Libertarians are attracted to the self-ownership thesis because it seems to satisfy four important theoretical desiderata. First, the thesis treats all persons equally by assigning them the same initial set of rights. Second, the thesis gives people the strongest set of ownership rights possible. Third, it assigns persons a determinate set of rights. And, finally, it grounds the libertarian rejection of a duty to assist, benefit, or rescue others. This article argues that these four desiderata cannot be simultaneously satisfied. Specifically, it contends that the first three desiderata can be jointly satisfied only if the thesis merely gives people the right to include their owned bodies in various actions (as opposed to a stronger version of the thesis that gives people permissions to do things with their bodies). However, such an interpretation of the thesis will not satisfy the final desideratum. Thus, libertarians face a tetralemma when defining the self-ownership thesis.

A signature commitment of natural rights libertarianism is the self-ownership thesis, i.e. the thesis that people have the same moral rights over their bodies that they would have over a fully owned object. While there is potential disagreement over which rights count as ownership rights (as a conceptual matter), philosophers typically take the set of ownership rights to be some subset of the following set of rights, comprehensively catalogued by Fabian Wendt:

A liberty to use, consume, modify or destroy the owned object, a claim that others do not use, consume, modify or destroy the object without consent, a power to transfer the whole property rights bundle or parts of it to other persons, a liberty to defend one’s rights (and the rights of others) against aggressors, maybe a liberty to punish rights-violators, a claim to receive redress from violators of one’s rights, a power to enforce these rights against violators of one’s rights, claims against interference with the exercise of any of these liberties and powers and finally immunities against non-consensual loss of any of these claims.¹

Libertarians who endorse this thesis typically want it to satisfy four desiderata. First, they want the thesis to treat like people alike. Second, they want the thesis to assign persons the strongest set of self-ownership rights possible (i.e. the strongest set of rights that satisfies the first desideratum without generating a contradiction). Third, they want the thesis to have determinate content, which is to say that they want it to assign each person some specific set of enumerable rights. Finally, libertarians want the self-ownership thesis to ground their denial that persons have a duty to assist, rescue, or otherwise benefit others. This article will argue that these four desiderata cannot be simultaneously satisfied. Specifically, it will argue that the self-ownership thesis can satisfy the first three desiderata only at the expense of the fourth. Thus, libertarians face a tetralemma: they must either

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reconsider their rejection of the duty to assist or give up on satisfying one of the other three desiderata.

1. Four Desiderata for the Self-Ownership Thesis

To explain why libertarians face this tetralemma, it will be helpful to first describe each of the four desiderata in greater detail, starting with the desideratum that the self-ownership thesis treat like people alike. To briefly motivate this equality desideratum, note that practically all normative reasoning proceeds on the assumption that, if two people are relevantly similar, they must be treated similarly by a moral theory or principle; otherwise, the theory or principle seems unacceptably arbitrary. Thus, libertarians insist that all persons possess equal self-ownership rights – which is to say that if one person has a given right, all other persons have either an identical or a symmetrical right. For example, if one person starts out with the power to appropriate some object, then all persons start out with an identical power to appropriate that object. Similarly, if one person initially has the right to exclude all others from her body, then all others initially have the symmetrical right to exclude her from their bodies. Of course, people might end up with fewer rights than others by either waiving or forfeiting their rights; however, their initial moral equality insulates libertarianism from charges of moral arbitrariness.

The maximality desideratum holds that the self-ownership thesis ought to assign persons the strongest set of self-ownership rights compatible with all others having that same set of rights. More precisely, libertarians want to maintain that each person has a set of self-ownership rights \( S \) such that \( S \) has no proper superset \( T \) where (a) every member of \( T \) is an ownership right and (b) every person can possess all the members of \( T \) without logical contradiction. Note that, absent this specification, one could assign persons many possible subsets of the self-ownership rights listed in the introductory section while still satisfying the equality desideratum. For example, one could assign each person only a permission to use, consume, or modify her body but no other self-ownership rights (e.g. no claim against others using, consuming, or modifying her body). Or, alternatively, one might assign each person the aforementioned claims but without the posited permissions. Together, these examples illustrate that if one defines the self-ownership thesis as merely asserting that persons have equal self-ownership rights, one would render the thesis radically indeterminate, as there are thousands of non-identical combinations of ownership rights that are equal in the specified sense. By contrast, a statement of the self-ownership thesis that satisfies the maximality desideratum would seemingly avoid this indeterminacy problem, as one might plausibly think that there is a single maximal set of equal ownership rights (much more on this below). Additionally, rejecting the maximality desideratum would allow for impoverished versions of the self-ownership thesis that assign persons only a limited set of rights. Given that libertarians typically take self-ownership rights to provide people with valuable moral protections, they will typically want to assign persons as many of these rights as possible – i.e. they will endorse the maximality desideratum.

