



# Libertarianism and Conjoined Twins

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## Abstract

This paper presents a new challenge for libertarianism. (Or rather: for any version of libertarianism committed to absolute, indefeasible self-ownership rights). The problem, in a nutshell, is that libertarianism appears to self-destruct in cases where conjoined twins—who share body parts—disagree over what to do with them. The problem is explored, and some solutions are proposed. The verdict is that accepting any of them will make libertarianism harder to defend.

**Keywords** Libertarianism · Conjoined twins · Self-ownership · Homesteading

## 1 Introduction

For some libertarians<sup>1</sup>, the primary axiom of libertarianism, the thing that makes it tick, is the non-aggression principle. Murray Rothbard defines it like so:

The fundamental axiom of libertarian theory is that no one may threaten or commit violence (‘aggress’) against another man’s person or property. Violence may be employed only against the man who commits such violence; that is, only defensively against the aggressive violence of another. In short, no violence may be employed against a nonaggressor. (Rothbard [1974] 2000, 116)

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<sup>1</sup> Not all libertarians. The flavour of libertarianism I’m challenging here is only the pure, strictly deontological version; the sort that’s committed to absolute, indefeasible self-ownership rights. Other varieties of libertarianism will be left untouched. This argument is not for them.

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According to Hans Hoppe, the principle “makes a sharp distinction between one’s own body and the body of another person” (Hoppe 2006, 321). If it didn’t, situations could arise in which two individuals disagreed about what to do with their shared bodily property, which would result in absurdity, since both would have an absolute, indefeasible right to do what they want with their body, and yet, by exercising that right, they’d stand in violation of the equally absolute and indefeasible rights of someone else. Thus, for Hoppe, and for libertarians of his persuasion, “[t]wo individuals cannot be the exclusive owner of one and the same thing at the same time” (197).

For most of us, for most of the time, this “sharp distinction” between people is both real and easy to recognize. No part of your body is a part of my body, and vice versa. The same goes for your property—your widgets, your wealth, your wagon wheel, whatever.

But the lines between what’s yours and what’s mine aren’t always so crisp. In particular, conjoined twins make trouble for this distinction. This paper explores the unique difficulty that conjoined twins create for libertarianism and then tests some possible lines of response. The verdict is that accepting any of them will make libertarianism harder to defend.

## 2 The Dilemma

Suppose that God 3D prints a pair of conjoined twins. The one on the left, he calls Owen. The one on the right, he calls Cowen. Owen and Cowen came in to being at exactly the same time. Their bodies and souls were created simultaneously, not a second between them. Anatomically, Owen and Cowen are thoracopagus conjoined twins; that is, they are conjoined at the chest, facing face to face. Among other things, they share a single heart.

These are no ordinary twins. After all, they were made by God in a 3D printer. Since God is perfect, it stands to reason that his printer is perfect too. Consequently, the twins are perfectly symmetrical. There isn’t an atom of difference between them.

Furthermore, when the twins were created, they began using their bodies—including their shared heart—at *exactly* the same time.

Finally, both twins are equally capable of clear, coherent speech, and both twins have the same capacity for rational, autonomous decision-making, which is, predictably, superb.

One day, the twins appear before the International Federation of Libertarian Clever Clogs (IFLOCC) with a legal dispute. Owen, being of sound mind and judgement, wants to die. Having recently finished watching “The Prom” on Netflix, he has decided to inject his heart with bleach. But Cowen, who is more easily impressed, isn’t on board with the decision. He, also being of sound mind and judgement, wants his heart to keep on pumping.

On whose side should IFLOCC rule? Owen (who wants his heart to stop), or Cowen (who doesn’t)? Under ordinary circumstances—that is, if the twins were physically separate—libertarians would say that both decisions ought to be respected by law. Owen should be free to stop his heart, and Cowen should be allowed to keep his going. Their bodies, their choices.

But, under these less than ordinary circumstances, the situation is muddled. Were the IFLOCC to side with Owen, they would be allowing Owen's to violate Cowen's right not to have his heart stopped. On the other hand, were the IFLOCC to side with Cowen, they would be violating Owen's right to stop his heart.

Thus, we have ourselves an intractable dilemma; a legal paradox. To remain true to libertarianism, the IFLOCC must somehow rule in favour of both twins. But to rule in favour of both twins is impossible, since their demands are incompatible.

