

Self-Ownership and Property in the Person: Democratization and a Tale of Two Concepts*

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Democracy is at war with the renting of human
beings, not with private property.

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DURING the 1990s a number of political philosophers turned their attention to the concept of self-ownership. Much of the discussion is critical of libertarianism,¹ a political theory that goes hand-in-hand with neo-liberal economic doctrines and global policies of structural adjustment and privatization. Attracta Ingram's *A Political Theory of Rights* and G. A. Cohen's *Self-Ownership, Freedom, and Equality* are devoted to such criticism (and I shall focus much of my argument on their books²). The consensus among most participants in the debate is that self-ownership is merely a way of talking about autonomy, but Ingram and Cohen go against the tide by arguing that the idea is inimical to autonomy and that an alternative is needed.

In *The Sexual Contract* I am also critical of libertarianism, and my conclusion is similar to Ingram's and Cohen's. I argue that the idea of property in the person must be relinquished if a more free and democratic social and political order is to be created. However, despite some common concerns, there are very few points at which my work and that of Cohen and Ingram, or of most contributors to the current debates about self-ownership, come together.

In large part this is because property in the person, not self-ownership, is central to my analysis. It might seem that the choice of concept—self-ownership or property in the person—is inconsequential. Self-ownership has become accepted as standard terminology, so there is no reason to make an issue of usage when, on the face of it, the two concepts are so similar, perhaps even synonymous. I shall argue not only that, if libertarianism is the target, a good deal hangs on the choice of concept, but that “property in the person” is central to an understanding of some important contemporary institutions and practices.

How “self-ownership” is interpreted is related to the interpretation of rights. If rights are seen in proprietary (libertarian) terms—the standard view of rights,

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¹Steiner (1994) is a notable exception.

²Page references to Ingram (1994) and Cohen (1995) will be in parentheses in the text.

Ingram argues—then it follows that rights can be alienated, in whole or in part. A major mark of (private) property, including property in the person, is that it is alienable. If property is alienable it can be subject to contract, and in *The Sexual Contract* I used the label “contractarianism” in order to highlight the central place of the practice of contract in libertarian theory. To be sure, attention is directed to these features of property if self-ownership is emphasized, but, curiously, in the debates about the concept little attention is given to ownership and what follows from owning. This means that the implications of alienability, inalienability, and contract are not pursued. Criticism of libertarianism is truncated, and aspects of the doctrine seem puzzling. Cohen, for instance, worries over Robert Nozick’s willingness to endorse voluntary slavery (*Self-Ownership, Freedom, and Equality* is an extended criticism of Nozick).

The puzzlement is exacerbated by the focus on exploitation and neglect of subordination in discussions of self-ownership, an odd oversight in arguments that are about autonomy and rights. Thus the exploitation of workers is analyzed but not the alienation of autonomy or right of self-government—the subordination—involved in the employment contract. Of course, wage labor is usually seen as free labor because an individual voluntarily enters into a contract of employment. This justification of employment, as I argued in *The Sexual Contract*, depends on the idea of property in the person—a political fiction, but a fiction with a powerful political force.

Criticism of libertarianism by most participants in the debate about self-ownership is also limited by their approach to political philosophy. They tend to take in each other’s intellectual washing and rely on a limited range of reference points and intellectual authorities. Nozick’s influence in setting the agenda is indicated by Ingram’s summary in *A Political Theory of Rights* (p. 3) of the major issues in the discussion of self-ownership: “exploitation, redistribution, and talent-pooling.” John Rawls is also influential, and one indication is that justice is assumed to be *the* key concept. Except for Ingram, few of the contributors have much to say about democracy.

Moreover, “methodological Rawlsianism” (Norman 1998) has been shaping much mainstream political theory for over two decades. Methodological Rawlsianism has become sufficiently dominant to be seen not merely as the standard way of proceeding, but as “inevitable,” at least “insofar as it amounts to little more than a codification of common sense.”³ Ingram’s argument lies squarely within methodological Rawlsianism, which hampers her critical confrontation with libertarianism. Cohen’s approach is different, but also leads to a narrow view of political and moral philosophy which he sees, as he states on the first page of *Self-Ownership, Freedom, and Equality*, in the “standardly academic” way as “ahistorical disciplines” using “abstract philosophical

³Norman 1998, p. 279.

reflection.” But historical understanding is necessary for an appreciation of the political importance of the concept of property in the person.

Both Cohen’s and Ingram’s approaches reflect another prominent contemporary trend, the depoliticization of political theory. In recent years political philosophers have turned away from politics to moral argument and moral reasoning. Norman states that not only methodological Rawlsians but “just about everyone else” sees political philosophy as “a branch of moral philosophy.”⁴ Charles Mills writes that political theory “is nowadays conceived of as basically an application of ethics to the social and political realm.”⁵ Ethics and politics should not be divorced from each other, but that does not imply support for the imperialism of moral philosophy. The problem of democratization—of reducing subordination and creating a more democratic society—is, first and foremost, a political problem. But the discussion of self-ownership has, as Elizabeth Anderson recently remarked about egalitarian arguments that involve many of the same scholars, “lost sight of . . . distinctively political aims.”⁶

I. WHY “SELF-OWNERSHIP”?

I have found no discussion of why “self-ownership” should be preferred to “property in the person.” One line of argument dismisses self-ownership on the grounds that “it is founded on an attempt to derive normative implications from the possessive pronoun,” but this is far too quick a dismissal.⁷ It is usually assumed that self-ownership is a central part of morality in liberal democratic societies. Thus Ingram states that self-ownership is “well entrenched in our moral thinking” (p.39), a statement echoed by Gorr, who believes that self-ownership is “deeply rooted in our shared moral consciousness,” and is “among the foremost” of the values of liberal democracy.⁸ It is also claimed that in “liberalism” the “most plausible set of rights . . . is rights of self-ownership.”⁹ Use of the language of self-ownership now seems so obviously appropriate that, in *Real Freedom for All*, Van Parijs merely stipulates that self-ownership “in some sense” is a basis for his argument. This turns out to be a sense in which self-ownership is “closely associated” with basic human rights.¹⁰

⁴Ibid.

⁵Mills 1997, p. 91.

⁶Anderson 1999, p. 288.

⁷Barry (1996a, p. 28) makes this argument in a review of Cohen’s book. For the subsequent exchange see Cohen (1996) and Barry (1996b). For an account of the implications of personal pronouns for self-ownership, and an argument that constitutive ownership is not a right but an ontological relation that places objects within the boundaries of the self, see Dan-Cohen (forthcoming).

⁸Gorr 1995, pp. 291, 285.

⁹Lloyd Thomas 1998, p. 8.

¹⁰Van Parijs 1995, pp. 3, 235 n. 8.

If rights are so closely associated with ownership, then neglect of the concept of property in the person is all the more surprising. The category of the “person” has been fundamental to the very lengthy and bitterly contested process of democratization, and the universalization of rights and political standing, in Anglo-American countries. The concept of the “self,” while central to moral argument, has not had the same legal and political significance as “person.” Slaves in the Southern states of America were deemed mere property, non-persons, and so denied all civil or political status or rights. Wives under the common law doctrine of coverture were not persons, and had no independent legal standing. They could not own property or their earnings, enter contracts, have custody of their children, practice professions, vote, or enjoy bodily integrity. Wives were under the legal jurisdiction of their husbands who represented them in public as the “person” of the conjugal couple. Slavery was ended only in the aftermath of a civil war, and women had to fight a very long political battle to be recognized as “persons”; for example, the last vestiges of coverture were eliminated in England only in 1992.¹¹

On the other hand, the set of relationships that constituted another body central to economic development was deemed a person. For several centuries corporations have been regarded as legal persons in English law, and from 1886 onward in the United States (long before women won the vote), corporations became “persons” within the meaning of the term in the Fourteenth Amendment.¹²

Such political issues are mostly avoided in recent discussions of self-ownership. The concept is typically interpreted in a general, weak sense as a way of talking about (a certain view of) individual autonomy. Gorr, for example, offers a “moderate self-ownership principle,” equivalent to the “fundamental” right of a person “to have a significantly stronger say than anyone else in how she chooses to live her life and in what may be done to her.”¹³ Kymlicka writes that self-ownership “protects our ability to pursue our own goals,” and people’s “ability to act on their conception of themselves.”¹⁴ Ingram (p. 39) states that self-ownership is very attractive if interpreted as the view that each individual should be free from interference by others, with a right to the fruits of the exercise of her capacities. Cohen, too, argues that the attractiveness of self-ownership lies in its perceived connection to autonomy, to “the range of choice you have in leading your life” (p. 237). He presents the “thesis” of self-ownership (which he

¹¹That a wife does not forfeit her right of bodily integrity upon marriage was finally acknowledged in law when rape within marriage became an offence. In practice, women’s status as “persons” is still not fully secured. Yet political philosophers now generally write “she” and “her”, even when this is inappropriate or obscures continuing problems about women’s standing as citizens.

¹²See Bowman 1996; Corcoran 1997; Spender 1999.

¹³Gorr 1995, p. 271.

¹⁴Kymlicka 1990, p. 112.

distinguishes from the “concept” of self-ownership)¹⁵ as providing an answer to the question of who should control “persons and their powers” (capacities). The answer is that those persons themselves should do so (p. 210).

Interpreted in this fashion self-ownership is obviously attractive. Who does not want a significant say in their own life, to be able to pursue their own goals, to have freedom from interference, and control over their actions? Interpreted blandly enough, “self-ownership” appears uncontroversial and as synonymous with autonomy. The problem is that the concept then has little or no theoretical purchase; it becomes “so indeterminate that anything or nothing follows from it.”¹⁶ Significantly, neither Cohen (to whom I shall turn shortly) nor Ingram works with such an interpretation of self-ownership. Ingram sees self-ownership in libertarian terms, so that an individual is “the morally rightful owner of her person and powers” (p. 17). She owns “all of herself and no part of anyone else” (p. 5), and is “an absolute sovereign with respect to the dominion of her own person” (p. 34). It seems that Ingram could easily use the language of property in the person.