Relevant to the discussion of determinacy just above, the determinacy desideratum holds that the self-ownership thesis must have determinate content in the sense that it entails that each person possesses some specific set of rights. There are stronger and weaker versions of this desideratum. A stronger version holds that the self-ownership thesis must be entirely determinate such that, for any given person and any given right, there is some fact...
of the matter about whether or not the thesis entails that the person possesses that right. Alternatively, a weaker version might allow that there is no such fact of the matter about certain rights so long as there is a suitable number of rights that are entailed by the thesis. For these purposes, one need only posit this latter version of the desideratum, as the proposed tetralemma still arises even on this weaker assumption.

Finally, libertarians want the self-ownership thesis to support their contention that persons do not have (enforceable) duties to assist or rescue others. A core libertarian contention is that people are not required – or, at least, cannot be made – to use their bodies to benefit others. But why think that there are no such (enforceable) duties to provide benefit? Libertarians typically answer this question by appealing to the self-ownership thesis: because people have a permission to use their bodies as they choose, they cannot have a duty to aid others. Granted, there may be other reasons for rejecting such a duty. However, libertarians attracted to the self-ownership thesis will take the case against a duty to assist to be significantly strengthened if the thesis implies the negation of such a duty. This gives them reason to endorse this final desideratum.

The problem for libertarians is that it is not possible to satisfy all four of these desiderata simultaneously – or so this article will argue. Specifically, it will contend that a self-ownership thesis that has determinate content and assigns persons equal and maximal rights will not be able to ground a denial of the duty to assist. Thus, libertarians will have to either give up this basis for rejecting duties of assistance or allow one of the other desiderata to go unsatisfied.

2. The Indeterminacy Argument

To see why libertarians face this tetralemma, it will be helpful to consider an influential worry about the determinacy of the self-ownership thesis. As noted in the introduction, ownership is generally understood to imply a bundle of ownership rights, where these rights include a permission to use a thing, a claim against others using the thing, the power to transfer these rights to others, etc. However, given that ownership decomposes into a number of distinct rights, some philosophers have worried that a self-owner might be understood as having any arbitrary subset of these rights vis-à-vis her body. Thus, absent additional specification, the claim that all persons own their bodies lacks determinate content, thereby failing to satisfy the determinacy desideratum. Further, any additional specification must seemingly avoid charges of being ad hoc. If, for example, one assigned persons just those rights that did not entail any unfortunate results – e.g. one denied persons a claim to exclude just in case respecting that claim would impose high economic costs on others – that decision would seem arbitrary in a way that would compromise the theoretical acceptability of the self-ownership thesis.

There is an apparent solution to this problem: posit that each person possesses the strongest set of ownership rights compatible with all other persons possessing that same set of ownership rights. This specification appears to resolve the indeterminacy worry because there is seemingly only one single maximal set of self-ownership rights. Given such a single maximal set, there would be no question about which rights are assigned by the self-ownership thesis, as it assigns all and only those rights that are in the set. In this way, the posited specification attempts to simultaneously satisfy both the determinacy desideratum and the maximality desideratum. Additionally, the invocation of maximality...
makes the specification seem principled rather than arbitrary and ad hoc: because self-ownership rights provide people with valuable moral protections, one has reason to assign people as many self-ownership rights as possible.

