revise this account so as to incorporate a principle pertaining to the rectification of injustice. This principle holds that each person is entitled to the holdings they *would have had* absent all historical rights violations (Nozick 1974, 152–3). For a discussion of the shortcomings of both the original account and the revised version, see Lawrence Davis (1976, 838–40).

<sup>3</sup> The reason that "entitlement theories" is plural is because an entitlement theory is a *kind* of moral theory that posits that justice is a function of whether holdings were acquired in accordance with principles of just acquisition and just transfer. Given that there are various principles of just acquisition and just transfer that one might posit, there will be many different entitlement

If this is correct, this incompatibility would be a serious problem for the anarchist conclusion, as there are two reasons that the anarchist cannot simply reject entitlement theories of justice as false. First, note that one of the theoretical advantages of the anarchist position is that it puts dialectical pressure on libertarians to accept egalitarian conclusions. Because it embraces core libertarian principles as its starting premises, the anarchist argument is much harder for libertarians to dismiss than other egalitarian arguments. If, for example, one defends egalitarianism by arguing from some set of non-libertarian premises, libertarians can avoid the conclusion by, first noting that egalitarianism is incompatible with their preferred principles and, second, using that incompatibility to justify rejecting the most controversial non-libertarian premise. By contrast, the anarchist position is not so easily avoided, as it begins with libertarian premises – that is, premises that libertarians cannot easily reject. However, this dialectical advantage is compromised if the anarchist has to reject entitlement theories on the grounds that they are incompatible with the anarchist conclusion. For, in that case, libertarians might simply insist that the anarchist's *modus tollens* argument against entitlement theories is actually a *modus ponens* argument; that is, the anarchist conclusion must be rejected as its negation follows from the acceptance of an entitlement theory of justice.

Second, and more straightforwardly, the anarchist position presupposes an entitlement theory of justice, as it grants that people can establish property rights over things via proviso-satisfying acts of initial appropriation, thereby endorsing a central tenet of entitlement theories. Granted, the set of established self-ownership rights is weaker than those posited by entitlement theorists; however, given that these rights are acquired via actions that accord with a principle of just acquisition, the anarchist argument for ASO still presupposes an entitlement theory of justice. Thus, if the anarchist conclusion proves to be incompatible with entitlement theories of justice, the anarchist cannot simply reject such theories without potentially negating her thesis that people can appropriate their bodies. This suggests that anarchists might be forced to choose between self-ownership and egalitarianism, with those who favor the former having to give up the anarchist conclusion in favor of the Hobbesian conclusion.

This chapter will argue that this is a false dilemma, as the anarchist conclusion is, in fact, compatible with entitlement theories – at least, when

theories, where these theories are individuated based upon which combination of principles they endorse.

the latter are properly specified. First, though, it will argue that there *is* a serious cost to endorsing the anarchist's Hobbesian rival. Specifically, Section 5.1 will argue that the Hobbesian conclusion violates the moral tyranny constraint, and, for this reason, is unacceptable. Thus, those who accept the moral tyranny constraint (and the argument of the Chapters 3 and 4) ought to accept the anarchist conclusion rather than the Hobbesian one. Sections 5.2 through 5.6 will then argue that the anarchist conclusion is compatible with both entitlement theories of justice and the arguments for accepting such theories. Finally, Section 5.7 will defend the egalitarian component of the anarchist conclusion. Specifically, it will defend the conclusion's presumption that all persons start out with a claim to an equal share of advantage by arguing that it, too, follows from a core libertarian premise (albeit, not the moral tyranny constraint).

### 5.1 **Hobbesian Moral Tyranny**

The argument against the Hobbesian conclusion need not be terribly extensive, as even libertarians averse to the anarchist conclusion will likely find the implications of this alternative comparatively unattractive. For example, few libertarians would want to affirm the Hobbesian implication that a person who labors on some resource and improves its value has no claim against others coming and destroying that resource or taking it for themselves. However, it is worth briefly exploring *why* this result is a theoretical problem for the Hobbesian conclusion, as the answer to this question will help to further bolster the contention in Chapter 2 that the moral tyranny constraint entails a broad array of particular moral judgments and, thus, should be accepted as the conclusion of a process of reflective equilibrium.

A natural temptation is to reject the Hobbesian conclusion on the grounds that a world with neither private property rights (over external resources) nor distributive rights would be miserable and poor. According to this line of thinking, it would almost always be imprudent to improve resources in such a world, as others would be free to come and take whatever it is that one produced without having to bear any of the associated costs of production. Thus, all but the most altruistic persons would refrain from producing goods or carrying out even very basic economic activities like agriculture. This would make the Hobbesian world a world without industry – a world of hunters, gatherers, scavengers, and deep poverty. Given the unattractiveness of such a world, the Hobbesian conclusion must be rejected.

The problem with this argument is one that will be familiar from the discussion in Section 1.2. There, in the context of discussing the Lockean proviso, it was argued that moral changes are causally inert due to not being physical (or mental) events. When someone stakes a claim and declares herself to be the owner of some resource, people will behave in an identical fashion whether or not that attempted act of initial appropriation succeeds as a matter of moral fact. Thus, an act of initial appropriation will never leave others worse off. For this reason, it was posited that the real concern with initial appropriation was whether or not *counterfactual compliance* with the established rights would leave others worse off. Similarly, when considering what was wrong with strict egalitarian theories, it was noted that someone spitefully destroying her own advantage will not *actually* leave others worse off because their post-destruction holdings are a function of their society's contingent redistributive institutions, not any moral fact about whether their holdings are just. Rather, the problem with strict egalitarianism is that it enables the spiteful destroyer to leave others worse off *assuming* everyone were to fully comply with the prescriptions of that moral theory.