The oddity of the consensus about the terminology of self-ownership can be seen if Locke, often mentioned in connection with self-ownership, is considered. Locke provides the *locus classicus* of the concept of property in the person. In a very well-known, often quoted, brief passage, Locke states that “every Man has a *Property* in his own *Person*. This no Body has any Right to but himself.” The most natural language, following Locke, is that of “property in the person” rather than a translation into “self-ownership.” Now it might be objected that there is no reason for Locke’s words to be reproduced literally. Little or nothing hinges on the terminology. My argument is precisely that there is something important at stake in the choice of terminology when interpretations and discussions of “self-ownership” obscure the political implications of “ownership” (II, § 27).

The passage from Locke continues as follows: “the *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his.” There has been a great deal of argument over the years about these words, particularly in two debates. First, there is a longstanding controversy about the acquisition of private property through the mixing of labor with the earth or other materials. Recent discussions of self-ownership, particularly Cohen’s arguments about world ownership, have contributed to this debate. Second, a tradition of moral argument has maintained that an injustice is committed if workers are not rewarded for the whole of the fruits of their labor. The arguments about exploitation and self-ownership, and over self-ownership and libertarianism, fall within this second debate.

These familiar arguments typically overlook that Locke is making a *political* claim and so miss two crucial points. First, Locke establishes political standing and rights for the person who owns the property. Only the owner has the right to

¹⁵Cohen (1995, pp. 209–10) argues that there is often a failure to distinguish the concept, which might be criticized for incoherence or confusion, from the thesis, which might be met with approval, or might be argued to be false.

¹⁶Barry 1996, p. 28.

dispose of his property, for instance, to alienate all or part of it. Libertarianism relies very heavily on this political point, but this is not sufficiently acknowledged in discussions of self-ownership. Libertarians argue that if the owner voluntarily contracts for part of the property in his person, say, his labor power, to be used on behalf of another over a certain period for agreed recompense, there is no question of injustice. The owner's labor, the work of his hands, is his to do with as he will, either to use for himself, or to put at the disposal of another.

Second, an owner temporarily relinquishes ownership when he alienates part of the property in his person. Thus he has no right to a claim on anything that may be produced through its use by another. This is illustrated by another of Locke's famous passages: "the Grass my Horse has bit; the Turfs my Servant has cut become my *Property* . . . The *labour* that was mine . . . hath *fixed* my *Property* in them" (1988/1690, II, §28). The servant has labored but the labor and the turf is the master's, not the servant's. David Ellerman (1992, pp. 51–4) offers a crucial insight here. Locke is commonly read as referring to labor that has been *performed* (cutting the turf), and then it becomes a contentious matter why the labor is treated as if the master and not the servant was at work, and why the master owns the product (the turf). But, as Ellerman argues, Locke is talking about labor that is *owned*, not performed. The master has contracted for use of a piece of property in the person (the servant's labor power which has been temporarily alienated), and, therefore, the master (temporarily) owns the property, can put it to use as he desires, and owns the product.¹⁷

Cohen's interpretation of "self-ownership" illustrates why these implications of ownership are overlooked in current debates about the concept. At first sight, Cohen's interpretation follows the logic of libertarianism, since the ownership enjoyed is exclusive, and gives absolute control to the owner. He uses the figure of the slave-owner to show what is involved.

Each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking, to dispose over his slave (p. 68).

However, in a footnote, Cohen states that if "ownership requires separability of what owns from what is owned, then self-ownership is impossible" (p. 69 n. 4). His interpretation of the "self" invoked by the thesis of self-ownership is that the term is reflexive; the "self" signifies that "what owns and what is owned are one and the same, namely, the whole person" (p. 69). Thus to say that "A enjoys self-ownership is just to say that A owns A." There is no "deeply inner thing" that is owned (p. 211). If "self-ownership" refers to a whole person in the sense that there is no

¹⁷ A "servant," Locke (1988/1690, II §85) tells us, sells "for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive: the Master [has] but a Temporary Power over him, and no greater, than what is contained in the *Contract* between 'em." Ellerman notes that C. B. Macpherson is one of the few commentators to appreciate that Locke was arguing about ownership, not performance. I comment on Macpherson below.

distinction between the owner and his property, so that what is owned cannot be separated from the owner, it follows that the property cannot be alienated.

My understanding of property in the person entails nothing about the existence of a deeply inner thing. Rather, the “person” is “owner-occupied”—to use Steiner’s evocative phrase¹⁸—and is seen as a bundle of property, one part of which makes judgments about the disposition of the rest, but the part that makes the judgments is no deeper and has a status no different from the rest. My analysis of property in the person in *The Sexual Contract* traced some of the implications of the logic of contractarianism (libertarianism). As an owner of property in the person, an individual stands in exactly the same relation to that property—to capacities, powers, abilities, talents, labor power, bodily parts and so on—as to material property. The owner makes the same kinds of decisions about all forms of property. Only the owner can make these judgments and there can be no restrictions on his right of decision making. The individual’s right of disposition over himself is unlimited and all property is alienable. If it is advantageous to sell, exchange, or rent out any part of the property owned in the person, then the owner would be rational to do so. Property in the person can be contracted out for use by another without any detriment to the owner; indeed, the owner necessarily benefits from such a transaction.

Why might Cohen claim that my interpretation of property in the person is “impossible”? There are two senses in which this could be the case.

First, Cohen may mean that property in the person is “impossible” in the sense of being an incoherent or nonsensical concept. My interpretation might appear strange at first sight, but there is nothing incoherent or nonsensical about it. If that were the case, then major institutions, such as employment, could not have developed, and nor could the idea be frequently (if sometimes implicitly) appealed to in popular controversies about, for example, sale of bodily organs, or what is called surrogate motherhood.¹⁹

Second, Cohen may be referring to anthropological accuracy. If so, then, in one sense, I fully agree with him. The owner cannot be separated from some crucial pieces of property in the person. For this reason I have argued that property in the person is a *political fiction*.

“Property in the person” includes two major categories of property, one alienable and one inalienable from the owner. Technological advances mean that many more bits of property can now be separated from their owners than used to be the case. Sperm, for example, has always been separable, but now kidneys and other organs are alienable (and an underground market has developed for them), and, in the case of some indigenous peoples and individuals, genetic material has been separated and patented by others. The major questions about these practices concern the social desirability and consequences of seeing bodily parts and

¹⁸Steiner 1994, p. 232.

¹⁹On the latter see Pateman (1988, pp. 209–18).

material as alienable commodities, instituting markets for their sale, and allowing them to be patented. However, this is not the property in which I am interested either here or in *The Sexual Contract*.

The second category of property in the person is “impossible” because an individual’s powers, capacities, abilities, skills, and talents are inseparable from their “owner.” But the fiction of separability is maintained and property in the person is treated *as if* it were alienable, and so can become the subject of contract and marketed as “services.” As I emphasized in *The Sexual Contract*, contracts involving this category—the political fiction—of property in the person create *relationships* (such as that between worker and employer, or wife and husband, for example). The significant aspect of contracts that constitute such relationships is not an exchange, but the alienation of a particular piece of property in the person; namely, the right of self-government.²⁰ When “rights” are seen in proprietary terms they can be alienated, but in a democracy the right of self-government is only partially alienable.

II. SELF-OWNERSHIP, CONTRACT, AND ALIENABLE RIGHTS

Cohen became preoccupied with Nozick’s argument when he saw that libertarians and Marxists were both committed to the idea of self-ownership. Marxists rely on the idea of self-ownership to attack the exploitation of workers, and libertarians rely on it to reject the redistributive taxation required for the welfare state.

Cohen argues that the “crucial right” entailed by the idea of self-ownership is the right not to be forced to provide a service, or product, to anyone else (p. 215). Marxists claim that workers are exploited because capitalists steal from workers. Capitalists pay the market price for use of the workers’ labor power, the worker then produces commodities of much greater value than the wages received, and the product, and hence the value, is appropriated (stolen) by the capitalist. The parallel libertarian claim is that individuals are compelled without their agreement to hand over to the state part of what they have earned by use of their labor power or capacities. The stolen product is then redistributed to others who have no valid claim to receive it. In both cases, the crucial right of individuals is violated.

The problem with Cohen’s argument is that the right not to be forced to provide a service or product is derivative of the right to alienate property in the person at will. Only if a piece of property in the person has been contracted out voluntarily for use by another can a valid claim be made to that “service” or the product that results. For libertarians, legitimate relationships are always and only generated through contract.

²⁰This is the case in a traditional marriage. On the supposed exchange in these contracts, see Pateman 1988, pp. 57–60.

Cohen devotes a good deal of attention to Nozick's claim that to have a non-contractual obligation to serve another is tantamount to slavery. As he shows, such a claim does not stand up to close scrutiny. Yet Cohen remains puzzled why Nozick endorses a contract to become a slave, while rejecting non-contractual obligations that fall far short of this complete abrogation of freedom. Cohen then puts the puzzle to one side by making a very odd move. He denies that self-ownership is basic to libertarianism. According to Cohen, "the libertarian bottom line in political philosophy is not, indeed, that we are self-owners but that the state has no right to impose or enforce non-contractual obligations on us" (p. 233).²¹

Cohen's interpretation of "self-ownership" renders what is owned inalienable, and so he attributes his own bottom line to libertarians and finds Nozick's position perplexing. The importance of contract for libertarians, and their worries about non-contractual obligations, now seems mysterious and arbitrary. Moreover, it means that there is no good reason for my own choice in *The Sexual Contract* of "contractarianism" as a label for the same doctrine. Cohen's attention is thus diverted from the meaning of "slavery" in contractarian argument. Nor does Ingram consider this. She points out that full self-ownership is necessary for libertarians "to rebut slavery, serfdom, and exploitation," yet full self-ownership "embraces the most important claim of slavery: that people can be the objects of private property rules" (p. 38). Libertarians oppose only involuntary slavery, which illustrates that "the case for self-ownership is grossly oversold." But instead of exploring what is endorsed by the logic of libertarianism, she argues that an alternative to the libertarian view of self-ownership must "start from an established settlement on issues such as slavery and forced labour" (p. 88). Since slavery is not a "clear and present danger" in constitutional democracies it can be left aside (p. 39).²²

The logic of contractarianism rules out real, coerced slavery. Rather, what is at issue is voluntary, contractual "slavery" in the form of an employment contract that lasts for a lifetime.²³ If wage labor is to stand at the opposite pole from (real) slavery, and be set apart from other unfree labor, the following argument is required, an argument that rests on the (contractarian) idea of property in the person.