Unfortunately for libertarians, defining self-ownership in terms of equality and maximality is not actually sufficient for rendering the concept of self-ownership determinate. While this approach rules out a large number of candidate sets of ownership rights (e.g., the set where each person has only the permission to use her body but no claims against others using her body), the concept of self-ownership will not refer to a single set of rights without further specification. To see why, consider G.A. Cohen’s case of person P wanting to punch person Q in the nose. In this scenario, one might assign to each person a claim against others that they not make contact with her body. Given this assignment, it would follow that any non-consensual physical incursion on Q’s nose would wrong Q. Alternatively, one might assign to each person a use right to move her respective fists where she pleases — i.e., a Hohfeldian permission, which entails that P does not wrong others when she carries out acts of punching with her body. Both rights seem to be genuine ownership rights, as one is a claim against others using the object in question (i.e., an exclusion right) while the other is a permission to use the object in the chosen fashion (i.e., a use right). However, one cannot include both of these rights within the set of self-ownership rights, as to do so would entail a contradiction: P would be free to punch Q (because P’s use right implies there is no duty to refrain from punching) and have a duty not to punch Q (because Q’s exclusion right implies such a duty).

Given the apparent incompatibility between the posited use right and exclusion right, it follows that there is no single maximal set of self-ownership rights. For, consider the set S that is the strongest set of universalizable ownership rights over the self that excludes both the fist-related use right and nose-related exclusion right mentioned in the previous paragraph. A set that is otherwise identical to S but also contains one of the two specified rights would be stronger than S (as it would be a superset of S). However, there are then two distinct maximally strong sets of rights: the set of rights that is identical to S but also includes the use right and the set of rights that is identical to S but also includes the exclusion right. If some set could contain both rights in addition to all the members of S, then that would be a stronger set, still, yielding a singular maximal set of self-ownership rights. However, because the two rights are incompatible, there is no such single maximal set, thereby rendering the concept of self-ownership indeterminate. Further, one could make the same point about any analogous use-right — exclusion-right pair; thus, the self-ownership thesis is not just indeterminate, but radically indeterminate (in violation of the determinacy desideratum).

Cohen attempts to defuse this problem by arguing that the right to punch someone in the nose is not an ownership right. Thus, while the set that contains all the members of S plus the exclusion right is not stronger than the set that contains all the members of S plus the punching right, only the former is a set of ownership rights. This, in turn, implies that there is still a single maximal, universalizable set of such rights — i.e., the concept of full self-ownership remains determinate. However, given that use rights are ownership rights, why would the liberty to use a fist to punch someone not qualify as an ownership right? Cohen’s only argument for this claim is an argument by analogy. Specifically, he considers the theoretical choice between assigning everyone either a right of way across others’ land or the incompatible right to fully exclude others from one’s land. In this case, Cohen argues that, while there is no universalizable maximal rights set in this
case, there is still a universalizable maximal set of property rights with respect to land – namely the set where people have exclusion rights but no right of way – as a right of way does not qualify as a property right in land. Analogously, he concludes that there can be a single maximal set of self-ownership rights, as the right to punch is not an ownership right.

However, Cohen’s claim about rights of way is no more obvious than the claim about self-ownership that it is supposed to support. Given that (a) a right of way is a Hohfeldian liberty right to use the land in question and (b) the right to use a thing is a paradigmatic property right, why would a right of way not be a property right in land? Perhaps Cohen’s thought is that a right of way is really a right to do something with one’s body rather than the land, so it is better construed as a self-ownership right than a land-ownership right. Or, alternatively, Cohen’s claim might be that a right of way is a right to use someone else’s land – perhaps because that person has a larger number of ownership rights with respect to that land – and therefore cannot be an ownership right because it is not a right over something that one owns. The problem with both of these suggestions, however, is that they render the right-of-way case disanalogous to the punching case, as both a right to punch and a right not to be punched are, to borrow the language Cohen uses to describe self-ownership rights, rights ‘over a particular body, by the person whose body … it is’. Given the failure of Cohen’s analogy, there seems to be no basis for his contention that a right to punch is not an ownership right. Thus, his argument fails to counter the worry that defining self-ownership in terms of maximal equal ownership rights leaves the concept indeterminate.