The posited objection to the Hobbesian conclusion seems to make the same kind of mistake. It presupposes that an absence of property claims and distributive claims will result in persons behaving differently than they would in the world where they have such claims. However, this presumption is incorrect for the reasons just discussed: People's behavior is a function of their beliefs and their social contexts, not the moral facts. Thus, any objection to the Hobbesian conclusion that appeals to its supposed undesirable outcomes cannot succeed. Even if the Hobbesian conclusion were true, people would not behave any differently than they would if it were false, which is to say they would have still set up systems of legally enshrined private property with all of the attendant economic and social consequences.

Rather, the unacceptability of the Hobbesian conclusion is better explained by appealing to the moral tyranny constraint. Note that if a person has a property claim or a distributive claim against others using some resource in an advantage-diminishing way, then they will owe her compensation if they infringe upon this claim. Given that this remedial duty would be discharged in the full-compliance world, she will end up no worse off<sub>FC</sub> as a result of their use of the resource, as the compensation would offset any costs<sub>FC</sub> she would have otherwise incurred due to their infringing action. By contrast, if the Hobbesian conclusion is correct, then persons lack any claims vis-à-vis natural resources. This, in turn, implies

that they have no claim to any sort of compensation when others act on any given resource. For example, a scavenger could come and take everything that a farmer produces without owing the farmer anything in virtue of this action.<sup>4</sup> Thus, the scavenger would be able to unilaterally, discretionarily, and foreseeably leave the farmer worse off<sub>FC</sub>, in violation of the moral tyranny constraint.

Given that the Hobbesian conclusion violates the moral tyranny constraint in this way, one can appeal to the constraint to explain the unacceptability of this conclusion. While the truth of the Hobbesian conclusion would not entail that people end up living up in a chaotic and impoverished state of nature, it *would* license people to foreseeably, discretionarily, and unilaterally leave others with less<sub>FC</sub>. Thus, one can deny the Hobbesian conclusion on moral tyranny grounds. This result further bolsters the moral tyranny constraint's explanatory power, thereby strengthening the reflective equilibrium argument for the constraint presented in Section 2.3.

## 5.2 The Incompatibilist Argument

Given that the Hobbesian conclusion violates the moral tyranny constraint, one must posit some other thesis that *does* assign persons duties vis-à-vis natural resources. Further, given the arguments of Chapters 3 and 4, these duties cannot be property rights and must, instead, be distributive claims of some variety. Given these constraints, the anarchist conclusion seems like a promising candidate thesis to endorse to avoid the moral tyranny of both private property acquisition and the Hobbesian conclusion.<sup>5</sup> However, as noted earlier, this conclusion's incorporation of luck egalitarianism appears to render it incompatible with any entitlement theory of justice. Thus, one

<sup>4</sup> Granted, there are certain measures that the farmer could take to preclude this outcome. While she will not be able to protect her crops via coercive means when such coercion violates the rights of others, she might employ various noncoercive measures such as building a very secure wall around her farm. That said, barring a state of complete security where no person is able to seize any other person's products, the Hobbesian conclusion will still violate the moral tyranny constraint. Additionally, even if, as a matter of contingent fact, no person was able to seize someone else's holdings, one might think that both moral theories and meta-theories like the moral tyranny constraint are *necessarily* true; thus, the Hobbesian conclusion would still violate the moral tyranny constraint because it would allow people to leave others worse off<sub>FC</sub> in the possible worlds where people's holdings are not totally secured.

<sup>5</sup> Granted, the moral tyranny constraint would be satisfied by many theories of distributive claims so long as those theories are sensitive to responsibility in the sense discussed in Chapter 6. Thus, the foregoing argument does not show that one must accept the egalitarian aspect of the anarchist conclusion. Much more will be said about this point in Section 5.7.

might worry that accepting the anarchist conclusion requires rejecting entitlement theories with all of the attendant theoretical costs discussed in this chapter's introduction. The task of the subsequent four sections is to argue against this conclusion by demonstrating that the anarchist conclusion can be reconciled with entitlement theories of justice.

Why think that the anarchist conclusion is incompatible with an entitlement theory of justice? Begin by returning to luck egalitarianism's contention that an inequality is unjust if (and only if) it is due to luck – that is, if the worse-off party has not made some relevant sanctionable choice that justifies that inequality. By contrast, Nozick's articulation of entitlement theories holds that a distribution is just if each person is entitled to her respective holdings. Now consider a case where holdings are distributed contrary to the prescriptions of luck egalitarianism – that is, someone is worse off than another person despite not having chosen sanctionably – but, by hypothesis, all such holdings have been obtained via just appropriation and transfer. In such a case, luck egalitarianism would entail that the distribution is unjust while the entitlement theory would entail that it is just. Thus, one must reject one of the two theories to avoid contradiction.

Does this simple *incompatibilist argument* demonstrate that entitlement theories of justice are incompatible with the anarchist conclusion in addition to standard luck egalitarianism? Entitlement theorists might be tempted to answer this question affirmatively, as the anarchist conclusion assigns distributive claims in accordance with the prescriptions of a luck egalitarian principle of justice. As just noted, luck egalitarianism holds that a distribution is just if and only if any inequality reflects some sanctionable choice on the part of the worse off. The anarchist conclusion then incorporates this judgment by assigning to each person claims against others using unowned resources in a way that would leave her worse off than others (where a person forfeits some of these claims when she chooses sanctionably). Thus, entitlement theorists might reasonably infer that the anarchist conclusion is similarly incompatible with entitlement theories of justice.