²¹For a very different argument about why "obligations" must be voluntary or self-assumed see Pateman (1985/1979).

²²She also argues that a further weakness of libertarianism is that involuntary slavery is treated as an offense against the right to be free, and so does not recognize the real evil of slavery, that it denies equal human worth. Of course, the moral issue of human worth is important (not least to women, whose persons and lives are so often seen as of less worth than those of men), but this is not the same as the issue of subordination and freedom.

²³In *The Sexual Contract* I drew on a paper by J. Philmore (1982) that pursued the logic of the libertarian defense of slavery. Ellerman (1995, p. 9) has now disclosed that "Philmore" was his *nom de plume*. Ellerman, an economist, understands that logic so well because he has a very clear grasp of both the assumptions required to justify the institution of employment and the problem that employment poses for self-government and democracy.

A wage laborer is an owner who voluntarily enters into a contract to alienate part of the property in his person (his services or labor power) for use by an employer for a specified period, during specified hours, in a specified place (the “workplace”). The owner of the property has the right to decide whether or not the property will be available, and whether or not the terms of the contract are acceptable. A worker’s decision to enter into a contract to rent out labor power for use by another in exchange for remuneration can thus be seen as an exercise of autonomy, as an example of freedom in action. But why should the duration of the contract be limited? Contractarians argue that any limitation on the right of an owner to alienate the property in his person is unwarranted, an illegitimate curtailment of autonomy. The prohibition of life-time employment contracts is unjustified. Thus contractarians justify “slavery,” or what I called *civil slavery* in *The Sexual Contract*.

Cohen’s interpretation of self-ownership and his “bottom line” fail to capture the logic of libertarianism, and thus have no intrinsic connection to his critical target—nor to the institution of employment, wage labor or the traffic in labor power (to use Stanley’s apt phrase²⁴). But Cohen’s is not the only analysis of self-ownership to uncouple the concept from wage labor. James Tully arrives at a similar position in his reassessment of C. B. Macpherson’s *The Political Theory of Possessive Individualism*.²⁵

Macpherson’s famous argument about possessive individualism, Tully writes, “is one of the most challenging and successful hypotheses to be advanced in the history of European political thought over the last thirty years.”²⁶ Tully translates Macpherson’s own terminology of property in the person into self-ownership. (My understanding of property in the person was influenced by Macpherson’s work.) For Macpherson, “possessive individualism” means that the individual is proprietor of “his own person and capacities” and, for that reason, is free.²⁷ A vital assumption of Macpherson’s argument is that the individual “cannot alienate the whole of his property in his own person, [but] he may alienate his capacity to labour.”²⁸

Macpherson argued that possessive individualism “was the predominant assumption of English political thinking from Locke until, say, James Mill. This was the period . . . when the whole society was recast in market relations.”²⁹ In light of more recent scholarship, Tully takes issue with Macpherson’s thesis on two main grounds. First, he questions Macpherson’s claim that the conceptual basis for a “market society” had appeared by the seventeenth century. A

²⁴Stanley 1996.

²⁵Tully 1993, Macpherson 1962.

²⁶Tully 1993, p. 72. An echo of Macpherson’s work appears in Cohen’s book. Macpherson argued that in the second half of the twentieth century there was a new form of equality; the equality of insecurity in the face of nuclear weapons. Cohen argues that there is a new basis for equality in the global ecological crisis.

²⁷Macpherson 1962, p. 3.

²⁸Macpherson 1962, p. 264.

²⁹Macpherson 1973, p. 199.

necessary component of a market society—the idea of an independent “economy,” in which “work is allocated in accordance with the law of supply and demand,” instead of by government—became dominant only in the eighteenth century.³⁰ Locke’s theories were couched in different terms from arguments about the virtues and vices of commercial society of eighteenth-century political economists. Nothing in my own argument depends on Macpherson’s reading of Locke. What is important is that the existence of a capitalist “economy” becomes a widely accepted “fact,” and that the institution of employment is central to this economy.³¹

Second, Tully argues that Macpherson was mistaken in claiming that possessive individualism was primarily of economic significance. Tully states that “the conceptual scheme was first developed to explain political power and state formation and then, from Smith to Marx, transferred to labour power.”³² Macpherson took the application to labor power for granted and read it back into Locke. But, as I have already emphasized, Locke makes a *political* claim about ownership, about the standing and rights of individuals (owners) that follows from the idea of property in the person—an idea and a claim required for the justification of the traffic in labor power.

Tully points out that the historical antecedents of Locke’s famous formulation go back a long way. He refers, for example, to Roman ideas of mastery of oneself, or self-proprietorship, that signified that a man was not a slave, subject to the will of a master. Nederman (1996) argues that a turning point for ideas about self-ownership occurred in the thirteenth century with the erosion of a legal distinction between usufruct and limited rights to property, and the more complete rights of *dominium* or “lordship.” Men began to be seen as having a right to property as individuals, irrespective of their circumstances, and a right to decide what they would do with their own. In late medieval argument, he suggests, it is possible to discern ideas about consent and resistance to kings and governments who violate their subjects’ rights that anticipate later arguments. But Nederman concedes that it was not until theories of consent in the seventeenth century that the “full flowering” of the earlier “conceptual transformation” took place.³³

Such full flowering, however, required a particular conception of property and self-proprietorship. As has often been pointed out, Locke, like other theorists in the seventeenth and eighteenth centuries (Ingram refers to Madison, for example) understood “property” in a very broad sense. Lives and liberties, as well as estates and other material goods, were seen as property. Hence the idea of property in the person, including capacities, powers, and rights, followed easily.

³⁰Tully, 1993, p. 93.

³¹From the 1840s in Britain, in the wake of the Poor Law, wage labor became accepted as the “normal” way for able-bodied men to gain their livelihood.

³²Tully, 1993, p. 84.

³³Nederman, 1996, p. 344.

But what is the political implication of this idea? Tully points out that the idea of self-ownership—interpreted as “exercising some form of jurisdiction over the self free from the control of others”—has been turned to a number of different political purposes depending on the conception of rights that is adopted.³⁴ The vital point here is whether rights are seen as alienable, or inalienable, or as some mixture of the two.

Tully distinguishes two political paths from the idea of self-ownership. The first path, when all rights are alienable, leads to *dominium*, or absolutism. If a man owns himself he has the right to do as he wills with his own. He can thus legitimately yield up his right of ownership in its totality, for example, to an absolute monarch or a slave master. The outcome in these examples is not democratic, but it is voluntarily created. To make this argument in my language of property in the person, all pieces of property, including the piece that makes determinations about the disposition of property, can be alienated—libertarianism follows this direction.

Tully calls the second path delegation, but I shall label it constitutionalism. To follow the constitutional direction some rights have to be seen as inalienable and others as alienable. Or, to put this in terms of my own argument, only some pieces of property in the person are available to be the subject of contract. The right of self-preservation, for instance, is held by a number of famous theorists to be inalienable. Van Parijs, presents a libertarian argument, but nonetheless takes it for granted that some rights are not alienable. Thus he argues that self-ownership “must be defined in such a way that it does not allow people to sell themselves into slavery.” Self-ownership in a free society will thus fall short of the rights that, as he sees it, make up “standard ownership.”³⁵ The constitutional path must be taken to justify employment and wage labor, and Macpherson’s conception of possessive individualism moves along this path. As indicated in my earlier quotation, he assumes that there are limits to alienation of property in the person, but that the capacity to labor can be alienated. The constitutional view entails that complete alienation, and thus voluntary entry into slavery or absolute monarchy, is blocked. The way is then open for arguments about consent to government and limits on governmental power. This path leads to democracy in the polity but not in the economy.

There is also a third alternative, not mentioned by Tully; all rights can be seen as inalienable. I shall return to this possibility later when I examine Ingram’s arguments about self-ownership.

Tully argues that when capitalists became controllers of the production process they “inherited the concept of the worker as a repository of abilities.” This was the view of mercantilist theorists in the seventeenth century, who saw the laborer as a “mere repository of productive capacities,” or a “utilizable self.”

³⁴Tully, 1993, p. 81.

³⁵Van Parijs, 1995, p. 234, n. 4.

The same view can also be found in Locke's plan for workhouses.³⁶ The individual is held to be a repository of capacities that can be directed, trained, and used to perform repetitive operations.³⁷ Tully argues that the repository view entails that the individual has no proprietorship over capacities. Macpherson was mistaken about property in the person and capitalism. Tully argues that the

labourer in the capitalist wage contract must totally alienate the rights he has over his capacities in the workplace. Therefore, the wage-relationship under capitalism must consist in the junction of the 'alienation' conception of rights associated with absolutism and slavery and the conception of the labourer as a repository of capacities.³⁸

In the Lockean "non-absolutist tradition," according to Tully, the laborer cannot alienate "sovereignty over his abilities." Rather, the worker "sells a complete 'service' to a master, as in the pre-capitalist putting-out system." Thus this tradition, in which the individual is "proprietor and master of his own labour," is "incompatible with wage labour under capitalism."³⁹

The problem is that Tully's argument misunderstands the institution of employment. Wage labor stands firmly in the constitutional path. Unless both limited alienation and individual sovereignty over capacities are presupposed, employment would be merely another example of unfree labor. If total alienation took place, wage labor would be no different from the labor of a slave or of a domestic servant on call for twenty-four hours. Both are at the bidding of a master at all times—but there are no masters in the old sense in employment.

