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SELF-OWNERSHIP AND CONSCRIPTION

Hillel Steiner

University of Manchester

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In his deservedly acclaimed *Self-Ownership, Freedom and Equality*, Jerry Cohen advances the following statement as being, uncontroversially, a principal implication of the concept of moral self-ownership:

> [I]f I am the moral owner of myself, and, therefore, of this right arm, then, while others are entitled, because of *their* self-ownership, to prevent it from hitting them, no one is entitled, without my consent, to press it into their own or anybody else's service, even when my failure to extend service voluntarily to others would be morally wrong.[1]

I want to argue that this claim is too sweeping: that there are some servicings of others such that the impressment of my right arm into those servicings, without my consent, is consistent with my moral self-ownership. These servicings are ones of preventing or redressing violations of those others' moral rights.

Such an argument – for the possible compatibility of conscription with self-ownership – must strike many as intuitively implausible. While not, perhaps, wishing to endorse Milo Minderbinder's famous observation in *Catch 22*,:

> [f]rankly, I'd like to see government get out of war altogether and leave the whole field to private industry,[2]

they would certainly balk at the suggestion that even those engaged in prosecuting a *just war*[3] could, consistently, be morally empowered to conscript the services of self-owners for that purpose. For while it's perfectly consistent with self-ownership that its bearers *voluntarily* donate their services to uphold the moral rights of others – and even that they have a moral

duty to do so – the idea that those others might have an enforcible *right* that they do so seems to many to be a bridge too far. If self-ownership rules out anything, one might say, it surely rules out conscription.

Before considering why this may not be true, we need to examine the generic problem besetting the very idea of just conscription. Having done so, we'll be better placed to reflect on whether it can cohere with self-ownership. Let's begin by briefly reviewing some conceptual features of rights and duties.

The Problem

Rights, in the strict sense of Hohfeldian claims, correlatively entail duties.[4] One of the properties standardly and distinctively attributed to correlative duties is that they are *enforcible*: that is, that someone's use of force to prevent or redress breaches of them is authorised.[5] It's this property that is widely presumed to distinguish correlative moral duties from other moral duties and that forms the basis for regarding them, or respect for the rights they entail, as constituting the primary – even exclusive - standard by which legal duties are to be morally appraised.[6] For rights and their correlative moral duties are the progeny of principles of *justice*, whereas *non*-correlative moral duties are ones enjoined by other moral principles, such as charity or decency. These latter do not entail rights and, as Kant suggests, are generally thought to be unsuitable for, or even incapable of, enforcement. Charitable and decent acts have moral value, or indeed can be denominated as charitable and decent, only if done voluntarily and not under compulsion, legal or otherwise.[7] Let's call these non-correlative duties *general* moral duties, in order to distinguish them from those moral duties which are enjoined by the requirements specifically of justice.[8]

Now, a salient feature of rights is the fact that any coherent set of rules implying the enforcibility of a duty thereby further implies the existence of not only a Hohfeldian power (or authority) to enforce it but also the liberty – absence of an enforcible duty *not* - to exercise that power.[9] But the existence of the liberty to do an action does *not* imply the existence of the counterpart liberty to forbear doing it: the possessor of the liberty to do X may also be vested with an enforcible duty to do X and, hence, would lack the liberty to forbear doing X. And it's this fact that serves to point us more precisely in the direction of

the problem we face in thinking about our duties to enforce moral rights. Suppose I have a moral right – a just right - not to be assaulted. Then you, along with many others, have a just duty not to assault me. Can you also have a *just* duty to enforce, against those others, my right not to be assaulted? That is, can you have what amounts to a *second-order* just duty to enforce their *first-order* just duties not to assault me?

As noted previously, most people would be willing to grant that you may well have a *general* moral duty to enforce others' non-assault duties. But they would resist the suggestion that this second-order enforcement duty of yours can itself be a requirement of justice. Why?