### 3 Libertarians and Conjoined Twins

The literature in which libertarians have attempted to grapple with the problems posed by conjoined twins—real or imaginary—is scant. In fact, the only such attempt, so far as I've been able to find, is that of Jeramiah Dyke and Walter Block. The stated goal of their paper (titled: "Explorations in Property Rights: Conjoined Twins") is to answer questions like "who owns the [conjoined] body if it is under the control of two *wills*?", or "[c]ould one twin legally end his life if it meant the end of both of their lives?" (Dyke and Block 2011, 1).

That last question is directly relevant to the case of Owen and Cowen. If Dyke and Block have an answer, the IFLOCC might just have a sound libertarian basis for their ruling. Unfortunately, despite posing the question in their opening paragraph—which lists the "questions entertained" (*ibid.*) throughout the paper—no answer seems to have been given. The question was raised, and then, apparently, forgotten.

Moreover, the things they do discuss aren't going to be of much help here. The authors mostly go on to talk about the rights conjoined twins and their caregivers, and how the law should deal with conjoined twins if one of them commits a crime. The cases discussed involve twins who are either under the care of a carer, or who are in some way asymmetrical: either in their dominance, or in their ability to communicate. Whatever we choose to make of their solutions to these knotty problems, however, their analysis has little or nothing to say about the Owen-Cowen dispute, which is such that neither twin is dominant in any respect, neither twin is under the custodianship of a caregiver, and both are capable of making their wishes known.

There is, however, another instance of Block giving an answer to the conjoined twin question, one that's directly relevant to the case at hand. In an episode of *The Tom Woods Show* (a popular, libertarian podcast) Block gives an altogether different solution, suggesting that in cases where conjoined twins disagree about what to do with a shared set of organs, courts should defer to the older twin, the one who home-steaded the organs first (Woods 2020).

(At first, this proposal might strike you as simply biologically confused. How could one twin be older than the other? They're *twins*, aren't they? Don't *twins*, by definition, have to be the same age? Answer: perhaps, but not necessarily. It depends on your view of twinning. For, according to one account of twinning—the 'budding' view—it's perfectly possible for identical twins to be of different ages. According to this view, the correct analysis of twinning is that the first embryo begins to exist at conception, and then, about two weeks later, a new individual embryo 'buds' out of the first, leaving the original embryo alive and intact. If Block is an adherent of

the ‘budding’ view, then he’s not confused in claiming that one twin—the original embryo—could be older than the other, since the ‘budding’ view entails just that<sup>2</sup>).

Now, it goes without saying that this was an off-the-cuff answer in a free-form interview. This remark shouldn’t necessarily be taken as Block’s considered view on the matter. Regardless, it won’t work as a solution to the Owen–Cowen dispute.

Remember. In the hypothetical, Owen and Cowen were created simultaneously—not one after the other. They began using their heart simultaneously too. So even if we granted that, ordinarily, whoever homesteads a body part first becomes the sole and rightful owner of it, we would still be no closer to solving the problem at hand.

## 4 Weak solutions

Here are two solutions that won’t work if libertarianism is true:

- (1) Rule in favour of Owen, who wants his heart to stop.
- (2) Rule in favour of Cowen, who doesn’t.

What to make of (1) and (2)? Well, depending on your moral beliefs (and depending on the specifics of the case) you might conclude that one twin morally is in the right, and that the other is morally in the wrong, or that one twin is being reasonable while the other is being unreasonable, and, on that basis, decide whose wishes ought to be respected.

However, as libertarians are wont to stress, libertarianism is *not* a general moral theory. It’s only a theory of what ought to be legal. And, on libertarianism, *there can be no legally binding positive obligations*. Indeed, such obligations are “anathema to libertarianism” (Block 2010, 10)<sup>3</sup>. So even if we think that Owen or Cowen has this or that moral duty, or that one twin is being more reasonable than the other, the IFLOCC simply has no right—*no right!*—to force a decision upon one of them against their will. To do so would be to impose a positive obligation on one of the twins, which, under libertarian law, you just can’t do.

Here is another implausible response:

- (3) Assert that full self-ownership rights can only apply to physically separate individuals, and, thus, that conjoined twins—unlike physically separate humans—lack bodily rights (at least over the parts they share in common).