Against this inference, one might contend that the anarchist conclusion does not presuppose or otherwise imply the luck egalitarian principle of justice. Rather, it simply employs this principle as a way of determining which claims people have, without affirming luck egalitarianism's assertion that any luck-based inequality is unjust. Thus, the anarchist conclusion sidesteps the incompatibilist argument, as it does not entail that distribution in the posited case is unjust. However, this move is a bit too quick, as

there is arguably a conceptual relation between people's assigned claims and justice that allows for the incompatibilist argument to be applied to the anarchist conclusion. Specifically, one might think that, at least in most cases, if a person has a claim to some state of affairs obtaining, then it is just if that state of affairs obtains – that is, the state of affairs is just.<sup>6</sup> Or, more modestly, one might merely hold that a state of affairs is *unjust* if a person has a claim against the realization that state of affairs. (Perhaps she must hold this claim against all other persons.)

If this is right, then the anarchist conclusion's assignment of claims *does* entail that certain unequal distributions are unjust. Specifically, it will declare that a state of affairs is unjust if someone generated a luck-based inequality by acting on an unowned resource. Notably, this includes distributions where everyone is also entitled to their holdings – that is, distributions that are just according to an entitlement theory of justice. Thus, one cannot rescue the anarchist conclusion from the incompatibilist argument by denying that it declares distributions unjust.

### 5.3 The Left-Libertarian Solution

One strategy for avoiding the incompatibilist argument is to constrain entitlement theories in a way that precludes the possibility of the posited case obtaining (i.e., someone suffering luck-based disadvantage when everyone is entitled to their holdings). This approach is popular among left-libertarians, who maintain that the appropriation of resources is constrained by an egalitarian proviso. For example, Otsuka (2003), in defending a luck egalitarian principle of equal opportunity for welfare, argues that there can be no case where this principle is violated but all holdings have been acquired through either just transfer or just appropriation.

<sup>6</sup> The reason for the qualifier is that there are some potential counterexamples to the unqualified version of this claim. For example, David Miller (2017, §1.2) suggests that emergency situations might give rise to duties – and more specifically *enforceable* duties – that exceed what is required by justice. Similarly, Buchanan (1987, 562–3) argues that people might have enforceable duties that are not duties of justice, for example, duties to solve collective action problems. However, as Miller notes, these exceptions are rare. More importantly, when it comes to the foregoing dialectic, the incompatibilist argument will extend to the anarchist conclusion so long as its posited case is one where duties to refrain from realizing some state of affairs imply injustice. In other words, the anarchist conclusion will be incompatible with entitlement theories if there is *at least one case* where (a) a luck-based inequality obtains, (b) everyone has justly acquired their holdings according to the relevant entitlement theory, and (c) duties to refrain from realizing a state of affairs *in this case* imply that the state of affairs is unjust.

Specifically, he argues that an egalitarian proviso obtains such that one can appropriate some natural resource only if everyone else is left an equally good share of unowned natural resources – where two shares are equally good if and only if the holders of those shares have an equal opportunity to obtain welfare via the use and/or exchange of their holdings. Given that luck-based inequality can obtain between two people only if they did not have equal opportunities to obtain welfare, it follows that any luck-based inequality implies a violation of Otsuka's egalitarian proviso. Thus, the existence of luck-based inequality implies that the better-off did not justly acquire their property. This, in turn, implies that the case posited by the incompatibilist argument is impossible: There cannot be a situation where a luck-based inequality obtains but each person is entitled to her respective holdings.

While this strategy may succeed, it is vulnerable to various objections. For example, Mathias Risse notes that anti-egalitarian libertarians might simply reject Otsuka's egalitarian proviso on the grounds that they reject the fairness considerations that ground it (2004, 354–5). Notably, Otsuka defends his proviso by suggesting that it would be *unfair* if the first person to encounter a natural resource were able to acquire it and thereby preclude later arrivals from reaching the level of welfare that they would have achieved had they arrived first and appropriated that resource (1998, 78). However, in response to this complaint, an anti-egalitarian libertarian might simply deny that fairness is a genuine moral concern, or, more modestly, contend that it does not bear upon whether a holding is just. Thus, she would deny the egalitarian proviso, thereby readmitting the possibility of cases where the anarchist conclusion and entitlement theories entail incompatible claims about justice.

More importantly, note that the posited egalitarian proviso is incompatible with the Lockean proviso introduced in Chapter 1 and defended in Chapters 2 and 3. Because the latter allows for appropriations that deny others an equal opportunity to obtain welfare (so long as no one is left worse off<sub>FC</sub>), there will be cases where the two provisos will yield contradictory judgments. Thus, the anarchist cannot employ the kind of egalitarian proviso favored by left-libertarians while sustaining her commitment to the Lockean proviso. Of course, she could abandon that part of her position, but doing so would undermine the argument of Chapter 3, which, in turn, would leave her endorsement of ASO without its foundational supporting argument. Given the high theoretical costs of abandoning the Lockean proviso, some other strategy is needed for making the anarchist conclusion compatible with entitlement theories of justice.

#### 5.4 Just Holdings vs. Just Distributions

Fortunately for the anarchist, there is an alternative compatibilist strategy available to her. This approach revises entitlement theories but does so without any appeal to fairness or egalitarian notions that entitlement theorists might be happy to reject. Rather, it contends that there is an internal problem with the foregoing account of entitlement theories that should motivate any entitlement theorist to revise her theory in the way suggested subsequently. Recall that entitlement theories have so far been defined using Nozick's formulation: A distribution is just if all persons are entitled to their respective holdings. However, suppose that someone's holdings include some unowned thing that she has never bothered to appropriate but nonetheless possesses.<sup>7</sup> Given such possession, Nozick's posited sufficient condition of justice would not obtain, as it would not be the case that each person is entitled to her respective holdings. While this does not imply that the distribution is *unjust* (as it might be neither just nor unjust), it does mean that, even if everyone else is entitled to their holdings, this is insufficient for establishing the justice of the overall distribution *and everything that justice entails*. For example, one implication of a distribution being just is that one cannot permissibly redistribute or destroy anyone's holdings without her consent. Indeed, the reason that Nozick seemingly posits an entitlement theory of justice is to explain the purported wrongness of such nonconsensual redistribution/destruction. Thus, if a single person's possession of an unowned object is sufficient for negating the justice of the entire distribution – where this implies that it might be permissible to redistribute or destroy *any* holding – then the posited account of entitlement theories seems inadequate.