For your enforcement duty to be itself a just one, it would have to be a correlative one: that is, one correlatively entailing a right (claim) to your performance of that enforcing action. As such, it would imply the presence in someone of a power/liberty to enforce your performance of that enforcing action: it would imply your just liability to conscription.

And the problem here is that, whatever might be the detailed specification of *your* first-order just rights, it's essentially unclear that such conscription would not be a violation of them. Here are you, innocently walking along the street, and you come upon some others who are assaulting me. Assuming that you, like myself, have a just right against being assaulted, can it really be true that someone is justly at liberty to force you to interfere with my assailants or to forcibly impose some penalty upon you for not doing so? Wouldn't that someone be thereby violating your right, by assaulting you? Indeed, wouldn't that someone be thereby violating your rights even if what they forcibly conscripted – expropriated - for that purpose was only your justly acquired *belongings*, rather than your services? More generally, wouldn't we be correct to suspect that the set of principles generating these various rights, duties, liberties and powers contains inconsistencies, that it has vested us with *incompossible* rights?[10]

Not necessarily. For you might have a contract, with me or even with Milo Minderbinder, that vests you with that duty to interfere with my assailants. So if we assume that duties created by contracts are, or at least can be, just ones, then, by contractually undertaking that duty, you may have placed yourself under a just conscription liability.[11] And if you have, then your just right against being assaulted is *not* violated by your being forced to interfere with

my assailants. It's not violated because that anti-assault right of yours has been contractually modified – reduced – by you, so as to empower and permit your co-contractor to force you to perform your contractually incurred enforcement duty. Your co-contractor has been exempted from that anti-assault duty in those circumstances. Hence no incompossibility is thereby implied. That what contracts do is to modify the pre-contractual rights of one or more of the contracting parties is, indeed, little more than a tautology.

Our problem is plain. For what if your enforcement duty has *no* such contractual basis? Can there nonetheless be a just right to its performance and, hence, a just liability in you to be conscripted? Indeed, if there could, wouldn't this make any such contract normatively superfluous, so far as your being vested with that enforcible enforcement duty is concerned? After all, what contracts are presumed to do is, precisely, to *create* just duties: that is, they are presumed to render acts justly obligatory which, in the absence of those contracts, would not be justly obligatory.[12] And if they a*ren't* justly obligatory, if we remain at liberty to forbear them, wouldn't others (including governments) be under a duty not – lack the liberty and hence the power – to compel us to perform them, inasmuch as such compulsion would violate our unmodified rights? So isn't Milo Minderbinder therefore correct, insofar as what he is saying implies that enforcible duties to enforce the rights of others are best assigned to the private domain of contracts - including, of course, his favoured domain of commerce?[13] In short, how can (non-contractual) conscription be just?

Sen's Proposal

A possible solution to this kind of problem is the consequentialist one advanced by Amartya Sen. This application of consequentialism can be characterised as a proposal that we conceive of the justice principles that generate and shape a set of moral rights as implicitly including an injunction to *minimise justice-deficits* (*MJD*). A justice-deficit seems to be in prospect here inasmuch as, regardless of whether performance of enforcement duties is or is not enforced, some innocent person's rights – yours or mine – look like being diminished: no matter what is done, that deficit will not be zero. To minimise that deficit, then, is to minimise the non-zero disvalue that attaches to states of affairs by virtue of their having the property that some innocent persons' just rights are not intact in them.

In order to lay the meta-ethical foundation for this injunction, Sen argues persuasively for a disengagement of consequentialism from what he calls 'welfarism'. Welfarism is the view

(i) that the appropriate objects of moral appraisal are states of affairs, and

(ii) that what matters morally about states of affairs is to be discovered solely in their utility features – information about pleasures and pains and overall desire-satisfaction.

Quite clearly, these two propositions are in no way logically inseparable. And it's therefore perfectly open to us to accept the first – to accept consequentialism – while shrugging off the second as a prejudice fostered by standard utilitarianism and reinforced by its opponents. The morally relevant features of states of affairs may be *multi*-dimensional, including utility information but also many other considerations. Welfarism or, more generally, *uni*-dimensional appraisal is thus one variant of consequentialism, but not the only one.[14] And one morally relevant feature of states of affairs can thus be the presence, in them, of impaired rights.