Unlike solutions (1) and (2), solution (3) doesn’t explicitly contradict libertarianism. Indeed, it seems to be a natural outgrowth of Hoppe’s assertion that “[t]wo individuals cannot be the exclusive owner of one and the same thing at the same time” (Hoppe

<sup>2</sup> For a defence of the budding view, see Condit (2020, 53–56). For two rival accounts that share the same (broadly Aristotelian) assumptions about personal identity, see Ford (1988) and DeRosa (2021).

<sup>3</sup> Not everyone agrees with this. Some libertarians think there are positive obligations that can be permissibly enforced. However, since it’s not clear to me how libertarians who accept positive obligations would respond to this dilemma (partly because *which* positive obligations are accepted varies from theorist to theorist), I won’t explore that rabbit hole here.

2006,, 197) But it seems to run contrary to another of Hoppe’s maxims: namely, “that all rules aspiring to the rank of just rules must be general rules, applicable and valid for everyone without exception” (Hoppe 1998,, xv), and it flies in the face of Dyke and Block’s assurance that “there is no negation of liberty that emanates from a birth defect” (Dyke and Block 2011, 1). If (3) is accepted, no libertarian statement of the self-ownership principle can be complete unless it ends with: ‘...except for conjoined twins.’, which is sad way to end a principle.

What’s more, accepting solution (3) opens the door to some of the worst *reductios* imaginable. (*Reductios* that are—by my lights—much, *much* worse than any of the ones used to motivate libertarianism in the first place). To take just one example, according to libertarianism, the reason “the rapist [...] is guilty of criminal behavior [is] because the victim is the rightful owner of the body being brutalized” (Block 1994, 119). But if conjoined twins don’t own the organs they share in common, then, it would seem, conjoined twins who share reproductive organs cannot be raped in the criminal sense. Sometimes bullet-biting is unavoidable. But I doubt many will want to bite this one.

Suppose the libertarian rejects these options. She might well prefer option (4):

(4) Rule arbitrarily (say, on the flip of a coin)<sup>4</sup>.

At first blush, this objection may strike you as a little...well...arbitrary. It seems to share the same essential problem as (1) and (2). The only difference is that, this time, the arbitrariness is left out in the open.

On closer inspection, though, this open arbitrariness might not be as problematic as it seems. By way of analogy, suppose that Sally, a consequentialist, is standing at a crossroads. Whichever path she chooses, left or right or none at all, her choice will result the exact same number of utils. In such a case, Sally would be equally justified in any choice she made, even if it was done arbitrarily, on the flip of a coin, say, or the say-so of a three-month-out-of-date horoscope. In the same way, if the very fact of the twins’ conjoinment makes a potential rights violation inevitable, and a choice has to be made, then ruling arbitrarily is the best option (indeed, the *only* option) available.

But not all libertarians will be happy with this solution, and for two reasons. First, option (4) seems only to can the problem and kick it down the road. Imagine a case where a private protection agency had agreed, through a previously negotiated contract, to protect both Owen *and* Cowen from rights violations<sup>5</sup>. In that case, flipping

<sup>4</sup> For this to work, the legal system might need to change its current practices. In the context of a different ownership dispute, law professors Heller and Salzman write: “Flipping a coin may seem fairest. But oddly that’s the one solution in the list above judges and juries are explicitly forbidden to from using. Coin flips work on the playground and to start football games, but not in the law. As a judge, you need to give a reason for choosing one party—even if you believe both sides have equal merit” (Heller and Salzman 2021, 19).

<sup>5</sup> For context, some libertarians think that the security functions of the state should be disbanded and replaced by private security guard companies, or ‘protection agencies’ (see Friedman [1989], Rothbard [1978; 1998], and Huemer [2013; 2021]). (Caveat: of these authors, only Rothbard is committed to the strong view of self-ownership I’m challenging here. The other two are fine.)

a coin on which twin should have their rights violated would mean flipping a coin on which unbreakable contract should be broken. Thus, the IFLOCC would be not only *allowing* an unfortunate but necessary rights violation, but actively *committing* one by reneging one of their contracts.

I suppose the natural retort would be that since a potential rights violation is unavoidable, any contract from a single organization promising the twins total protection against rights violations would be invalid (like a contract promising the delivery of a harem of married bachelors, or the drawing of a square circle). Fair enough. But suppose the twins had drawn valid contracts with two *separate* protection agencies. Would the only lawful means of resolution then be a battle between the two agencies, where the stronger agency would win out and permit their client to violate the rights of the other twin? Again, (4) seems only to delay the problem.