A capitalist economy and the institution of employment require the practice of contract. In turn, contract presupposes juridical equality and rights, and the idea of property in the person. By arguing that self-ownership is not the bottom line for libertarians, Cohen misunderstands the place of contract in libertarian arguments about freedom. By arguing that self-ownership is incompatible with

³⁶Tully, 1993, pp. 88, 86.

³⁷Tully (1993, p.80) comments that Rawls takes the repository view, and this shows that self-ownership is thus neither necessary or sufficient for "liberalism." In contrast, Gorr (1995, p. 288) argues that Rawls's theory "incorporates a healthy, well-grounded commitment to self-ownership". The different readings of Rawls's theory illustrate that the meaning of the repository view is no more self-evident than the meaning of "self-ownership." Tully's interpretation of the repository view is the individual is, as it were, a mere empty holding unit for capacities. Such an empty unit has no rights over the capacities. However, my account of property in the person could be reformulated to read that the owner is a "repository" of (alienable) capacities which can be rented out for use as the owner sees fit. The repository view then becomes compatible with "self-ownership." Moreover, Rawls's claim that individuals' abilities are part of the "common assets" of a community is not necessarily the same argument as that about utilizable selves and repositories. If abilities are common assets then there is plenty of room for debate about how the assets might best be developed. The focus of the extensive current controversy is how their use should be rewarded. The implication for citizenship and democracy of the issue of development of capacities thus tend to be overlooked. (On self-ownership and self-cultivation see Ryan, 1994). It is worth noting here that contradictory readings of Rawls are made easier by the disjuncture between the extreme individualism of the first part of *A Theory of Justice* and the social individualism of the latter part (see Pateman 1985/1979, 113–33).

³⁸Tully 1993, pp. 88–9.

³⁹Tully 1993, pp. 89.

wage labor, Tully misunderstands the importance of contract for the institution of employment.

III. SELF-OWNERSHIP, WAGE LABOR, AND SUBORDINATION

If a capitalist bought a complete service from a worker who alienated all of his rights over his capacities, wage labor could not be defended as free labor and the wage laborer could not stand at the opposite pole from the slave. However, the justification of employment that I presented above rests on a political fiction, the fiction that capacities can be treated as separable from the person.

A worker cannot send along capacities or services by themselves to an employer. The worker has to be present in the workplace if the capacities are to be “employed,” to be put to use. A disembodied piece of property is not what is required. The employer must also have access to the knowledge, skills and experience of the worker if the capacities are to be used as the employer desires. In short, employers hire persons, not a piece of property. Capitalists become controllers of the production process and gain the right to direct, regulate and train the “repository” of capacities hired. The wage laborer does not decide how the property contracted out is to be used. When workers enter an employment contract they agree that the employer should direct them in the use of their capacities. Thus employers become masters and workers become subordinates but in a new—constitutional—sense. Unlike the relationship between lord and serf, master and slave, or master and servant, a distinctively modern form of subordination is created through contract, specifically, the employment contract. Employment is constituted through a voluntary contract between juridical equals and self-governing owners. Yet the consequence of contracting out part of property in the person is that a diminution of autonomy or self-government occurs. I called this curtailment of freedom *civil subordination* in *The Sexual Contract*.

Recent discussions of self-ownership focus on exploitation not subordination, notwithstanding the interpretation of self-ownership as a way of talking about autonomy. No attention is paid to the connection between relations of civil subordination and problems about autonomy and democratization. In part, the neglect arises from the turn away from politics to moral philosophy and the preoccupation with justice. Employment is not seen as a problem, and so wage labor appears in the debates as a question of exploitation (theft of labor time, or value); that is, as a market exchange that raises a moral problem of injustice. Another reason for the silence about subordination is that an ahistorical conception of political theory erases a long tradition of suspicion and criticism of employment. It is not easy today, when labor markets and employment are seen as central to democratization, to remember that employment has not always been seen as involving free labor.

Throughout most of the nineteenth century in the United States wage labor was controversial. An autonomous individual was understood to be independent; that is, neither dependent on another for subsistence, nor subject to the will of a master. Wage labor was widely seen as restricting or denying autonomy. A laborer was directed by an employer in his work, and depended solely on wages for his livelihood. The view that employment was free labor because it involved voluntary entry into a contract became predominant only from the 1890s onward (and the courts began to enforce “freedom of contract”). The widespread view earlier in the century was that wage labor was, at best, a temporary condition on the way to a man becoming his own master. Employment was seen to be too close for comfort to the denial of freedom and total subordination of slavery.⁴⁰

In the twentieth century, some critics of wage labor were concerned with its effects on the character and capacities of workers. They argued that subordination fostered servility and stunted capacities, thus creating individuals who were not fitted for free citizenship. Theorists of different political allegiances highlighted the problem (though they disagreed about the solution). Hayek, for example, a champion of free markets and minimal government, writes that the employed are “in many respects alien and often inimical to much that constitutes the driving force of a free society,” and their dependence fosters an “outlook” incompatible with freedom.⁴¹ G. D. H. Cole, a guild socialist, whom I discussed many years ago in *Participation and Democratic Theory*, argued for the democratization of workplaces in order to develop the individual attributes required for active citizenship.

These criticisms suffered from a serious limitation. Hayek (1960, p. 6) remarked that we cannot “fully appreciate the value of freedom until we know how a society of free men as a whole differs from one in which unfreedom prevails.”⁴² The presence of free *men* was sufficient. Attacks on the subordination of male wage laborers typically rested on acceptance of subordination and servility in marriage. The employment contract developed in tandem with the marriage contract, and the subordination of wives was presupposed by the institution of employment.⁴³

I have been referring to the owner as “he,” since this is historically accurate. Independence, along with personhood and self-ownership, were masculine attributes, and the “owner” was not quite what he seems in current debates over self-ownership. The man who was a husband and a wage laborer not only owned himself, but, however lowly his social station, also, under coverture, exercised

⁴⁰On these matters see Sandel (1996) and Shklar (1991).

⁴¹Hayek 1960, p. 119.

⁴²Hayek 1960, p. 6.

⁴³See Pateman, 1998, ch. 5. Advocates of cooperation, such as William Thompson (whom I discuss in *The Sexual Contract*), were feminists, and well aware of the connection between the subordination of wives and the public division of labor. Cohen (p. 255) remarks that for the most part “pioneer” socialists in the nineteenth century opposed the market and favored central planning. But pioneers such as Thompson (dismissed by Marx as utopians) tried to promote change through practical experiments in living, not central planning.

jurisdiction over his wife. He was a master at home. The connection between masculinity, independence, and ownership of property in the person was nicely affirmed, for example, in a statement by one of the leaders of the Knights of Labor, an American organization critical of wage labor. He wrote in the 1880s of the independent individual enjoying “a well-built, fully equipped manhood” (cited Sandel, 1996, p. 186, though Sandel ignores the implications of the language). Part of his manly equipment was a wife. Wage labor not only invoked slavery, but the subordination involved put manhood into question. But here the critics of wage labor diverged from the American abolitionists who saw employment as a mark of independence. Wage labor was separated from slavery by a voluntary contract—and by a man’s right to marry: “By the lights of abolitionists, a free man differed from a slave not only because he was a ‘free agent’ and the sovereign of himself, but because he [unlike a slave] possessed an inalienable right to his family.”⁴⁴

The issue of masculinity was hard to avoid when employment was subsumed under the common law that governed the domestic relations of master and servant. As I point out in *The Sexual Contract*, the clear legal separation of wage laborers from other domestic dependents in England (that is, the final consolidation of the “economy” and employment as an institution), was a very long process.⁴⁵ Employment was detached from the law of master and servant only in the late nineteenth century. Over a century later, the problem of masculinity, femininity, and property in the person, and the long struggle over who was to count as an owner and a person, has been obscured. There is no indication of the continuing legacy of these problems for women or ethnic minorities in recent discussions of self-ownership.

The problems are also harder to see today because recent welfare reforms have been based on the premise that paid employment is a duty of all citizens, men and women alike. Employment is now firmly established as a requirement for democratization, and a means to develop the capacities of citizens. Moreover, the claim that the employment contract is nothing more than a (fair) exchange of property for recompense has now become the common sense of political philosophers and national and international economic and political policy-making.⁴⁶ David Ellerman challenges this common sense, and does so head-on by

⁴⁴Stanley (1996, p. 89) goes on to note that this view was “handed down from none other than Adam Smith.”

⁴⁵On the USA see Orren (1991, esp. ch. 3) and (1994).

⁴⁶The difficulties of shaking off history and politics, and the problems surrounding contracts about property in the person, have been brought to attention again in the radical structural adjustment policies enacted in New Zealand. The Employment Contracts Act (1991) was modeled on a “classical” conception of a contract between two individuals of equal standing with “no predetermined outcomes” (in my terminology a contractarian conception). But the Act “created a hybrid” that gave the courts jurisdiction to decide if duress was involved in making the contract, although not if it was unfair or unconscionable, and included “personal grievance provisions that imposed constraints on the capacity of employers to terminate the contract” (Wilson 1997, pp. 89, 94).

rejecting the understanding of capitalism accepted by virtually everyone, defenders and foes alike. Ellerman denies that capitalism should be defined in terms of private property and ownership. He argues that the defining feature of capitalism is not private property but production organized through the system of employment.⁴⁷

Ellerman characterizes the familiar controversy between supporters of capitalism and advocates of socialism over ownership of the means of production as “analogous to a debate over slavery where the alternative proposed by the ‘abolitionists’ was the public ownership of the slaves.”⁴⁸ Within the terms of this controversy, attention is focused on one form of ownership, and so employment as an institution, and the employer’s right to tell workers what to do, is not confronted. Ownership of property, Ellerman argues, entails that the owner has the right to determine how it will be used—or put negatively, the right to exclude others from using the property without the owner’s consent—but nothing more. It is one part of the “fundamental myth” of capitalism that ownership of capital assets gives the owner right of government over others. Where does that right come from? Ellerman’s answer is that it is a consequence of the employment contract.