The application of that aforesaid minimising injunction thence proceeds to an examination of cases exhibiting *multilateral interdependences*.[15] These are cases involving persons occupying the four distinct roles which are implicit in the previous example of my being assaulted. We can thus label these persons generically as *Perpetrator, Victim, Conscript and Conscriptor*. In these cases, Conscriptor is in a position to stop Perpetrator from committing a serious violation of Victim's rights, but the only way she can do this is one that involves her committing a less serious violation of Conscript's rights. Thus, for instance, Conscriptor knows that Perpetrator has planted a bomb in Victim's car, but can warn Victim in time to avert injury only by breaking open the locked door to the absent Conscript's room in order to use the telephone there.

Sen makes three claims about this sort of case:

(i) that a deontological (constraint-based) view of rights prohibits Conscriptor from breaking into Conscript's room;

(ii) that any moral theory that regards respect for rights as being of fundamental and not merely instrumental value – such as the deontological view purports to do and as welfarism avowedly does not do – must license Conscriptor's breaking into Conscript's room;

(iii) that a consequentialist account of rights can license Conscriptor's breaking into Conscript's room.

The collateral conclusion arrived at on the basis of this reasoning is that a moral theory that regards respect for rights as being of fundamental value is going to be so structured as to license trade-offs of some rights against others. The compossibility of Conscript's and Victim's rights is sustained by *MJD*, only in the sense that Conscript's first-order just rights are, post-perpetration, less than they were, pre-perpetration.

Nozick's Objection

Anticipating such consequentialist constructions of rights, Robert Nozick likens their salient features to those of standard utilitarianism.

> [A] theory may include in a primary way the nonviolation of rights, yet include it in the wrong place and the wrong manner. For suppose some condition about minimizing the total (weighted) amount of violations of rights is built into the desirable end state to be achieved. We then would have something like a "utilitarianism of rights"; violations of rights (to be *minimized*) merely would replace the total happiness as the relevant end state in the utilitarian structure… This still would require us to violate someone's rights when doing so minimizes the total (weighted) amount of the violation of rights in society… The side-constraint [i.e. Nozick's] view [of rights] forbids you to violate these moral constraints in the pursuit of your goals; whereas the view whose objective is to minimize the violation of these rights allows you to violate the rights (the constraints) in order to lessen their total violation in society.[16]

And the superiority of the side-constraint view of rights is held to lie in the fact that

> [side] constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent…. Side constraints express the inviolability of others, in the ways they specify. These modes of inviolability are expressed by the following injunction: "Don't use people in specified ways." An end-state view, on the other hand, would express the view

> that people are ends… by a different injunction: "Minimize the use in specified ways of persons as means." Following this precept itself may involve using someone as a means in one of the ways specified. Had Kant held this view, he would have given the second formula of the categorical imperative as, "So act as to minimize the use of humanity simply as means," rather than the one he actually used: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."[17]

For Nozick, then, any set of rights-generating principles that licenses and empowers Conscriptor lacks conformity with the Kantian precept. The fact that her treatment of Conscript is a *response* to Perpetrator's treatment of Victim and that the former treatment is less adverse than the latter, does not preclude it from being, like Perpetrator's, a contravention of the injunction "Don't use people in specified ways" - the specified way in question here being the violation of another's rights. On the side-constraint view of rights, the rights respectively imputed to Victim and Conscript by *MJD* are indeed incompossible. Hence Nozick would agree with Milo Minderbinder: enforcible duties to enforce the rights of others are best assigned to the private domain of contracts.[18]

A Reconciliation?

Can these two views of just rights be brought into closer alignment? I believe they can. And, somewhat ironically, the argument that this can be done is based on a critical scrutiny of the one proposition on which both Sen and Nozick are agreed: namely that, in a post-perpetration world, Conscript's pre-perpetration rights have necessarily been reduced and, hence, that his post-perpetration rights are only a subset of them. How does this argument work?