To resolve this problem, the entitlement theorist should maintain that what justice predicates is not the distribution as a whole but, rather, any given holding or set of holdings. In other words, Nozick's suggestion that a distribution is just if each person is entitled to her holdings should be rejected in favor of the following *revised entitlement theory*: Some holding is

<sup>7</sup> An anonymous reviewer suggests that proposed case is impossible, as Nozick might take the possession of any unowned thing to entail its appropriation so long as such appropriation satisfies the Lockean proviso. It is not fully clear whether Nozick would endorse this view, but even if one grants that he would, the posited case can simply be adjusted by stipulating that the possessed object cannot be appropriated because such appropriation would violate the Lockean proviso. Or, alternatively, one might even take the object to be stolen. For the argument to succeed, one must merely grant that there is at least *some* case where a person possesses a thing without owning it.

just if its possessor is entitled to it.<sup>8</sup> This theory would allow the entitlement theorist to maintain that it is impermissible to nonconsensually redistribute or destroy those holdings to which people are entitled (as those holdings are just), even if that person or some other person possesses an unowned thing. At the same time, it would allow that one might permissibly redistribute unowned holdings. Such a result seems to best capture what entitlement theorists like Nozick have in mind when advancing their theories.

However, if one accepts this restatement of the relationship between entitlements and justice, then one must reject the argument that entitlement theories are incompatible with the anarchist conclusion. Recall that this argument posits a case where everyone is entitled to their holdings but someone uses an unowned resource in a way that generates a luck-based inequality between two persons. The anarchist conclusion entails that the worse-off party had a claim against this use of resources, which, in turn, implies that the resulting distribution is unjust. By contrast, the entitlement theory *as originally stated* entails that the resulting distribution is just, as everyone is entitled to their holdings. Thus, a contradiction was reached. However, the revised entitlement theory does not affirm that the distribution is just; rather, it merely maintains that the owned holdings are just – a result that is entirely compatible with the anarchist conclusion's implication that the entire distribution is unjust. One is therefore free to endorse the anarchist conclusion without having to give up the entitlement theory presupposed by the social anarchist position (at least, once this entitlement theory is appropriately specified in the way just described).

### 5.5 Is Entitlement Necessary for Justice?

Proponents of the incompatibilist argument might object to this conclusion by disputing the way in which entitlement theories of justice have been characterized. Note that the foregoing discussion of the incompatibilist argument follows Nozick in positing that a distribution is just if every person is entitled to her holdings. However, the incompatibilist might argue that entitlement is not merely a *sufficient* condition of justice but also a *necessary* one. In other words, a proper interpretation of Nozick's theory would assert that justice obtains if *and only if* each person is entitled to her

<sup>8</sup> Or, more precisely, if its possessor is entitled to it *and* does not owe anyone compensation for past wrongdoing.

respective holdings.<sup>9</sup> Similarly, the revised entitlement theory should maintain that a holding is just if *and only if* its possessor is entitled to it (as opposed to how it is stated previously, where entitlement is a sufficient – but not necessary – condition of a holding being just).

If entitlement is a necessary condition of some holding being just, that would allow for a revitalization of the incompatibilist argument. Specifically, consider the case where *P* is not entitled to a particular resource *R* but it is in her possession. Additionally, suppose that *P* would be left worse off than *Q* if *Q* were to interact with *R* in any way. Finally, assume that the comparative disadvantage that *P* would suffer if *Q* were to interact with *R* would not reflect any sanctionable choice on *P*'s part (in the sense proposed in Chapter 6). In this case, the anarchist conclusion would entail that *Q* has a duty to refrain from interacting with *R*. This, in turn, implies that the state of affairs where *Q* refrains from interacting with *R* is just (given the conditional relationship between duties and justice posited earlier). However, if entitlement is a necessary condition of justice, an entitlement theory would hold that *Q*'s exclusion from *R* is not just, as *P* is not entitled to her holding. Thus, entitlement theories of justice still contradict the anarchist conclusion.

But why think that entitlement is a necessary condition of justice? There are two reasons for denying this proposition and, by extension, the revitalized incompatibilist argument. First, if one grants that a holding is just only if its possessor is entitled to that holding, that seemingly entails that borrowed holdings are not just, as a borrowed item is, by definition, an item that one possesses but does not own. Further, given that the return of a borrowed holding would meet the sufficient condition of justice (as the possessor of the item would now be the person who is entitled to that item), it seems that borrowers have a duty of justice to return the item to its owner even though they had full permission to be in possession of the item in question. Given that practically any entitlement theorist would reject this result as unacceptable, one ought to reject the proposal that entitlement is a necessary condition of a holding being just.

There are various replies that could be made to this objection. Mack, for example, suggests that this counterexample might be avoided by positing that a person with a borrowed holding is entitled to said holding (2018, private communication). However, endorsing this suggestion would require making significant modifications to other parts of a Nozick-inspired

<sup>9</sup> Vallentyne endorses such an interpretation, arguing that Nozick's failure to posit such a necessary condition was an oversight on his part (2011, 151).

entitlement theory. For example, while Nozick says little about his principle of justice in transfer, presumably it holds that a transaction is just if the holding in question is voluntarily given and received. Thus, if a borrower is entitled to the borrowed item – and, she then gives that item to a third party – it would follow that the third party is now entitled to the item per Nozick's account. However, entitlement theorists would reject this conclusion. More generally, it seems that Nozick understands entitlement as something very close to full ownership of the holdings (with the caveat that certain exclusion and transfer rights are limited by his posited version of the Lockean proviso). However, borrowers have fairly limited rights over borrowed items, as they lack a right to destroy, transfer, or exclude others from said items. Thus, borrowers cannot be said to be entitled to borrowed items, at least as Nozick uses the term.