Now, at this point, the libertarian might just roll her eyes and say: “Look, mister—ought implies can. If a rights violation is unavoidable, *if it literally cannot be avoided*, then, yes, of course someone’s rights will be violated. Why is that such a problem?”.

Answer: maybe it isn’t. Though it does seem a bit off-base to me, all this talk about battling protection agencies and the violating of inviolable rights, I suppose the libertarian is within her epistemic rights in biting the bullet on this one.

But there are no free lunches. This move comes at a weighty cost. Historically, most libertarians have held that it is impossible for rights to conflict with one another. According to Rothbard, “since the rights of man are deducible from natural law, these rights cannot conflict with one another. If one discovers a contradiction, one has also discovered an error in one’s process of reasoning” (Rothbard 2005). Block goes one step further, crowning the doctrine the rights cannot clash an “axiom of libertarianism” (Block 2013, 128). Put formally, this “axiom” states that.

*A possible set of rights is such that it is logically impossible for one individual’s exercise of his rights within that set to constitute an interference with another individual’s exercise of his rights within that same set.* (Steiner 1977, 769; his italics)<sup>6</sup>

One plausible motivation for this axiom is that it’s permissible *by definition* to enforce a right, and impermissible *by definition* to enforce the violation of a right. But if rights can conflict, then one and the same action can be both permissible and not permissible to enforce—which is a contradiction.

If the libertarian accepts the thesis that rights can’t conflict, however, then she won’t be able to say that a rights violation is unavoidable in the Owen and Cowen case, because doing so explicitly concedes that they can.

The foregoing solutions strike me as pretty hopeless. I don’t see how they can be made to work. But that’s alright. The goods are on their way. In the next section, I provide one more solution—one that, by my lights, fares somewhat better than its predecessors.

<sup>6</sup> Cf. Christmas (2018).

## 5 Theism to the rescue?

Suppose the libertarian wants to reject all of those options because, she thinks, they're lame. What's left? I have one final offer:

(5) Rule in favour of God.

Remember. In the thought experiment, Owen and Cowen were created in a 3D printer, up in heaven, by God. On theism, the following two things are often thought to be true of God. First, God exists *a se*. That is, God is the sole ultimate reality, the only self-existent being. No being but God exists of necessity. Second, there's the doctrine of creation *ex nihilo*, which is closely bound to the doctrine of aseity. God, the sole ultimate reality, is the creator of all else that exists.

Now, libertarian homesteading theory will attribute ownership of some entity *E* to whoever creates *E*, so long as the parts composing *E* aren't owned by anyone else. And since 'all else that exists' includes Owen and Cowen's bodies, God would seem to own those, too<sup>7</sup>. If we accept this premise, then the sting of the problem can be alleviated. We are no longer faced with a situation wherein two wills have equal claim over a shared set of body parts. Rather, we are faced with a situation wherein one will (God's) has rightful ownership of everything, including Owen and Cowen's heart.

If the IFLOCC embraced (5), they'd have the beginnings of a solution to the Owen-Cowen dispute. The courts would simply treat Owen and Cowen as temporary stewards over a piece of God's property (a heart) and would try to rule however they think God would want them to. Maybe God opposes suicide. In that case, the IFLOCC should side with Cowen, who wants to live. Or, maybe, contrary to popular misconception, God approves of the practice (in which case, the IFLOCC should side with Owen, who wants to die).

Of course, a solution like this will have to overcome a number of hurdles if it's to succeed. First and foremost, you could straightforwardly object that it's doubtful whether God exists<sup>8</sup>.

Second, you could deny that the concept of 'ownership'—at least as it's normally understood by libertarians—can be meaningfully applied to God. For example: according to libertarianism, an essential feature of property ownership is that it's alienable; that is, it can be transferred to others at will. But it would be strange to think that God could just give away ownership of all creation to one of his creatures<sup>9</sup>.

<sup>7</sup> This position is exemplified by Locke, who declares that human beings are "...the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure" (Locke [1689] 1884, 194).

<sup>8</sup> Bonus thought: if, after considering all these options and more, the libertarian judged that a theistic account of self-ownership was more plausible than its rivals, they could always take the datum of self-ownership as a small piece of inductive evidence favouring theism over atheism. If they did, the theoretical cost of adopting theism as an auxiliary hypothesis might go down a bit.