Two preliminary clarifications are needed. First, we need briefly to establish one significant aspect of the meaning of the term 'use', in relation to Nozick's invocation of the Kantian second formula's injunction against using other persons only as means. Nozick, as we've seen, takes that injunction to entail that one person may not use another without the latter's consent. However, he offers little defence of this inference, and Jerry has argued, quite persuasively, that it is illicit: that, indeed, the Kantian injunction neither entails, nor is

entailed by, Nozick's consent requirement.[19] But even if we put that issue to one side, there appears to be some fundamental ambivalence in the very idea of what using a person amounts to.[20]

I shall simply take it, as a feature of *usings* in general, that - however diverse these may be – no use occurs if an attempted use *fails*, just as no murder occurs if an attempted murder fails. What is it for an attempted use to fail? The idea of using something, X, presupposes the presence of a purpose on the part of the user. Specifically, it presupposes that there are some features of a state of affairs, Y, which can be brought about by a disposition of X,[21] and which the disposer of X intends to bring about. An attempted, but failed, use of X would thus imply the non-occurrence of those Y-features. Now, it seems clear that, among the several conditions disjunctively sufficient for the non-occurrence of those features, two are (i) that the causally required disposition of X is outrightly prevented, and (ii) that, even though that required disposition is not prevented, the bringing about of those features is. That is, a piece of conduct disposing of X fails to amount to a use of X, either if that conduct is rendered incapable of occurring or if, despite its occurrence, those intended Y-features of the post-disposition state of affairs do not eventuate. In that latter case, we say that the conduct disposing of X is *nullified*. Of course, it's reasonable to assume that Kant's second formula is to be understood as an injunction also against *attempted* usings of persons. But, when read in the light of Kant's aforementioned distinction between duties of justice and other moral duties – whereby only the latter pertain to our intentions in acting[22] – that second formula implies that failed attempts to use others cannot count as breaches of just duties, even if they may well count as breaches of other moral duties.

The second clarification begins from the trivial observation that our just rights entitle us to many diverse things. Exactly what these things are evidently varies from one theory of justice to another. But what is common to all of them is that they consist in what Bentham referred to as the *services of others*: that is, all the duties correlatively entailed by our rights consist in the forbearances or performances of other persons. Those obligatory forbearances and performances are important and each possesses a value. And although these values obviously vary enormously, it seems fair to say that any account of just rights – and certainly Sen's and Nozick's – presupposes their comparability. How else could Sen determine that Perpetrator's failure to forbear from his act against Victim is a *more serious* violation of rights than is

Conscriptor's act against Conscript? How else could Nozick advance a principle of rectification – that 'performers of injustice have [obligations] toward those whose position is *worse* than it would have been had the injustice not been done' – as one of the three constitutive principles of his theory of distributive justice?[23] Precisely which value-metric is presupposed by Sen's and Nozick's shared assumption of rights-comparability is evidently a matter of profound importance. But as it's not one that immediately concerns our present enquiry, I shall not pursue it here.

Consider, then, how our understanding of the enforcement issue before us would be affected by our treating each just right as an entitlement to a certain amount of that value. If, in a post-perpetration world, Victim's and Conscript's respective sets of rights were each to be of the same value magnitude as they had been pre-perpetration, would there be any grounds left for claiming that the rights of either of them were not intact? And if not, wouldn't that post-perpetration world be describable as at once satisfying *both* Sen's *and* Nozick's injunctions? That is, wouldn't it constitute a state of affairs in which the justice-deficit had been minimised,[24] and one in which persons' attempted usings of others had been nullified?