The second objection to making entitlement a necessary condition of justice is that this amendment does not follow from the considerations that motivate libertarians to endorse entitlement theories of justice in the first place. Absent such a logical connection to the premises that ground an entitlement theory of justice, making entitlement a necessary condition of justice seems ad hoc and, thus, an implausible way of demonstrating that entitlement theories are incompatible with the anarchist conclusion. Most notably, the primary motivation for positing an entitlement theory is seemingly to negate the permissibility of redistributing those things that persons have justly appropriated or received via just transfer. However, this result is achieved by simply positing that entitlement is a sufficient condition of justice – at least, if one accepts the plausible supplemental premise that it is impermissible to transform a just holding into one that is not just via redistribution. Given that the original statement (and restatement) of entitlement theory satisfies this core theoretical *desideratum*, the proposed amendment to make entitlement a necessary condition of justice seems unmotivated.

### 5.6 Wilt Chamberlain and the Anarchist Conclusion

It is worth considering a final reason for thinking that entitlement theories of justice are incompatible with the anarchist conclusion. This third incompatibilist argument would concede that there is no contradiction between the implications of the two positions. However, it would maintain that the arguments for rejecting non-entitlement theories in favor of entitlement theories apply equally to the anarchist conclusion. Thus, even if entitlement theories are not technically incompatible with the anarchist conclusion, any entitlement theorist would still reject the anarchist

conclusion on the grounds that it is negated by the arguments that led her to accept an entitlement theory in the first place. The anarchist conclusion would thereby lose its dialectical significance for the reasons discussed in the introduction to this chapter.

The problem with this proposal is that the anarchist conclusion sidesteps the primary arguments for favoring entitlement theories of justice over non-entitlement theories. Consider, for example, Nozick's (1974) influential Wilt Chamberlain argument. In this thought experiment, holdings are distributed in accordance with the prescriptions of one's preferred non-entitlement principle. However, each person then voluntarily pays Wilt Chamberlain a small amount of money to watch him play basketball, with the result being the emergence of a new distribution that is (by hypothesis) unjust according to the non-entitlement principle.

While Nozick is not fully explicit regarding the structure of his argument, he is best understood as making two distinct *reductio* arguments against non-entitlement principles of justice.<sup>10</sup> The first begins with the observation that, if the post-transfer distribution of resources is unjust according to the non-entitlement principle, then one would act permissibly if one enforced the original distribution and thereby prevented the unjust distribution from arising. However, Nozick argues that such enforcement must take the form of either (a) unacceptably interfering with freedom by blocking free exchanges between consenting adults, or (b) allowing such acts but then redistributing the fruit of Chamberlain's labor – an act that is unacceptable because it is tantamount to slavery (1974; 163, 169–72). In other words, a non-entitlement theory declares the enforcement of the original distribution permissible when such enforcement is, in fact, impermissible. Thus, any non-entitlement theory must be rejected to avoid contradiction.

The second *reductio* posits that if one has a just share according to a non-entitlement principle of justice, then one has the right to dispose of that share as one wishes, with any resultant state of affairs thereby qualifying as just (1974, 161). Thus, given that the starting state in the Wilt Chamberlain case is just, it follows that the state of affairs after people choose to give some of their holdings to Chamberlain is also just.

<sup>10</sup> Different interpreters of Nozick tend to focus on only one of these *reductios* at the expense of the other (e.g., with Onora O'Neill (1981, 308) primarily addressing the first and Cohen (2011, 127) and Mack (2002, 81–4) focusing on the second). However, for these purposes, it will be granted that Nozick is making both arguments.

However, the resultant distribution is also unjust according to the posited non-entitlement principle because it does not align with its prescribed pattern/end-state. To avoid this contradiction, one must reject the assumed non-entitlement principle of justice.

When considering these *reductios*, one question to ask is whether Nozick assumes that all persons in the Wilt Chamberlain case are entitled to their holdings. Seemingly, the answer to this question must be “yes” given Nozick’s own understanding of the moral status of unowned holdings. Nozick must maintain that there is nothing morally problematic about interfering with unowned holdings, as the person who possesses a resource but does not own it has no claim against others coming and using it without permission. Similarly, the possessor would have no claim against them taking that thing and redistributing it to someone else (assuming the absence of any distributive claims). And she would lack any power to give a person a claim to exclude others from that resource. These Hohfeldian no-claims and disabilities follow from non-ownership as a matter of definition. However, there would then be nothing wrong with blocking transfers made by someone who is not entitled to a thing (e.g., someone attempting to bequeath an unowned thing to someone else). Given that Nozick’s first *reductio* rests on the premise that such blocking is wrong, he must be presupposing that the people in the Wilt Chamberlain case are entitled to their holdings. Similar remarks apply to the second *reductio*’s contention that the people have a right to dispose of their share as they see fit – a claim that would be true only if they were entitled to their shares. Thus, by his own lights, Nozick’s Wilt Chamberlain *reductios* are sound only if it is assumed that the people in the scenario are entitled to their holdings.