3. Two Kinds of Use Right

Fortunately for proponents of the self-ownership thesis, there is a better way of solving the indeterminacy problem. To introduce this solution, it will be helpful to formally restate the indeterminacy argument so as to make its premises explicit:

1. To punch someone is to use an owned object.
2. A use right is a permission to use an owned object.
3. Thus, a permission to punch someone is a use right.
4. Use rights are ownership rights.
5. Thus, a permission to punch someone is an ownership right.
6. A claim against being punched is an ownership right.
7. If a claim against being punched and a permission to punch are both ownership rights, then the maximal set of ownership rights will include both of these rights.
8. Thus, the maximal set of ownership rights includes both of these rights.
9. But one cannot assign both rights to all persons without contradiction.
10. Thus, there is no maximal set of ownership rights that can be assigned to all persons without contradiction.

Cohen’s reply seems to be an effort to dispute Premise 5. However, it does not succeed for the reasons discussed in the previous section. By contrast, the proposal here is that one can reject the indeterminacy argument by denying its validity. Specifically, the suggestion will be that there is an equivocation that occurs across lines 1 and 2 of the argument, as there
are really two senses of ‘use’ with Premise 1 and Premise 2 employing different senses of the term. Thus, the indeterminacy argument fails. Additionally, once it has been clarified what Premise 2 is asserting, one can then demonstrate that there is a single maximal set of ownership rights that can be assigned to all persons without contradiction— which is to say that the first three desiderata presented in Section 1 can all be satisfied simultaneously.

To show how the term ‘use’ is ambiguous, it will be helpful to begin by drawing a metaphysical distinction between the composition and form of objects. The composition of an object is the set of all the parts that compose it (one might here imagine the illustrated list of parts so often found in the opening pages of a furniture-assembly instruction booklet). By contrast, the form of the object is the spatial arrangement of those parts, with the same set of compositional elements potentially taking on many forms. For example, a Lego sculpture and the heap created by the demolition of that sculpture will have the same composition but distinct forms. Similarly, actions can be understood as having both composition and form, as they are composed of parts arranged in particular ways across time and space. 22 For example, one might use a deck of cards to either play a game of solitaire or build a house of cards, with these two actions having the same composition (the constructor/player plus 52 cards) but different forms.

The suggestion here is that a Hohfeldian claim or permission can have either an action’s form or its composition as its object. In the case of claims, a person who has a claim against an action’s form has a claim against someone arranging a set of objects into a particular spatio-temporal formation. For example, a person might have a claim against another destroying a scarce unowned resource upon which she depends for survival. In this case, the former’s claim is against the latter’s specific manipulation of the resource but not a claim against her using the object as such. By contrast, a person might have a claim against another using some set of objects at all, irrespective of what the person does with those objects— i.e. a claim against the objects being a part of the set of objects that composes the action. 23 For example, the owner of a bicycle would have a claim against that bicycle being ridden to the beach without her permission. In other words, there are two different ways in which an action can wrong a person, as there are different sorts of claims that she might have against that action. The action might thereby infringe upon multiple claims simultaneously if she has a claim against both its composition and its form.

Given that there are two varieties of claim rights, there are also two different varieties of permissions that correspond to these respective varieties of claims. Suppose that some action ϕ has all and only objects a and b as members of its compositional set and arranges them across space and time such that ϕ has form f. When no one has a claim against P including a and b within the action, P has a correlative permission to include a and b within her action. Call this permission an inclusion right. By contrast, when no one has a claim against P arranging objects into spatio-temporal form f, her correlative permission to realize f can be called an exercise right. In the natural-resource case above, the suggestion is that the person who destroys an unowned scarce resource has an inclusion right vis-à-vis that resource but not an exercise right to destroy it.

This distinction allows for the libertarian to deny the validity of the incompatibility argument presented above. Specifically, she can maintain that the argument equivocates with respect to the term ‘use.’ When Premise 1 asserts ‘to punch someone is to use an owned object’, it is employing the term ‘use’ to refer to a particular exercise of the object. 24 By contrast, Premise 2’s contention that a use right is a permission to use an owned object is best understood as asserting that a use right is a permission to include the owned object in any given action’s compositional set— i.e. that use rights are inclusion
rights. Thus, Premise 3’s claim that a permission to punch someone is a use right does not follow, and the indeterminacy argument is invalid.