The answer to this latter question is 'not necessarily'. For what we are evidently considering here is the possibility of *compensation.* And, for those descriptions to be true, that compensation has to have been extracted from certain specific persons rather than just anyone. For instance, extracting compensation from fifth-parties – from persons other than any of the four we've been discussing - would amount to a violation of *their* rights, inasmuch as it would entail an uncompensated post-perpetration reduction of their pre-perpetration holdings of value: it would itself be another perpetration. The resulting justice-deficit, being non-zero, would thus fail to be minimised. And persons – the compensators – would certainly have been used by others – the extractors - in the specific way of violating their rights. *Whom* compensation is extracted from matters, so far as justice is concerned.

So who should (justly) be paid compensation, and who should (justly) be compelled to pay it? Well, if, as we've so far been assuming, the intervention by Conscriptor and Conscript has actually succeeded in preventing Perpetrator from violating Victim's rights, then, trivially, the latter's pre- and post-perpetration holdings of value are identical: he has suffered no justice-deficit nor has he been used in that specific forbidden way. If, conversely, the

intervention has not succeeded, then Victim is evidently owed enforcible compensation by Perpetrator, to restore the parity of his pre- and post-perpetration rights. That such enforcible payment will leave *Perpetrator's* post-perpetration rights below the level of their pre-perpetration counterparts does *not* signify a violation of his rights, since – like the act of contracting – his voluntarily perpetrating is tantamount to his modifying (reducing) his rights by the amount of that owed compensation. This enforcible reduction is one which justice requires him to bear and one which does not require nullification. It does not leave him with a justice-deficit.

Whether or not the intervention has succeeded in preventing Perpetrator's violation, Conscript's rights *have* been violated – and by Conscriptor. So she clearly owes him compensation. Her payment of that compensation nullifies that violation by ensuring the parity of Conscript's pre- and post-perpetration rights.

But here a problem arises. For Conscriptor's enforcible payment to Conscript would – as Perpetrator's payment to Victim does - leave her own post-perpetration holdings reduced below their pre-perpetration level. Is this reduction one which justice similarly requires her to bear, unnullified?

I think the answer is 'no'. It would be otherwise – it would be 'yes' – if that act of conscription had been unnecessary to prevent Perpetrator's violation. But, *ex hypothesi*, it was necessary. And that being so, there is a decisive reason to claim that her conscripting of Conscript was, indeed, an act required of Conscriptor by an enforcible duty. To see this, we need to remind ourselves about the source of Conscript's conscription liability. For, again *ex hypothesi,* it's not one grounded in a contract: that liability was not one created by either Conscript or Conscriptor. So it must be one *directly* enjoined by whatever justice principles are generating the set of just rights in question - the set which includes Victim's right against Perpetrator. That is, these principles themselves are such as to imply that Conscript – an innocent third party, in respect of Perpetrator and Victim – is subject to a conscription liability. In which case, and since Conscriptor herself occupies the same innocent third party position in respect of Perpetrator and Victim, she is presumably subject to the same injunction. Of course, the Hohfeldian logic of this line of thought immediately implies the existence of a *second-order Conscriptor* – one who is in turn empowered to impose

Conscriptor's conscription duty upon her. But that is no obstacle to finding an enforcible duty in Conscriptor to do what she did – to conscript Conscript - and it probably describes the structure of the jural relations obtaining in many real-world conscription practices.

If, then, the non-parity between Conscriptor's pre- and post-perpetration holdings *does* warrant her compensation, by whom and how much is the compensation owed to her? The rights-loss she would otherwise stand to incur, by virtue of her intervention in behalf of Victim's rights, evidently has two component elements. There is, first, whatever of her own pre-perpetration holdings have had to be directly sacrificed in that intervening effort. And second, there is the amount she has had to pay in compensation to Conscript to nullify her violation of his rights. Who owes these amounts to her? Perhaps, and in the interests of precision, we should say that, since her intervention was the fulfillment of an enforcible duty, her compensation for the losses she has thereby incurred is owed by whoever enforced that duty on her, i.e. by second-order Conscriptor. But if, by parity of reasoning, we regard second-order Conscriptor's action as similarly required by an enforcible duty, and if we thus proceed to trace this extended compensation-chain to its terminus, it's reasonably clear that – however long that chain may be - its terminal point must be Perpetrator. For if, and only if, it *is* Perpetrator will it be true that any post-perpetration reduction of pre-perpetration holdings was incurred voluntarily. Only if it is Perpetrator will it be true that the post-perpetration settlement lacks any justice-deficit, and that persons will have been prevented from using others by unnullified violations of their rights. The appropriate analogy for this compensation-chain might, I suppose, be a row of stood-up dominoes which are so arranged that, when the first one falls, each other one is pushed, and falls, in succession. Because each domino is the immediate cause of its successor's falling, it *both* owes its successor compensation *and* is, in turn, owed at least that amount of compensation by its predecessor. So the ultimate ower – the only domino who is left out-of-pocket – is the first domino to have pushed (or whoever pushed it).