There are two things to note about this conclusion. First, as a more general point, it reveals a dialectical weakness in Nozick’s argument, as those who endorse some non-entitlement theory of justice can avoid his posited *reductios* by simply denying the possibility of people being entitled to their holdings. Specifically, a non-entitlement theorist can deny that persons are able to acquire the power to transfer claims to others; this, in turn, would allow her to insist that there is nothing problematic about blocking transfers between consenting adults. To preclude this reply, Nozick would have to maintain that the power to transfer follows directly from a person’s holdings conforming to the non-entitlement theory in question. If such conformance entailed the power to transfer, then the non-entitlement theorist would be vulnerable to Nozick’s *reductios*. However, it is unclear why the non-entitlement theorist should affirm this conditional and give up her denial that anyone has the power to transfer

claims to resources. Additionally, the foregoing discussion reveals that Nozick cannot consistently assert this conditional, as it conflicts with his own distinction between entitlement and non-ownership. Nozick's contention is that the power to transfer is a distinctive feature of entitlement – that is, it has entitlement as its necessary condition. Thus, he cannot consistently maintain that a particular distribution of holdings obtaining is a sufficient condition of the power to transfer holdings. This leaves him with no way to object to the non-entitlement theorist who denies both the proposed entailment relation (i.e., that a just distribution entails that each person has the power to transfer her holdings) and the more general premise that persons can possess the power to transfer holdings.

That said, the anarchist cannot avail herself of this argument because she *does* grant that persons can possess the power to transfer. She is thereby precluded from denying the premise that the people in the Wilt Chamberlain case have the power to transfer their holdings. Rather, like Nozick, she must affirm that persons have this power if and only if they are entitled to their holdings. Granted, she denies that persons could, in practice, acquire such entitlements via appropriation for the reasons discussed in Chapters 3 and 4. However, she must concede that, at least in theory, a scenario could arise where a group of people *do* acquire property either via everyone's consent or because a total absence of scarcity entails that the Lockean proviso is satisfied vis-à-vis natural resources. Thus, unlike the pure non-entitlement theorist, she must allow that there is a possible Wilt Chamberlain scenario where persons are entitled to their initial holdings (in addition to those holdings conforming to the prescriptions of her favored non-entitlement theory).

Fortunately for the anarchist, she can reject a different premise of Nozick's *reductios* to avoid having to reject the anarchist conclusion. Specifically, both *reductios* contend that the post-transfer distribution is unjust according to the non-entitlement theory in question. However, while this implication does follow from standard non-entitlement distributive principles, it does not follow from the anarchist conclusion. This is because the anarchist conclusion only assigns persons luck egalitarian distributive claims vis-à-vis *unowned* resources. Given that Nozick must affirm that all of the holdings in his Wilt Chamberlain case are owned, it follows that there would be no distributive claims restricting the permissible use of these holdings. Rather, the permissible use of these holdings would be strictly governed by people's property claims over those holdings. Thus, the anarchist conclusion does not entail that Wilt Chamberlain has any duty to redistribute his post-transfer holdings; rather, it concedes that he has property claims against such redistribution. This, in turn, implies

that the post-transfer distribution is just according to the anarchist conclusion – a result that does not contradict Nozick’s contention that the post-transfer distribution is just. The anarchist conclusion thereby sidesteps both of Nozick’s Wilt Chamberlain *reductios*.

The anarchist conclusion similarly avoids a third argument against non-entitlement theories that Mack (2002, 82–3) attributes to Nozick. This argument holds that, if some state is unjust, one must be able to explain how it came to be unjust via appeal to some historical occurrence – that is, one must be able to identify the particular event responsible for the emergence of the injustice. However, given that the post-transfer state in the Wilt Chamberlain case is reached via just steps from a just pre-transfer state, there is no such apparent explanation. Thus, the post-transfer state cannot be unjust, contra what a non-entitlement theory implies – and one must, therefore, reject such a non-entitlement theory. However, again, this argument is only valid because non-entitlement theories declare the post-transfer state unjust. By contrast, the anarchist conclusion affirms the justice of the distribution, as there are no luck-based inequalities *that have resulted from the use of unowned resources*. It thereby sidesteps this interpretation of Nozick’s Wilt Chamberlain argument in addition to the ones presented previously.

Unfortunately, it is not possible to consider whether the anarchist conclusion avoids every objection to non-entitlement theories of justice. However, the fact that it is able to sidestep all three interpretations of Nozick’s Wilt Chamberlain argument is at least suggestive that it will similarly survive whatever other arguments entitlement theorists might develop in the defense of their theory. The general reason for thinking that the anarchist conclusion will avoid such arguments is the fact that it concedes to the entitlement theorist that a holding is just if its possessor is entitled to it. By granting people ownership rights over whatever resources they justly acquire, the anarchist conclusion effectively incorporates an entitlement theory into its broader account of how to assess the justice of holdings. This incorporation means that it will be difficult for entitlement theorists to object to the position.

### 5.7 Libertarian Egalitarianism

The previous sections have defended the thesis that the anarchist conclusion is the appropriate philosophical response to the fact that no one has acquired ownership over natural resources outside of their bodies (as argued in Chapters 3 and 4). Specifically, Section 5.1 argued that one cannot simply concede that people have no claims vis-à-vis natural resources, as such a conclusion would violate the moral tyranny constraint.

Thus, one must posit that people have *some* such claims, for example, those posited by the anarchist conclusion. Sections 5.2–5.6 then argued that there is no tension between the anarchist conclusion's posited distributive claims and the anarchist position's incorporation of an entitlement theory of justice. Thus, one might be an orthodox libertarian – that is, one who endorses an entitlement theory of justice – while still accepting the anarchist conclusion.