Additionally, once use rights are understood to be inclusion rights, it becomes evident that both a use right to punch and a claim against punching can be assigned to all persons without contradiction. As just discussed, the use right in question is merely a permission to include the owned fist in the action. It is not a permission to either carry out the punching motion with the fist or to include others’ bodies in the action (as one does when one makes contact with those bodies). Thus, the right does not conflict with others having a claim against being touched by a swung fist. Indeed, having a permission to include her fist in the action is fully compatible with her not having a permission to include Q’s body in her action. This, in turn, implies that there is a single maximal set of self-ownership rights that can be assigned to all persons, where this set includes both exclusionary claims against non-consensual contact and inclusion rights to use one’s body in any action whatsoever. In this way, the libertarian can maintain that the self-ownership thesis satisfies the first three desiderata presented in Section 1.

4. Use Rights and the Duty to Assist

The previous section has argued that the libertarian can satisfy the equality, maximality, and determinacy desiderata by positing that use rights are inclusion rights. However, this section will argue that this theoretical choice entails that the self-ownership thesis will not satisfy the fourth desideratum presented in Section 1, namely, that the thesis grounds the libertarian rejection of a duty to assist or rescue others. Thus, absent some other strategy for satisfying the first three desiderata, libertarians will face a tetralemma, with one of their desiderata having to go unsatisfied.

To see why interpreting use rights as inclusion rights has this implication, it will be helpful to first consider why the self-ownership thesis is generally taken to negate any duty to assist, rescue, or benefit others. Specifically, the self-ownership thesis can be employed in the following bystander argument, the conclusion of which is that there is no duty to rescue/benefit. Suppose that a person is faced with two options: rescue a drowning child or stay on the shore. Given the exhaustive nature of these options, not staying on the shore is a necessary condition of rescuing the child. Further, assume (for the sake of a reductio) that there is a duty to rescue the child. Such a duty entails that the person also has a duty to not stay on the shore, as if one has a duty to ϕ – and ψ-ing is a necessary condition of one ϕ-ing – then one also has a duty to ψ. However, the self-ownership thesis implies that the person has a permission to use her body as she chooses, which entails a permission to stay on the shore. Thus, one reaches a contradiction, as the person cannot have both a duty to do a thing and a permission to not do the thing. To avoid this contradiction, one must then reject the assumption that there is a duty to rescue.

While this argument is valid, it also tacitly assumes that self-owners have exercise rights rather than mere inclusion rights. Specifically, this assumption is implied by the premise that the self-owner’s right to use her body entails that she has a permission to stay on the shore. As the punching case illustrates, the self-owner having a mere inclusion right would not morally vindicate this action in its entirety – that is to say, it would not show that the action did not wrong anyone. Rather, the right would merely entail that no one is wronged by one aspect of her action, namely its composition. In other words, while the self-owner would have a permission to include her body in the action of staying on the
shore, this use right would be entirely compatible with her having a duty not to stay on the shore (i.e. to rescue). In order for the self-ownership thesis to entail that she is free to stay on the shore, it must entail that she has both the right to include her body in that action and the right to carry out an action of that particular form – i.e. the thesis must entail both inclusion rights and exercise rights. However, the previous section has demonstrated that the concept of self-ownership cannot include exercise rights lest it be rendered indeterminate. Thus, the self-ownership thesis cannot support the conclusion that the person is free to stay on the shore, and the bystander argument against the duty to rescue collapses.

This point can be put more generally. If the self-ownership thesis is to ground a denial of the duty to rescue/benefit, it must entail that self-owners do not act wrongly when they carry out a non-assisting action rather than an act of rescue/benefit. However, as noted just above, a thesis that strictly assigns people inclusion rights does not have this implication. All that such a thesis establishes is that people do not act wrongly by including their respective bodies in the non-rescuing/non-benefitting action, with it then remaining an open question whether the action as a whole is wrong. Thus, a determinate, equal, maximal self-ownership thesis fails to ground the libertarian denial of the duty to assist.