Two points of wider relevance emerge from this argument for the possibility of just conscription. The first simply notes that the property of rights that sustains this construction, of enforcible duties to enforce rights, is their *fungibility*. It's this property that is implicitly attributed to them by, for instance, the provisions of civil or private law, whereby perpetrators of rights-violations are held liable for payment of damages to their victims (and

for payment of ancillary legal costs). And it's this property that forms the basis for rejecting the Sen-Nozick shared assumption that Conscript's post-perpetration rights are bound to be only a subset of his pre-perpetration rights.

More generally, what this analysis of just conscription suggests is that the difference, between consequentialist views of rights and the view of them as deontological side-constraints, may be less than is often assumed. A pluralist consequentialism of the sort advanced by Sen, in affirming (as welfarism does not) a multiplicity of primary values, need not be committed to mandating trade-offs between those several values, even if (like all consequentialisms) it does mandate trade-offs between competing instances of the *same* value.[25] For it can immunise any of those values against the former kind of trade-off by according it a lexically prior status in relation to the others. It can consistently hold, as Nozick does,[26] that any duty of justice lexically outranks or trumps - or *side-constrains* - the pursuit of other values and the performance of whatever duties that pursuit entails. Nor is this side-constraining property lost in the case of just conscription. For, unlike trade-offs between competing instances of the same value - where that value is *not* rights - the trade-off between the victim's right and the conscript's right does not entail that one overrides the other. Rather, and due to the aforesaid fungibility, it entails only that the conscript's rights can be upheld by other means.[27]

Self-Ownership and Conscription

So, can self-ownership bear the weight of such an uncontracted conscription liability? Even if it can be borne by other justice theories of moral rights, isn't it bound to be one of those uncontracted services to others that are anathematised by any theory assigning foundational status to our moral ownership of ourselves? Jerry's view, as we've seen, suggests that the answer to the latter question is 'yes'. For if the requirement of consent is, indeed, 'an immediate entailment of self-ownership',[28] it would necessarily follow that the impressment of Conscript's services, into the project of upholding of Victim's rights, is inconsistent with Conscript's self-ownership.

However, this entailment claim is open to doubt. Of fairly immediate relevance here is Jerry's response to the following objection mounted by Ronald Dworkin against the *determinacy* of self-ownership:

> To own something is to enjoy some or other set of rights with respect to that thing. But one might envisage a number of importantly different sets of rights over themselves and their powers in virtue of which we could say of people that they are self-owners. The principle of self-ownership therefore lacks determinate content.[29]

To this, Jerry replies at some length:

> The premises of this sceptical argument do not appear to me to sustain its conclusion. They do not show that the principle of self-ownership legislates indeterminately. For one thing, they do not refute the hypothesis, which I hereby propose, that the principle achieves determinacy through its requirement that *everyone* enjoys *full* self-ownership. It might indeed make no determinate sense to say, in the abstract, that Jones owns himself. But when one stipulates that *each* person has *full* private property in himself, then the constraints of universality and fullness combine to disqualify some sets of rights as possible denotations of 'self-ownership' …… [Even if some indeterminacy still remains] the requirements of universality and maximality will generate core rights that are indisputable ….. The polemically crucial right of self-ownership is the right not to (be forced to) supply product or service to anyone.[30]

And an uncontracted conscription liability, of the sort we've been considering, would appear to authorise a straightforward violation of that polemically crucial right.