For an employer to obtain the right to command other people’s actions, the right to be a boss, requires the employment contract; “the employer buys those rights in the employment contract.”⁴⁹ The employer is able to buy the rights because the pretence is that what is up for sale, or, more accurately, available for rent, is not a person but a factor of production (labor power). The pretence is that the worker’s labor power or services are indistinguishable from any other factors. Workers are thus regarded as if they were things (commodities)⁵⁰ to be rented and used along with the other factors that are required for production to take place. The employment contract “pretends that human actions are transferable like the services of things.”⁵¹ That is, in my terminology, the contract depends on the political fiction that individuals are owners of property in the person.⁵²

The other part of the fundamental myth about capitalism is that a property right, ownership of the means of production, determines the legal identity of those comprising the productive unit or the “the firm.” Rather, Ellerman argues, “the firm” is the party that hires factors of production.⁵³ Who forms the firm is a contingent matter. It depends on a “hiring contest,” and the outcome of the

⁴⁷Ellerman 1992, esp. chs 1, 2, 6; 1995, ch. 2.

⁴⁸Ellerman 1992, p. 17.

⁴⁹Ellerman 1992, p. 19.

⁵⁰There is a long history of argument and discussion about the peculiarities of labor power as a commodity, not always by Marxists. That Cohen takes so little account of this reflects some leftover baggage from an old-fashioned Marxism (in ch. 11 of *Self-Ownership, Freedom, and Equality* he provides a political biography).

⁵¹Ellerman 1992, p. 20.

⁵²Despite the close parallels between our arguments on this question, they were developed independently and from very different starting points.

⁵³Ellerman 1992, ch.1; 1995, ch. 2.

contest determines the pattern of contracts entered into in the market for inputs or factors. These contracts determine who and what is hired by whom. Almost always, capitalists do the hiring. Such an arrangement is taken for granted as natural, and so it appears to follow from ownership of a firm. But capitalists do the hiring not because of a property right but because of their market power in the hiring contest. The fact that the contest might have a different outcome—that is to say, workers might hire capital—is then also overlooked. That the alternative outcome is so rarely considered is because a contractual arrangement is presented as a property right.

Because of this, Ellerman argues, there are two dimensions of capitalist firms that are seldom distinguished. First, there is ownership of capital assets. Second, there is the residual claimant, the party that bears the costs of the productive inputs and at the end of the production process can claim the final product. The standard assumption is that the residual claimant makes the claim by virtue of a property right, because of ownership of capital assets. However, the mistake here, and the collapse of the two dimensions into one, becomes clear if one considers the case where the assets are rented out to another party. The owner retains ownership, but whoever has rented the assets and used them with any other factors to produce goods is the residual claimant. The residual claim arises through the rental contract and the production process, not by virtue of property ownership.⁵⁴ Ellerman, therefore, distinguishes the “firm,” the party that undertakes production and is the residual claimant, from the “corporation,” which is owned by shareholders. It follows that workers could become a firm (productive unit) without having to own the means of production. They can rent the factors they require from owners of capital assets in the market for inputs. I shall come back later to the implications of Ellerman’s argument for democratization.

In his criticism of libertarianism, Cohen introduces the notion of a “cleanly generated capitalist relationship.” This relationship bears a startling resemblance to Pufendorf’s slavery contract, which, in turn, looks very like the lifetime employment contract of civil slavery. Pufendorf conjectured that the natural human condition was one of equality. He also assumed that the inhabitants of this initial starting point were interested in increasing their possessions, and that some individuals would be “more sluggish” and less “sagacious” than others. The result was that some individuals accumulated a great deal and others gained little or nothing. Eventually, those who had become rich invited those cast into poverty to work for them in exchange for subsistence. “The first beginnings of slavery,” Pufendorf concluded, “followed upon the willing consent of men of

⁵⁴Ellerman also asks the question of why the owner of a capitalist firm should be the residual claimant when it is workers’ labor, using factors of production, that has produced the final product. Do they not have a claim (and a liability for the inputs used up)? His answer is that they do have a claim, but that this is denied because it is hidden behind the pretence that workers are merely another factor of production. The pretence enables the owner (the capitalist) to appropriate the whole product (Ellerman, 1992, ch. 2). Recall Locke, the servant, and the turf. The master owned what the servant produced because he owns (has contracted for use of) the servant’s labor power.

poorer condition, and a contract of the form of ‘goods for work’: I will always provide for you, if you will always work for me.”⁵⁵

A cleanly generated relationship, Cohen states, presupposes self-ownership, and it originates from an initial situation of equal capital distribution, and owners who differ in their thriftiness and talents. In time, with “no force or fraud” involved, the consequence is that some owners accumulate much more than others. Thus, a relationship between a “capital-lacking worker” and “capital-endowed” employer emerges. This capitalist relationship is a result of the “greater frugality and/or talent of those who come to have all the capital” (p. 161). Cohen (p. 163) states that Marxist argument “has no purchase” against cleanly generated capitalism since Marxists rely on the idea of self-ownership, and so cannot bring a charge of exploitation or injustice.

To be sure, given the assumption of a starting point of equal ownership (of property in the person), different individual attributes, no force or fraud, and a voluntary contract, no exploitation is involved. But that is not to say that there are no grounds for criticism. It only appears so in light of Cohen’s interpretation of self-ownership. The “clean” relationship is one of mastery and subordination in which the freedom or autonomy of one party is diminished.

Cohen makes only a few comments about subordination. He distinguishes two aspects of the thesis of self-ownership. One is exploitation; a worker should not “have part or all of his product taken from him for nothing in return.” The other is subordination; a worker “should not deploy [his energies] under another person’s orders in the manner of a slave” (p. 147). Cohen (p. 160) notes that there are “liberal critiques” of the undemocratic structure of relations in workplaces by, for example, Walzer and Dahl.⁵⁶ He also notes that Marxists have criticized the labor contract as *fictio juris*, as concealing a relationship actually like that “between lord and serf.” But he insists that such criticisms are relevant only where a worker is “dispossessed of resources from the start” (pp. 162–3).

Cohen fails to appreciate that libertarianism presupposes that no worker is dispossessed. In contractarianism—and in the institution of employment—all workers are *owners*, owners of property in their persons. Indeed, in my analysis of the logic of contractarian argument in *The Sexual Contract*, I asked what was wrong with the employment contract *even if* entry was voluntary, without force or fraud, and there were alternatives available (a reasonable assumption in late twentieth century welfare states⁵⁷). My answer to the question was informed by, although critical of, the long tradition of criticism of wage labor. The consequence of voluntary entry into the employment contract is civil subordination; the diminution, to a greater or lesser degree, depending on the circumstances of the particular contract, of autonomy and self-government.

⁵⁵Pufendorf 1934/1699, bk.VI, p. 936.

⁵⁶See also Pateman 1970.

⁵⁷See Cohen 1983.

IV. SELF-OWNERSHIP, AUTONOMY, AND RIGHTS

Ingram and Cohen both reject the claim that the language of self-ownership is merely a way of referring to autonomy. Ingram declares that “autonomy and self-ownership are incompatible” (p. 220). Cohen argues that a “disastrous misidentification” of autonomy with self-ownership has taken place. For Cohen, autonomy—that is, “real freedom,” or “the circumstance of genuine control over one’s own life”—demands limitations on self-ownership. More strongly, a serious concern with autonomy, “should actually make us spurn self-ownership” (p. 102).

Cohen says little about the meaning to be given to autonomy as real freedom, genuine control. Ingram, in contrast, presents an alternative to the libertarian interpretation of autonomy as self-ownership. She promises a *political* account of autonomy as self-government or self-command, to replace the proprietary conception. Instead of the owner as “absolute sovereign” (p. 34), a political view of autonomy and rights should be “modelled on the constrained sovereignty of modern democratic governments” (p. 87). However, Ingram’s development of an alternative understanding of autonomy, and her engagement with the logic of contractarianism, are inhibited by her methodological Rawlsianism. But there are, as it were, two Ingrams in *A Political Theory of Rights*, and the arguments of Ingram II point in another direction from those of Ingram I, to which I shall now turn.

The idea of property in the person, as I have emphasized, involves a political claim about rights and individual standing. Ingram’s interpretation of “political,” however, reflects the depoliticization of political philosophy. She argues that a political conception of autonomy “has to be independent of controversial philosophical and religious and moral doctrines” (p. 136). Here she is following Rawls very directly. Rawls states that “a distinguishing feature of a political conception is that it is presented as free-standing and expounded apart from, or without reference” to the “wider background” of the varied, and frequently conflicting, philosophical and religious doctrines of contemporary morally pluralist societies.⁵⁸ For methodological Rawlsians, a political conception is cut off in a neutral castle behind a moat without a drawbridge from ideas, beliefs and values that are sources of conflict.

This conception has an antecedent. I drew attention some twenty-five years ago to a *genre* of argument in which a reified (as I called it then) notion of the “political” was propagated.⁵⁹ A properly political constitution and form of government was identified with minimal democratic institutions. This view has reappeared in methodological Rawlsianism.⁶⁰ It also echoes the very influential

⁵⁸Rawls 1993, p. 12.

⁵⁹Pateman, 1975/1989. It is a conception that, as I indicate in my earlier article, goes back to Locke’s notion of a neutral, “umpire” government, set up through (one dimension of) an original contract.

⁶⁰Pateman, 1989/1975, p. 91; also 1985/1979, p. 132.

interpretation of democracy by Joseph Schumpeter in the 1940s. Democracy becomes no more than a political method or procedure, an institutional arrangement for electing governments, that has no connection to substantive political values. A minimalist conception of democracy became widely accepted in the 1990s together with neo-liberal economic doctrines.