<sup>9</sup> Example inspired by Nozick (1974, 287–288).

Another reason to think that ‘ownership’ cannot be truly predicated of God is suggested by Alexander Pruss on his majestic blog. He reasons as follows:

1. Things owned can be permissibly traded, barring special circumstances.
2. Trade in persons is never permissible.
3. Thus, no one owns a person. (By 1–3)
4. Thus, no person owns herself. (By 4)

“By the same argument”, notes Pruss, “God doesn’t own us, either. We *belong* to God, of course, but not by way of ownership” (Pruss 2015).

The rub: if “ownership” cannot be truly predicated of God, then the theistic solution to the Owen-Cowen dispute fails, since God—if he exists—doesn’t “own” Owen and Cowen. At least, so the objection goes.

However, there are ways this objection might be plausibly resisted. One would be to deny that the two examples listed above (transferring ownership of creation to a creature, trading in persons) are possible for God, since they contradict his goodness, his perfect rationality, or some combination of the two<sup>10</sup>. The second would be to adopt the strategy hinted at by Pruss: even if God doesn’t “own” us, we might still “belong” to him in the relevant sense. And if Owen and Cowen “belong” to God, then that might be all that’s needed for the theistic solution to get off the ground. Either way, I suspect that the worst of this objection can probably be avoided.

Third, some libertarians will be wedded to a principle which seems to make God’s existence of little help. More precisely, some libertarians will think that human persons are intrinsically unownable (or otherwise, for the ones who defend voluntary slave contracts, that it’s impossible to own a person merely by creating them)<sup>11</sup>.

But, clearly, the libertarian who accepts this principle won’t be able to accept the theistic solution to the Owen-Cowen dispute, since to say: “something intrinsic to persons bars those who make them from owning them—except for when *God* does it”, is, without further elaboration, a clear case of special pleading.

Finally, one could object that even if this approach is theoretically sound, we’d still face the practical problem of coming to know what God wants us to do with his belongings. By my lights, that’s the biggest downside to solution (5). For if its underlying assumptions turn out to be true, then the only one to whom the homesteading principle *truly* applies is God. So, if the libertarian embraced the theistic solution to the Owen-Cowen dispute, she’d have the additional burden of offering reasons for why, of all the ways God might want his property used by and allocated among his creatures, he’d want it done according to libertarian principles<sup>12</sup>.

<sup>10</sup> Interestingly, Nozick thought this response was so legless that he refused to even consider it, writing: “[a] moral view which must take *that* route to avoid being overthrown by facts that look accidental are very shaky indeed” (Nozick 1974, 288).

<sup>11</sup> For some places where this principle is either proposed or endorsed, see Rothbard (1998, 40–41), Block (2017), MacIntosh (2007), Narveson (2007, 234), and McKittrick (2006, 86).

<sup>12</sup> For some additional worries about the claim that God owns his creatures, see Murphy (2002, 94–104). For a critical response, see Evans (2013, 66–67).



## 6 Conclusion

In this paper, we've explored a hard problem for libertarianism. Which twin should the IFLOCC side with? Owen (who wants his heart to stop) or Cowen (who doesn't)? On libertarianism, neither twin has a stronger claim to their shared heart. To side with one twin over the other would be to impose an unsolicited positive obligation on one of them—something that's anathema to libertarianism (at least to the version we're considering here).

Three other options were surveyed. First, the libertarian could deny that conjoined twins have ownership rights over their shared organs. This conclusion is consistent, but not very plausible: it implies that (some) conjoined twins don't have a right not to be raped.

Second, the libertarian could embrace the arbitrariness and rule arbitrarily, thereby sanctioning the unavoidable violation of someone's inviolable rights. But this doesn't solve the problem. It merely postpones it. What's more, this solution implicitly concedes that rights can come into conflict. But some libertarians will want to insist that they can't.

Third, the libertarian could rule however she thinks God would want her to. This avoids some of the problems facing the other solutions, but it opens up a whole new can of worms: it assumes persons can be owned simply by being created, assumes God exists, assumes he owns us in the relevant sense, and, last but not least, imposes a new burden of proof on the libertarian, who would now have to provide reasons for thinking that her political philosophy is shared by the creator of the universe.

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