The reason why that appearance is misleading emerges most clearly, I believe, from a consideration of Nozick's own brief discussion of 'innocent threats':

> [A] principle that prohibits physical aggression [i.e. violations of self-ownership] ….. does not prohibit the use of force in defense against another party who is a threat, even though he is innocent and deserves no retribution. An *innocent threat* is someone who innocently is a causal agent in a process such that he would be an aggressor had he chosen to become such an agent. If someone picks up a third party and throws him at you down at the bottom of a

> deep well, the third party is innocent and a threat; had he chosen to launch himself at you in that trajectory he would be an aggressor.[31]

Now, setting aside the obvious disanalogies between this case and our previous one, it's not difficult to see that Conscript occupies a morally similar position to that of Innocent Threat. Crucially, his being forced by Conscriptor to render service in upholding Victim's rights is unchosen by him. *But the same is true of Conscriptor*. For she does what she does by virtue of a conscripting duty enforcibly imposable upon her either by second-order Conscriptor or, perhaps, by Victim himself. Indeed, Victim and either Conscriptor or second-order Conscriptor may be one and the same person. But that fact is insufficient grounds to identify his position as morally similar to Perpetrator's or Aggressor's. For, as Nozick suggests, that conscripting use of force is a permissible one, inasmuch as it is directed at preventing[32] the rights-violation initiated by Perpetrator (Aggressor).

The more general point here is that, although Jerry is undoubtedly correct in insisting that the requirements of universal *full* self-ownership are determinate over a wide range of issues concerning the forced supply of one's services to others, it is mistaken to deny that they are indeterminate in cases where those services are ones of upholding those others' rights. For full ownership entails (i) a right against others' incursions on what one owns, (ii) a liberty and power to do what is necessary to prevent such incursions, and, in the event of such incursions occurring, (iii) a right to full compensation for them. To deny that Victim is vested with that liberty and power is to deny his full self-ownership. In cases like the two discussed above, it is, of course, true that his exercise of that liberty and power amounts to a violation of Conscript's/Innocent Threat's self-ownership right against others' incursions. My claim is simply that full compensation for that violation nullifies it.[33] If that claim is true, then self-ownership can, indeed, bear the weight of an uncontracted just conscription liability. Hence, not all impressed servicings of others are ones prohibited by self-ownership.[34]

NOTES

[1] G.A. Cohen, *Self-Ownership, Freedom and Equality*, (Cambridge: Cambridge University Press, 1995), p. 68.

[2] Joseph Heller, *Catch-22* [1961], (London: Vintage, 1994), p. 298.

[3] I take a just war to be one waged in behalf of upholding the moral rights of others.

[4] Various objections to Hohfeld's correlativity thesis are answered in Matthew Kramer, 'Rights Without Trimmings', and Nigel Simmonds, 'Rights at the Cutting Edge', both in Matthew Kramer, Nigel Simmonds & Hillel Steiner, *A Debate Over Rights: Philosophical Enquiries*, (Oxford: Oxford University Press, 1998), pp. 24-49, and 148-152, 158-165, respectively.

[5] Whether the authoriser must be the claim-holder, or can be someone else, is a longstanding issue between the rival Will and Interest theories of rights. The present essay's argument is neutral as between those two theories. For a discussion of them, see Kramer, Simmonds & Steiner, *A Debate Over Rights*, passim.

[6] Inasmuch as what is held to distinguish legal duties from other social duties is their enforcement or, more precisely, the *dominance* of their permissible enforcement over that of other social duties, in circumstances where they are in mutual conflict.

[7] Thus Kant distinguishes duties of justice from other moral duties on the basis that the latter pertain only to the *content* of the will – to what is willed or intended in acting - whereas the former pertain solely to the *relation between* persons' wills insofar as their actions (regardless of what they will) affect the distribution of external freedom between them; cf. Immanuel Kant, *The Metaphysics of Morals*, (transl.) Mary Gregor, (Cambridge: Cambridge University Press, 1991), pp. 45 ff.