Norman notes that a prominent feature of methodological Rawlsianism is that it “dovetails with liberal democracy.”⁶¹ But, rather than dovetailing, methodological Rawlsianism presupposes a background of basic democratic rights and familiar institutions for the purpose of moral argument. Rawls writes that

there is a tradition of democratic thought, the content of which is at least familiar and intelligible to the educated common sense of citizens generally. Society’s main institutions, and their accepted forms of interpretation, are seen as a fund of implicitly shared ideas and principles.⁶²

The assumptions embodied in this passage show why a mode of depoliticized argument has grown along with methodological Rawlsianism.

The supposition that there is a common sense tradition of democratic theory implies that the meaning of “democracy” and other major political concepts is uncontentious.⁶³ Democracy is, therefore, placed outside critical scrutiny, and no questions need be asked about the need for *democratization*. The creation of a new common sense, or new interpretations of familiar ideas, as a major task of political philosophy, and of democratization, is ruled out of court. The job of political theorists becomes that of finding moral justification for accepted interpretations of the principles that form part of a taken-for-granted institutional background. The assumption then follows that political theorists can begin their arguments from intuitions, considered judgments, or fixed points of agreement about, and received understanding of, the ideas and principles inherent in those institutions. The possibility is eliminated that accepted forms of interpretation may systematically rule out an adequate understanding of the authority structures of institutions, and an appreciation of the political force and significance of major concepts.

Ingram states that autonomy is “the fundamental presupposition of our political tradition” (p. 197), and a political conception of autonomy must be formulated “in terms of certain fundamental intuitive ideas viewed as latent in

⁶¹Norman, 1998, p. 292.

⁶²Rawls 1993, p. 14.

⁶³I challenged the idea that there is “a tradition” of democratic theory on both theoretical and empirical grounds in *Participation and Democratic Theory*. Ingram argues that democratic theory is “best understood” through the lens of social contract theory (p. 193). The social contract is only one dimension of theories of an original contract (Pateman, 1988; see also Mills 1997), and “social contract theory” is full of hypothetical circumstances, principles and arguments (see Pateman, 1985/1979). But Ingram’s procedure is doubly hypothetical. She adds a (Habermasian) social discourse perspective to the Rawlsian contract model, in the form of a notion of “Ideal Discourse”, through which “a determinant conclusion on principles of right” is reached (p. 120). The ideal discourse reveals the “content of a rational consensus,” and “various elements of autonomy are reproduced as norms of autonomy-regarding conversation” (p. 169). I find this process rather opaque.

the public political culture of a democratic society” (p. 136). The problem here is how to decide which “latent” ideas are to be singled out. Ingram sees no difficulty since she assumes these latent ideas provide an alternative to the libertarian, proprietary interpretation of autonomy. Yet libertarian ideas are also latent in the political culture of Anglo-American democracies. Indeed, far from being latent in the 1990s, these ideas were extremely prominent. They were central to domestic and international policy-making. So why should the latent ideas favored by Ingram take precedence? Methodological Rawlsianism can provide no answer.

Ingram’s reason for formulating a political interpretation of autonomy is “to make possible, a certain practice of political justification” (p. 137). I justify my political claims to you, according to Ingram, when I give you “an account of how [a] claim follows from a starting point we both accept” (p. 196). I can follow and understand Ingram’s justification for her claims in *A Political Theory of Rights*. However, I accept neither her starting point, nor her reason for formulating a political conception of autonomy and rights, since I start from a different conception of democracy and the task of political philosophy. Justification is important in a democracy, but hardly the primary reason for rethinking central political concepts.

Moreover, how can I know whether we both accept the same starting point in advance of our discussion and negotiation? Ingram, like other methodological Rawlsians, merely assumes that a common starting point is always available, but this is something that needs to be established. A crucial part of the art and craft of politics is finding such starting points, especially when there is a history of subordination, or animosity and conflict between the parties.⁶⁴

To treat institutions as background context means that principles and ideas are abstracted from social relations so that concepts can be subject to moral analysis.⁶⁵ In Ingram’s argument, the separation of the concepts of autonomy and rights from the structures of institutions strips them of substantive political content. “Our thinking about rights,” she writes, “takes place against certain background beliefs that are not in question within the liberal democratic perspective” (p. 97). A political conception of rights is “developed for persons conceived as citizens of a modern constitutional democracy” (p. 194), and a

⁶⁴Ingram claims that justification proceeds from “from a premiss that is shared by” an “adversary” from within the same political tradition (pp. 197–8). But she also states that some citizens, “neo-Nazis, white supremacists, male-supremacists, certain religious fundamentalists, some rich people, terrorists,” are excluded from the “democratic consensus.” She does not believe this a problem for her political conception of autonomy (p. 139). Yet she also states that a “political conception stands or falls with the claim that it provides a basis of agreement between citizens” (p. 137), notwithstanding that it appears to cover only some citizens. The rise of neo-fascist parties and groups in Europe, white supremacist militias in the USA, and virulent ethnic nationalism more generally, poses a very real problem for democracy. But in methodological Rawlsianism, the messy, dirty stuff of politics disappears in favor of discussion directed at an apolitical “us” who agree about (the interpretation of) all the most important political principles.

⁶⁵I have analyzed and commented upon this procedure in Rawls’s theory; Pateman, 1985/1979, ch. 2, pp. 113–33.

political conception of autonomy is a principle “governing the basic institutions of a constitutional democracy” (p. 136). Autonomy provides an “underpinning to our intuitive notions of self-determination” (p. 170), and must “be presupposed” if there is to be “reasonable agreement” about rights. Autonomy enables rights “to play a leading role in the background morality of liberal democratic politics” (p. 9). Furthermore, autonomy gives content to rights; “we may expect claims to rights to be determinable by reference to the background principles that express autonomy” (p. 119). These principles, in turn, are “available” in such documents as *The Universal Declaration of Human Rights* (p. 115).⁶⁶

Despite the latter reference, Ingram discusses rights in terms of moral capacities and modes of thought about citizens, and the *image* of the citizen. Rights, she states, are intended “to settle in . . . an authoritative way, the details of our image of the citizen” (p. 168). A crucial part of this image is how they think of themselves: “As free persons they think of themselves as having the capacity to rule themselves . . . [they] regard themselves as able to give justice to each other . . . [and] as responsible for putting the value of autonomy into their own lives” (pp. 108–9). These statements raise an obvious question. Citizens may *think* of themselves in certain ways, or have a certain image of themselves—as autonomous beings enjoying rights, for instance—but do the conditions exist in which citizens can be autonomous; does the structure of the institutions within which they interact support self-government?

Ingram’s formulations follow Rawls closely. He writes that citizens “are conceived as thinking of themselves as free,” and that they can be regarded as free if they possess a “moral personality” which entails a “capacity for a sense of justice and . . . a conception of the good.”⁶⁷ Ingram, too, argues that autonomy derives from the idea of “moral personality” (p. 99), which means that individuals’ views about a good life and their goals are contingent, chosen, and thus open to change or rejection in the future. A “central” feature of “autonomous action” is “the pursuit of reflectively endorsed preferences” (p. 100). Certainly, owners must have such capacities and the ability to reflect on

⁶⁶As in some of Rawls’s argument, Ingram’s remarks often go in circles (see Pateman 1979 /1985, p. 115 on the circularity of Rawls’s argument). More seriously, Ingram glosses over very difficult problems of human rights. She notes that various rights may “make very little sense” in some political cultures (p. 171), and that the “adoption of rights in non-liberal cultures” will involve “differences of interpretation” (pp. 200–1). However, she sees no real difficulties since human rights talk is actually about a “universalist attitude,” not “details of different ways of life” (p. 198). The point of the practice of “human rights evaluation” is that it makes “our theory of rights intelligible to others even if they disagree with us” (p. 201). But that is precisely why human rights are so controversial. They are intelligible to people round the world—especially to a multitude of women’s movements—but intelligibility and the necessity of interpretation mean that they can be, and are, rejected as well as embraced. Autonomy or self-government is central to human rights, and therefore raises awkward questions about “ways of life.” Ingram mentions the need to preserve minority cultures in liberal democracies, but these cultures, like others, frequently pose problems for women’s human rights (see Okin 1999; Shachar 1998).

⁶⁷Rawls 1993, pp. 29, 34.

preferences if they are to participate in the practice of contract. But while moral capacities are necessary for autonomy, they are insufficient for political autonomy. Moral personality needs to be developed to maintain democratic institutions and citizenship, but a robust democratic citizenship and democratization require more than moral autonomy.

I shall now turn to Ingram II, that is, to passages in *A Political Theory of Rights* where Ingram concedes that political autonomy and rights demand a very different understanding of the citizen and self-government than that presented so far.

Ingram II writes of the autonomy that “leads to self-government or democratic citizenship” (p. 196), that she calls in passing “substantive autonomy” (p. 188).⁶⁸ To be self-governing citizens must be able, if they so choose, to alter their social and political institutions. Citizens must have the right “to exercise their self-governing capacities to redesign their social structure” (p. 81). Moreover, the “conditions of autonomy” (p. 188) have to be provided, and, therefore, “a principle of strong social provision” is required (p. 187).⁶⁹ Equal respect for all citizens demands that each is treated as a “rightful claimant to a fair share of social assets” (p. 159). Citizenship is reduced to a formality for poor individuals when they lack “adequate education, the material supports of health and well-being, access to culture, and to the means of cultural reproduction and development—philosophy, the arts, and sciences” (p. 164).

Even more strikingly, Ingram argues that political autonomy requires the prevention of “domination of some by others.” The social structure must not appear alien and constraining, as “failing to embody institutions that keep people alive to their own powers.” Nor must “specific institutions put some people in positions of economic and social power over the lives of others.” The aim, she states, is to create a social structure of “undominated interdependence” (pp. 157–8).

These aspects of Ingram’s argument suggest a very different approach to political philosophy and democracy from that underpinning the major part of her argument. Institutions cannot be taken for granted as mere background for justification of moral principles if there is to be strong social provision and absence of domination. Institutions, including employment, have to be subject to critical scrutiny and analysis in order to decide on the appropriate changes and policies in order to reduce domination and further democratization.