However, there is a gap in this argument when it comes to defending the particular distributive claims posited by the anarchist conclusion. Note that one can avoid the moral tyranny of the Hobbesian conclusion by positing *any* set of distributive claims so long as full compliance with those claims would sustain a particular pattern of advantage (and the theory holds people responsible for sanctionable choices). Recall that the Hobbesian conclusion allowed for moral tyranny because it did not posit any distributive claims. Absent such claims, a person can act on unowned resources in a way that leaves others worse off<sub>FC</sub>, as she will not owe any compensation to others for costs imposed by her usage. Thus, future full compliance would do nothing to offset those costs, with others ending up worse off<sub>FC</sub> as a result. By contrast, the anarchist conclusion's assignment of luck egalitarian distributive claims precludes persons from leaving others worse off<sub>FC</sub>. While person *P* might still impose costs upon another person *Q* and/or infringe upon *Q*'s claims, *Q* would still be entitled to the same quantity of advantage according to the anarchist conclusion. Thus, if *P* were to act in the posited way(s), the anarchist conclusion would reassign distributive claims such that full compliance with those claims would leave *Q* with just as much advantage as she would have had if everyone had complied with the original set of distributive claims (i.e., the claims assigned prior to *P*'s action). Given this reassignment, full compliance will leave *Q* with the same amount of advantage irrespective of *P*'s action, with *P* being thereby precluded from leaving *Q* worse off<sub>FC</sub>.

However, one can avoid the moral tyranny of the Hobbesian conclusion without assigning persons *luck egalitarian* distributive claims – that is, the set of distributive claims such that full compliance would eliminate all inequalities except those that reflect sanctionable choice. Rather, one merely needs to posit a set of distributive rights where full compliance would yield *some* fixed pattern of advantage.<sup>11</sup> For example, consider a

<sup>11</sup> As noted in parentheses in the previous paragraph, this pattern must be sensitive to responsibility for the reasons discussed in Section 2.4. There it was suggested that one must reject strict egalitarianism in favor of luck egalitarianism, as the former was inadequately sensitive to

theory that assigns each person a set of distributive claims such that full compliance would leave one person with 100 units of advantage and everyone else with 5 units. So long as this theory reassigns claims in light of persons' actions such that full compliance would generate these same outcomes, it will equally satisfy the moral tyranny constraint, as people will be unable to leave anyone worse off<sub>FC</sub> than she would have otherwise been. Thus, one cannot appeal to the constraint to justify the anarchist's assignment of *egalitarian* distributive claims – which is to say that the argument of Chapters 2, 3, and 4 does not quite deliver the anarchist conclusion as promised. Rather, it demonstrates that the moral tyranny constraint entails both (a) the absence of external private property and (b) that there is *some* (responsibility-sensitive) advantage<sub>FC</sub>-preserving set of distributive rights. Further argument is therefore required to demonstrate that one ought to accept the anarchist conclusion over rival theories of distributive rights.

There are two approaches one might take to filling in this argumentative gap. First, one might appeal to existing defenses of luck egalitarian principles of distributive justice to ground the anarchist conclusion's egalitarian distributive claims. While these defenses do not typically put things in terms of distributive claims, they do affirm that justice requires that each person receive an equal share of advantage (absent sanctionable choice). Given that the anarchist conclusion insists that each person has a claim to an equal share of advantage, it seems that any proposed argument for luck egalitarianism will also provide support for the anarchist conclusion's egalitarian presumption.

The disadvantage of this approach is that the overarching argument of the book loses some of its dialectical force. As noted previously at various points, the argument is intended to be a libertarian defense of egalitarian conclusions that puts dialectical pressure on libertarians to give up private property rights and, instead, endorse a variety of luck egalitarianism. For this reason, the foregoing chapters have granted as many libertarian premises as possible when arguing for the anarchist position. Similarly, this chapter has attempted to preserve this dialectical pressure by demonstrating that the anarchist conclusion is compatible with libertarian entitlement

responsibility – and, thus, would allow some people to unilaterally, discretionarily, and foreseeably leave others with less<sub>FC</sub>. However, similar remarks would apply to the comparison between any responsibility-insensitive distributive principle and its responsibility-sensitive counterpart. Thus, any share-assigning theory must be structured in such a way that an agent forfeits some claim to advantage if she makes a sanctionable choice – that is, a choice where full compliance conditional on that choice would leave others worse off than full compliance conditional on a rival choice (much more on this in Chapter 6).

theories of justice. However, if the anarchist conclusion follows from both libertarian premises *and* non-libertarian egalitarian premises – that is, those posited by the luck egalitarian defenses mentioned in the previous paragraph – then libertarians could, at low theoretical cost, deny the anarchist conclusion by rejecting the egalitarian premises. Granted, it is not clear what alternative pattern of advantage the libertarian would endorse instead (for she must endorse *some* pattern to avoid the moral tyranny of the Hobbesian conclusion). Nonetheless, one can imagine certain anti-egalitarian libertarians insisting that there is no positive reason to favor egalitarian distributive claims, with any arbitrary set of advantage<sub>FC</sub>-preserving distributive claims being an equally acceptable theoretical alternative to the anarchist conclusion.

Fortunately, there is a second approach available to the anarchist that restores the dialectical pressure of the anarchist argument. Specifically, the anarchist might observe that practically all libertarians *already* accept an egalitarian approach to the assignment of claims. This point is made by many libertarians themselves, as they argue that their rejection of distributive egalitarianism is grounded in a more fundamental kind of egalitarianism. Specifically, these libertarians contend that their view uniquely recognizes human moral equality by initially assigning all persons *equal rights* – which is to say either identical or symmetrical rights.<sup>12</sup> For example, if one person starts out with the Hohfeldian power to appropriate some object, then all persons start out with an identical power to appropriate that object. Similarly, if one person initially has the right to exclude others from her body, then all persons initially have the symmetrical right to exclude her from their bodies. Of course, some people might end up with fewer rights than others in virtue of having either waived or forfeited their rights; however, there remains a presumption of initial moral equality that insulates libertarianism from charges of moral arbitrariness.