[8] That is, duties of justice form a subset of all moral duties.

[9] The *presence* of such an enforcible duty (not to enforce) would imply a Hohfeldian disability in its bearer, i.e. his or her lack of that enforcement power. The reasons why powers exist only

in conjunction with the liberties to exercise them are presented in my *An Essay on Rights*, (Oxford: Blackwell, 1994), pp. 60, 68-69, and 'Working Rights', in Kramer, Simmonds & Steiner, *A Debate Over Rights*, pp. 242-243.

[10] On incompossible rights, see Steiner, *An Essay on Rights*, pp. 2-3, 74-101, and 'Working Rights', pp. 262-274.

[11] *May* have placed, insofar as the justness of contractual duties and of their bearers' liability to their enforcement, is thought to require certain cognitive and volitional conditions to be satisfied for a contract to be a just one.

[12] Which is not to deny that, in the absence of those contracts, those acts might nonetheless be obligatory as *general* moral duties. It is to deny only that their being obligatory is a requirement of *justice*.

[13] Minderbinder himself, of course, is not much concerned with whether these contractual duties, or the rights their performance may be enforcing, are just ones.

[14] Cf. Amartya Sen, *On Ethics and Economics*, (Oxford: Blackwell, 1987), pp. 40-47, 74.

[15] Cf. Amartya Sen, 'Rights and Agency', *Philosophy & Public Affairs*, 11 (1982), 3-39, pp. 4-19; 'Rights as Goals', Austin Lecture 1984, in Stephen Guest & Alan Milne (eds.), *Equality and Discrimination: Essays in Freedom and Justice*, (Stuttgart: Franz Steiner, 1985), p. 15.

[16] Robert Nozick, *Anarchy, State and Utopia*, (Oxford: Blackwell, 1974), pp. 28-29.

[17] Ibid, pp. 30-32.

[18] Cf. Nozick, *Anarchy, State and Utopia*, ch. 2, on 'protective associations'. This does not imply that Minderbinder is a Kantian!

[19] Cf. Cohen, *Self-Ownership, Freedom and Equality*, pp. 238-242.

[20] I also leave aside – due to my uncertainty about its relevance here - the consideration that the ends in behalf of which Conscriptor conscripts Conscript are *her* ends in only a very attenuated sense.

[21] Or, at least which the would-be disposer *believes* can be brought about by a disposition of X.

[22] See note 7, above.

[23] Nozick, *Anarchy, State and Utopia*, p. 152.

[24] Inasmuch as the extent of innocent persons' non-intact pre-perpetration rights in it would be zero.

[25] A trade-off between two different primary values occurs when duties respectively instancing each of them are disjunctively but not conjunctively fulfillable (i.e. conflict), and when a sufficiently large instance of the lower ranked/weighted value overrides an insufficiently large instance of the higher ranked/weighted one.

[26] And Rawls, too; cf. John Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971), pp. 3 ff.

[27] It is, perhaps, worth noting that this construction applies equally to cases in which – unlike Sen's – the value of Conscript's rights *exceeds* that of Victim's. And it is thereby even further removed from what Nozick refers to as a 'utilitarianism of rights'.

[28] Cohen, *Self-Ownership, Freedom and Equality*, p. 243.

[29] Ibid, p. 213.

[30] Ibid, pp. 213-215.

[31] Nozick, *Anarchy, State and Utopia*, p. 34.

[32] Or, for that matter, redressing.

[33] Thus, for example, full compensation of persons conscripted for military service nullifies what would otherwise be a violation of their self-ownership.

[34] Several lines of argument advanced in this paper have benefited very considerably from discussion with Antony Duff, Diane Elson, Carl Knight, William Lucy, Mike Otsuka, Jonathan

Quong, Mark Sachs, Christine Sypnowich, Peter Vallentyne, Leif Wenar and Steve de Wijze.