⁶⁸Ingram states that it follows from political neutrality that the state can make no attempt “to maximize autonomy, or to channel autonomous choice between only those options that are worthwhile” (p. 137). The references to substantive autonomy suggest that, even if the state should not be involved in directing choice, democratic government policy should attempt to maximize political autonomy (as I argue below).

⁶⁹Ingram argues that libertarianism rules out certain policies in advance, notably strong social provision, and so negates the possibility of change. Thus it is presented as a conservative doctrine. Yet ideas central to libertarianism have been a driving force in the rapid economic and social change that still continues; entire communities are being reshaped in its wake.

There is also a passage in which Ingram presents a view of rights at odds with her broader characterization. Recall that the three paths that lead from the idea of self-ownership depend on different conceptions of rights; the absolutist, the constitutional, and the path of inalienable rights. Ingram glosses the difference between the proprietary and political interpretations of rights as follows. In the proprietary view, rights in “personal endowments” are alienable. In contrast, a political conception “places persons outside the instrumental realm of property altogether.” The idea of self-government is “that each person is assigned inalienable rights in her person and personal powers within a political system—the principles and rules of a liberal-democratic polity” (p. 192).

Here, then, is an example of the third path. Rights in personal endowments—in property in the person—are *inalienable*. Now Ingram, as noted, argues that a political view of rights and autonomy involves constrained sovereignty. Yet constrained sovereignty (that is, the constitutional path, to use my own terminology) unlike the absolute sovereignty of contractarianism, implies that although some rights may be inalienable, others, notably the right of disposal over labor power, are alienable. As I have argued, the constitutional path is necessary for the development of the institution of employment and the traffic in labor power. Thus Ingram ends in a nicely ironical position by introducing inalienable rights. A major premise of her argument is that major institutions must be taken for granted as the source of received interpretations. Yet if rights in the person and personal powers are inalienable, the justification of the institution of employment is put out of reach.

V. EMPLOYMENT, INALIENABLE RIGHTS AND DEMOCRATIZATION

My interest in the idea of property in the person derives from a longstanding concern with the undemocratic character of some major institutions. In my earliest work I discussed this democratic deficit (to use a currently fashionable idiom) by investigating the lack of democracy in workplaces and its effect on the capacities and political participation of citizens.⁷⁰ More recently, in *The Sexual Contract* I framed the question in terms of the subordination created in institutions constituted by contracts about property in the person. That is to say, my interest in the concept is part of my wider concern with the problem of democratization

More generally, my approach to political theory, including the interpretation of classic texts and the analysis of central concepts, is based on the examination of specific political problems. Some historical exploration is invariably required to understand why a present-day problem takes a particular form, and to highlight the contribution of ideas and political theories in shaping and changing institutions and relationships. Such an approach necessarily deals in substantive

⁷⁰Pateman 1970.

concepts and values, and requires that the Rawlsian drawbridge is lowered so that institutions and central democratic principles and ideas can be brought back together. There can be no expectation that analysis begins from agreement on shared interpretations, or that the task is to justify these interpretations. Instead, since every approach embodies specific interpretations, the usual starting point is disagreement. Illuminating how and why certain interpretations are ruled out, and the significance of this exclusion for democratization, is an important task of political theorists.

This mode of analysis is very different from the depoliticized, ahistorical conception of political theory that underlies recent debates about self-ownership. Methodological Rawlsianism, and the assimilation of political philosophy into moral argument, work against an appreciation of the implications of accepting or rejecting the language of self-ownership as the standard way of talking about autonomy. Combined with a tacit acceptance of a minimalist view of democracy, and the legacy of left politics that focuses on exploitation at the expense of subordination, the failure to treat the institution of employment as a problem for democracy is hardly surprising.

Both Cohen and Ingram want to move beyond self-ownership. In the closing paragraphs of *Self-Ownership, Freedom and Equality* (p. 264), Cohen hints at how this might be achieved. Following Joseph Carens' *Equality, Moral Incentives, and the Market*,⁷¹ he suggests that a combination of social equality, to be maintained through taxation policy, and the preservation of "the market" for the allocation of goods and services is required, but with an important proviso: an "ethic of mutual service" must be developed to replace the market motivation of self-interest. It is unclear from Cohen's brief remarks whether he envisages preservation of the labor market. "The market" is an abstraction. There are numerous different markets, many of which are essential in a modern society. But the labor market—the traffic in labor power—is different from the rest. It is not a market for goods and services but a market in property in the person. For libertarians, contracts about property in the person are contracts of mutual service. Of course, Cohen is referring to "mutual service" in a different sense, what I would call an ethic of mutual aid, and he is calling for a change in political culture.

Such a change is unlikely to take place without a more general awareness of the problem that employment poses for democracy. A major change has occurred in political culture over the past quarter of a century, but it has not been in the direction advocated by Cohen. The motivation of self-interest and the idea of ownership—that an ever wider range of entities should be subject to private property rights—have become very widely disseminated.

Cohen remarks that liberal critics of the undemocratic structure of workplaces do not "take the injustice of the capitalist relationship in its general form as a

⁷¹Carens 1981.

datum, [so] they have no consequent propensity to accept the principle of self-ownership” (p. 161). But neglecting the concept is an obstacle to their criticism, not an advantage. The fundamental question about ownership and employment is how the undemocratic structure of the enterprise and the employers’ right of command over workers is to be justified.

In *A Preface to Economic Democracy* Dahl states that a form of government that is seen in democratic countries as “intolerable” in governing the state is seen as desirable in enterprises, and he argues for its replacement by representative democracy.⁷² If democracy is justified in the government of the state—an assumption that is now more widely accepted than when Dahl’s book was published—then it must also be justified in the government of economic enterprises; conversely, if democracy is not justified in enterprises, then it is not justified in the state. The enterprise, like the state, is a political system where power is exercised over the governed.⁷³ Collective decisions, binding uniformly on all members or categories of members, are made in both the state and the enterprise, sanctions against disobedience are applied, and there are costs involved in exit in both cases. Indeed, Dahl points out that citizenship in the state is in one way more voluntary than employment. When a citizen moves from one city or region to another in a democratic state all rights of citizenship are retained, but if a citizen leaves a firm then there is no right to move to another.⁷⁴

How, then, is this “intolerable” authority structure to be criticized? One of Dahl’s arguments is that private ownership of corporate enterprises cannot be justified. A bundle of rights surround property ownership, such as the right of use, of management, of income from the thing owned, of transmission to others, of alienation, and so on. These rights, Dahl argues, fail to provide sufficient specification of the scope of private property to justify “a claim to private ownership of enterprises in existing corporate form.”⁷⁵ He therefore discusses various alternative forms of collective ownership, and favors a cooperative form (rather than individual, state, or social ownership) for democratic enterprises.

In part, Dahl favors cooperative ownership because the history of change from private to public ownership reveals few examples of democratization of authority structures. One set of private bosses is usually exchanged for another set of public bosses (recall Ellerman’s quip about the public ownership of slaves). On the other hand, private ownership does not exclude the introduction of an element of representative government, such as works councils in some European countries.

The contradiction between lack of self-government in workplaces and its exercise in a democratic polity is not usually noticed because the question of democratization of workplaces is not on the political agenda. Dahl stresses one reason for this; the workplace is treated as a private not a political space. But he

⁷²Dahl 1985, p. 162.

⁷³Cf. Pateman 1970.

⁷⁴Dahl 1985, pp. 113–16.

⁷⁵Dahl 1985, p. 77.

overlooks two other reasons; that employment is presented as the paradigm of free labor, and that the political fiction is maintained that pieces of property, services, or factors of production are traded in the labor market, not Cohen's "whole persons." That is, Dahl neglects another sense of "ownership," ownership of property in the person.

Dahl argues that self-government is a fundamental moral right that should be enjoyed in all political arenas. However, he does not pursue the significance of this right for wage labor. As I have noted, Dahl also discusses the right to private property. In its basic form, he argues, the right extends only to the possession of resources necessary for "political liberty and a decent existence," or for "the exercise of democratic rights."⁷⁶ He discusses the popularity of this view of property in nineteenth-century America, but he does not connect it to ideals of independence (self-government) and criticism of wage labor. The implication of Dahl's argument about these two rights is that the only justifiable exercise of the right to private property is to maintain self-government. To treat the right of self-government as fundamental puts into question the conventional assumption that ownership of the means of production carries with it the right to govern workers. The cooperative alternative advocated by Dahl is of interest not so much because of the form of ownership, but because the participants in a cooperative are *not employed*. They are self-governing, autonomous, members and partners in a democratic productive unit.

The consequence of the employment contract, I have argued, is that the worker, the owner of property in the person, alienates (some degree of) the right of self-government to the employer. One peculiarity of this transaction is that autonomy is both presupposed and denied. In order to enter the contract the owner of property in the person exercises autonomy in deciding whether it is advantageous to rent out property for use by another. Yet the fiction is that what is offered in the labor market and what has been rented out is a piece of property (labor power, a service, a commodity, a factor of production), not a self-governing person. But once the contract is made and the property is "employed," the worker has to use judgment, skills and experience, that is, has to exercise autonomy, or production would be impossible. Employment thus provides another version of the paradox of (modern) slavery that I explored in *The Sexual Contract*. The paradox is that slaves have no standing at all, they are mere property. Yet their humanity has to be acknowledged in all kinds of ways, including measures to prevent their escape, for the institution of slavery to flourish.

Ellerman makes a similar point in different terms.⁷⁷ The legal pretense is that what is rented by employers in the labor market is just another factor of production. He argues that employees thus have "the legal role of instruments or

⁷⁶Dahl 1985, pp. 112, 82.