Given this commitment to assigning persons equal rights, it follows that libertarians should assign persons equal distributive rights as well. Granted, libertarians have not heretofore recognized that people have distributive

<sup>12</sup> Some notable examples include Locke (2005, §§ 4–7), Herbert Spencer (1851, 77–8), Anthony Fressola (1981, 316–7), Lomasky (1987, 122–3), Wendy McElroy (1991, 3), Rothbard (1998, 42–3), Narveson (1988, 98), Long (2005, 18–9), and Flanigan (2019b). Critics of libertarianism have similarly recognized libertarianism as egalitarian in this respect including Amartya Sen (1992, 13, 21–3), Cohen (1995, 213), Carl Knight (2009, 340), and Matthew Braham and Martin van Hees (2014, 427, 431). The claim that treating like people alike entails assigning individuals equal rights is also endorsed by Steiner (1974, 223). However, he contends that people should be understood as having equal rights vis-à-vis natural resources, thereby staking out a left-libertarian view that is much closer to the anarchist conclusion proposed here.

rights. However, if the foregoing argument is correct and there are such rights, then they should be assigned in the same egalitarian fashion that libertarians assign other rights. There is admittedly some ambiguity here regarding what qualifies as an assignment of equal rights. As just noted, one might take two persons to have equal rights if both have *the same right*, for example,  $P$  and  $Q$  each have a claim that  $R$  not  $\phi$ . More commonly, libertarians propose that persons have symmetrical rights, where  $P$  and  $Q$  have a symmetrical right if and only if  $P$  and  $Q$  *would have an identical right* if every reference to  $P$  in  $P$ 's right is replaced by a reference to  $Q$  and every reference to  $Q$  is replaced by a reference to  $P$ . For example, if  $P$  has a claim that  $Q$  not touch  $P$ 's body and  $Q$  has a claim that  $P$  not touch  $Q$ 's body, then the two have symmetrical rights, as changing  $P$ 's right in the way just discussed yields a right that is identical to  $Q$ 's. However, there is no apparent reason why equal assignments of rights might not also include cases where  $P$  and  $Q$  are assigned distributive claims that entitle each of them to an equal share of advantage. After all, such an assignment seems to equally avoid the accusation of moral arbitrariness that motivates libertarians to assign persons identical or symmetrical rights.

Additionally, seemingly any rights schema that assigns persons strictly identical and/or symmetrical distributive claims would not generate a fixed pattern of advantage under conditions of full compliance. This, in turn, implies that all such schemas violate the moral tyranny constraint. To see this, note that the Hobbesian conclusion represents just such a schema, as it assigns to each person a set of claims that are either identical or symmetrical to those possessed by each other person. Specifically, each person has a symmetrical right against others making ASO-infringing contact with her body and all persons have an identical permission to use any given unowned resource. However, because they lack advantage<sub>FC</sub>-preserving distributive claims over unowned objects, the Hobbesian conclusion violates the moral tyranny constraint (as discussed in Section 5.1). Similarly, assigning persons additional identical/symmetrical claims will fail to resolve this problem unless those claims somehow offset imposed costs<sub>FC</sub> in the way discussed at the start of this section. Thus, there does not appear to be a way to assign persons claims in an advantage<sub>FC</sub>-preserving fashion while also assigning each person a claim if and only if each other person is assigned an identical/symmetrical claim. Given this result, libertarians should concede that the proposed schema of luck egalitarian distributive claims instantiates an equal assignment of rights (lest their insistence on moral equality be rendered incompatible with the moral tyranny constraint). They would then be able to affirm human

moral equality while avoiding moral tyranny by endorsing the anarchist conclusion.

## 5.8 Conclusion

The bulk of the argument for anarchism is now complete. The foregoing chapters have attempted to show that a single plausible theoretical *desideratum* entails a number of conclusions typically embraced by anarchists. Specifically, these chapters argued that the moral tyranny constraint entails the Lockean proviso and the consent theory of legitimacy, each of which further entails the absence of external private property (despite it still being the case that people can easily acquire ownership over their own bodies). This chapter has argued that the moral tyranny constraint also implies that the non-ownership of external resources cannot entail an absence of all claims vis-à-vis those resources. Rather, each person must be assigned some set of advantage<sub>FC</sub>-preserving distributive claims that preclude other agents from discretionarily leaving her worse off<sub>FC</sub>. Additionally, this chapter argued that such distributive claims are fully compatible with an (appropriately interpreted) entitlement theory of justice – a result that sustains social anarchism’s claim to being a thoroughly libertarian position. Finally, the chapter argued that libertarians should endorse the luck egalitarian distributive claims posited by the anarchist conclusion, as such rights best reflect libertarians’ egalitarian approach to assigning rights to persons.

In short, libertarians who are sympathetic to the moral tyranny constraint should reject private property in external resources and endorse the anarchist conclusion. However, this conclusion is still in need of a bit of further precisification. Notably, the distributive claims posited by the anarchist conclusion are not simply egalitarian in character but, rather, *luck* egalitarian in character; that is, compliance with those claims would leave everyone equally well off *excluding those who have chosen sanctionably*. This italicized qualifier is included for the reasons described in Section 2.4: An egalitarian theory that does not hold people responsible for sanctionable choices (e.g., the choice to spitefully destroy all of one’s holdings) will still run afoul of the moral tyranny constraint. But which choices count as sanctionable? This question has so far been left unanswered. It is the task of Chapter 6 to provide a theory of sanctionable choice that brings luck egalitarianism – and, by extension, the anarchist conclusion – into full compliance with the moral tyranny constraint.