⁷⁷Ellerman 1992, ch. 8; 1995, ch. 4.

things within the scope of their employment.” They are employed by the party who has rented them just as other factors are employed in the production process. Both human and non-human factors are productive, that is, causally efficacious, but the distinguishing feature of human factors is that they are also responsible persons, that is, morally efficacious. Employment denies this responsibility. Employees “have no legal responsibility for, or ownership of, the produced outputs,” nor do they have “legal responsibility or liability for the used-up inputs.” It is “*as if* they had only physical causality with no *de facto* responsibility.”⁷⁸

But the fact that persons, not factors, are rented out in the labor market means that responsibility also has to be admitted. Ellerman illustrates this by the example of the “criminous employee.”⁷⁹ An employer has rented two factors, a van and a worker. At first, there is no criminal activity, but then the employer uses the services of both factors to rob a bank and they are caught. The worker claims in court that he is as innocent as the van owner (who is not responsible, not being involved in the crime and having no knowledge of it) because, just like the van, he was merely rented and employed as an instrument by his employer. The judge rejects this defense because the worker knowingly cooperated with the employer in the crime. They both share the responsibility.⁸⁰

A democratized workplace, unlike the institution of employment, presupposes that persons are responsible beings. A firm is a unified legal party that is responsible for the production process. In a democratized firm all participants are legally responsible for their joint activities, although they may delegate some authority to managers (representatives).⁸¹ To make this point in terms of my own argument, the participants in a democratic enterprise are not employees. They are self-governing (autonomous) members and partners in the firm, with the rights of citizens. They might, though they do not have to, own the firm (“the corporation” may be the owner); they can hire capital and other factors of production. The members will decide what to produce, how to produce it, have jurisdiction over the final product, and decide how they will govern themselves. The partners participate as “whole persons,” not as owners of property in the person, and there is no alienation of the right of self-government. The firm is constituted and maintained through the exercise of self-government in cooperative endeavors in daily work-life and in the collective governing body.

⁷⁸Ellerman 1995, p. 95.

⁷⁹Ellerman 1992, pp. 133–6.

⁸⁰Ellerman points out that it is *de facto* responsibility that is crucial. It is not that the worker lacks responsibility because an employment contract that involves a crime is invalid, nor a matter of the legal judgement in the particular case. The point is *de facto* responsibility in a joint activity—a worker is a person, not a factor, a thing, an instrument.

⁸¹Ellerman 1992, pp. 137–9; 1995, pp. 96–9. Ellerman refers to this as “self-employment,” but I find this confusing. It would be preferable to drop the language of employment when discussing democratic enterprises, although the hegemony of employment means that an alternative is not easy to find.

In principle, at least, all this is possible, but, as with any area of political change, the real problem is how it might be achieved. That question is a great deal more complex today than when I wrote *Participation and Democratic Theory*. There have been two decades or more of rapid and thorough economic restructuring and many multinational corporations now outrank medium-sized states in their “GNP.” Temporary and part-time employment is spreading rapidly, as is “outsourcing.” Nevertheless, unless the theoretical question gets back on the political agenda, practical solutions are not going to be developed.

When the individual is conceived as an owner of property in the person, rights are seen in proprietary terms. The major mark of private property is that it is alienable, so it is legitimate to alienate the right of self-government, at least in the “private” sphere of economic enterprises. A block is placed on alienation of that particular right in the “political” world of democracy. This arrangement is part of the constitutional path from self-ownership, but the bifurcation of self-government is arbitrary, as Dahl observes, and as strong-minded contractarians point out. The question raised by contractarians—the signpost along the absolutist path from self-ownership—is why alienation should not be unlimited and apply to all rights. Why are owners prevented from entering into a contract of civil slavery, from selling their votes, or selling all their democratic rights in a *pactum subjectionis*?⁸² When self-ownership is seen merely as a way of talking about, or as a synonym for, autonomy, there can be no convincing rebuttal to contractarians.

Versions of these questions, and a variety of answers, have echoed through modern political theory. Democratic theory begins from the premise that “all men are born free,” that self-government is a natural right. But what exactly followed from that premise, and to whom it referred, has always been in dispute. Rousseau claimed that for an individual to enter into a slave contract was a sign that he was not in his right mind, and had lost the capacity to appreciate the meaning of his status as free person. Both Kant and Mill argued that slave contracts were null and void.⁸³

To block slave contracts is compatible with the constitutional path, and partial alienability of the right of self-government. Ingram argues that rights in persons and personal endowments are inalienable. Entry to both the absolutist and the constitutionalist paths is then blocked. To make this move, however, means that, as Ingram recognizes, the right of self-government (autonomy) cannot be seen in

⁸²On the first see Pateman (1988, pp. 73–4), on the others Ellerman (1992, p. 100).

⁸³The person who entered the contract, Mill (1989, p. 103) wrote, “defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. . . . It is not freedom, to be allowed to alienate his freedom.” Rousseau and Kant both denied the status of self-governing persons to women, and endorsed their subordination in marriage. Among well-known political theorists, Mill stands virtually alone in criticizing both the marriage contract and the lack of participation by workers in governing enterprises. He looked forward to the day when laborers would form cooperatives, own capital, and elect their managers.

proprietary terms. The right has to be reconceptualized as an inalienable political right.

An “inalienable” right is a right that cannot be renounced. Nor can it be revoked, waived, transferred or forfeited; it “grants the right-holder an entitlement which he cannot undo.”⁸⁴ A right that is inalienable cannot be lost or extinguished, and cannot be separated from its holder.⁸⁵ An inalienable right thus cannot be traded in a market. Market-inalienability means that

market trading is a disallowed form of social organization and allocation. We place that thing beyond supply and demand pricing, brokerage and arbitrage, advertising and marketing, stockpiling, speculation, and valuation in terms of the opportunity cost of production.⁸⁶

The language of inalienable rights has a slightly old-fashioned ring to it. The influence of libertarian ideas, the shift in political culture, and the expansion of employment has made argument for democratization of workplaces and an end to the traffic in labor power also seem old-fashioned. But inalienable rights and workplace democracy form part of a series of much newer issues—such as the renting out of wombs, the traffic in organs, and the patenting of pieces of genetic material—that all revolve around commodification, property in the person, property rights and alienability.

The justification of employment as the paradigm of free labor rests on the political fiction that one piece of property in the person, labor power, is alienable. In fact, labor power is not separable from its owner and so is not alienable. Since labor power cannot be alienated, any debate about whether it should or should not be alienable, unlike debates over “property” that is separable from the “owner” (organs or genetic material, for example), is a debate over “let’s pretend.” Such a debate distracts attention from the subordination that constitutes employment, and from what is actually alienated through the employment contract—the right of self-government.

Rights are controversial, and much of the debate is informed by the “background beliefs” that Ingram wants to place outside disagreement. How rights, and autonomy or self-government, are interpreted is linked to the understanding of “democracy.”⁸⁷ Reinterpretation of concepts and reconstruction of institutions are part of the process of democratization. On the theoretical side the proprietary view of rights (part of the property individuals own in their persons) has to be reconceptualized. Henry Shue’s (1996) analysis of basic or fundamental rights—rights that are a necessary condition for the enjoyment of other rights—provides a promising suggestion of how the right of self-government might begin to be reframed. And the ideas of property in the person and self-ownership have to be relinquished. The political standing and

⁸⁴Meyers 1985, pp. 9, 24.

⁸⁵Radin 1996, p. 17; for other senses of “inalienability” see pp. 16–20.

⁸⁶Radin 1996, p. 20.

⁸⁷For another view of autonomy and democracy see Held (1995; 1996) and Gaffaney (2000).

bodily integrity that is encapsulated by “self-ownership,” and that historically has given the term its political force and appeal, can be expressed in other language and other concepts more appropriate in a democracy.

In practical terms, the right of citizens to exercise self-government in their workplaces must be acknowledged. Membership and participation in self-governing democratic organizations requires not only a change in authority structures but the conditions summed up by Ingram as “strong social provision.” The goal here is to maximize autonomy. As Ingram stresses, the conditions for full and equal standing for all citizens have to be provided to foster equal respect and to enable them to enjoy self-government and participate as fully in social and political life as they wish. Thus provision is required to ensure that moral and political capacities are developed, that everyone is properly educated, that all have adequate housing, access to health care, and income at a level to maintain a modest but decent living standard, and allow access to leisure and cultural pursuits.

The ideas that underlie strong social provision and democratization of economic enterprises helped animate much intellectual and popular activity for three decades after the Second World War, but were pushed to the periphery of political debate during the 1990s. The increase in inequality and the spread of the doctrine of ownership and private property rights means that conditions for democratization and the development of a political conception of democratic rights have been eroded. There are now signs that the political climate may be changing again, but whether or not that is the case, democratization needs to be kept on the political agenda and in the minds of political philosophers.

Thus it is important for critics of neo-liberal economic doctrines and political libertarianism to have the best tools available. These tools have been discarded in most debates about self-ownership by uncritical use of the term as a synonym for autonomy. Cohen and Ingram reject the identification of self-ownership with autonomy, but their attack on libertarianism is inhibited by their respective approaches to political philosophy and by concentration on exploitation at the expense of subordination. The central conceptions of libertarians—ownership of property in the person and contract—have not been taken seriously enough in the argument over self-ownership. When property in the person is translated into the language of self-ownership it becomes hard to see why contractarians argue as they do, and why they refuse (if they are strong-minded) to have blocks placed on alienable property rights. Yet an understanding of the meaning and political force of property in person is crucial for tackling new questions about organs, genetics and patents. Where lines are to be drawn about property and commodification, what should be alienable and inalienable, and where the balance should be between the two, are some of the most pressing issues of this new century.

A disjuncture has opened up between political culture, moving along an absolutist path in which everything can become alienable private property, and democracy as a global watchword. Democratization demands a conceptual

balancing act. The idea of property in the person is indispensable for an appreciation of why employment and democracy are at odds, and of the direction of the transformation required. But if democratization is to take place, property in the person must be left behind with civil subordination. Two of the most important questions are whether the right of self-government should continue to be (partially) alienable, and whether the renting of persons should continue to be deemed compatible with democratic citizenship.

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