5. Conclusion

This article has attempted to show that libertarians face a tetralemma. If they want the self-ownership thesis to treat like people alike, assign people the maximal set of ownership rights, and be (reasonably) determinate, they need to maintain that use rights are inclusion rights and not exercise rights. By contrast, if they want the self-ownership thesis to entail that there is no duty to assist, they need the set of self-ownership rights to include exercise rights in addition to inclusion rights. Given the incompatibility of these two ways of construing use rights qua ownership rights, the libertarian must make a difficult choice regarding which desideratum to leave unsatisfied.

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NOTES

1 Wendt, Fabian. 2015. “Justice and Political Authority in Left-Libertarianism.” Politics, Philosophy and Economics 14(3): 316–39, p. 318.
2 There are many influential libertarians who posit that people have equal rights – although not necessarily self-ownership rights as described above. These include Locke, John. 2005. Second Treatise of Government. Urbana, IL: Project Gutenberg. https://www.gutenberg.org/files/7370/7370-h/7370-h.htm. Accessed 26 July 2019, §§ 4–7; Spencer, Herbert. 1851. Social Statics: or, The Conditions Essential to Happiness Specified, and the First of Them Developed. London: John Chapman. https://oll.libertyfund.org/titles/273. Accessed 14 July 2020, pp. 77–78; Steiner, Hillel. 1974. “The Concept of Justice.” Ratio 16(2): 206–25, p. 223; Fressola, Anthony. 1981. “Liberty and Property: Reflections on the Right of Appropriation in the State of Nature.” American Philosophical Quarterly 18(4): 315–22, pp. 316–7; Lomasky, Loren. 1987. Persons, Rights, and the Moral Community. New York: Oxford University Press, pp. 122–3; McElroy, Wendy. 1991. “Introduction: The Roots of Individualist Feminism in 19th-Century America.” In Freedom, Feminism, and the State, 2nd ed., edited by W. McElroy. New York: Holmes & Meier, p. 3; Rothbard, Murray. 1998. The Ethics of Liberty. New York: New York University Press, pp. 42–3; Narveson, Jan. 1998. “Libertarianism vs. Marxism: Reflections on G. A. Cohen’s ‘Self-Ownership, Freedom and Equality’.” Journal of Ethics 2(1): 1–26, p. 6; Narveson, Jan. 2001. The Libertarian Idea. Peterborough, ON: Broadview Press, p. 98; Long, Roderick. 2005. “Liberty: The Other Equality.” The Freeman: Ideas on Liberty 55(8): 17–9, pp. 18–9; and Flanigan, Jessica. 2019. “Duty and Enforcement.” Journal of Political Philosophy 27(3): 341–62. Critics of libertarianism have similarly recognized libertarianism as egalitarian in this respect including Sen, Amartya. 1992. Inequality Reexamined. Oxford: Oxford University Press, pp. 13, 21–3; Cohen, G. A. 1995. Self-Ownership, Freedom, and Equality. Cambridge: Cambridge University Press, p. 213; Braham, Matthew, and Martin van Hees. 2004. “The Impossibility of Pure Libertarianism.” Journal of Philosophy 111(8): 420–36, pp. 427, 431; and Knight, Carl. 2009. “Describing Equality.” Law and Philosophy 28(4): 327–65, p. 340.

3 See, for example, Spencer op. cit., pp. 77–8 and Fressola op. cit., pp. 316–7. Similarly, Narveson 2001 op. cit. suggests that libertarians assign to each person maximal liberty, where liberty is manifested in the right of self-ownership. This way of defining the concept has also been influentially embraced by Cohen op. cit., p. 213, who, while critical of the self-ownership thesis, believes that the concept can be given determinacy by defining it in terms of equality and maximality. Peter Vallentyne, Hillel Steiner, and Michael Otsuka also appeal to equality and maximality to give determinacy to the concept of self-ownership, although their equality constraint differs slightly from the one proposed by the previously cited authors. Specifically, they contend that each person has the strongest set of ownership rights compatible with someone having that same set of ownership rights over all other things in the universe. Vallentyne, Peter, Hillel Steiner, and Michael Otsuka. 2005. “Why Left–Libertarianism Isn’t Incoherent, Indeterminate, or Irrelevant: A Reply to Fried.” Philosophy and Public Affairs 33(2): 201–15, p. 205.

4 A more stringent version of this constraint might hold that every person must be able to possess all the members of T without there even being any conflict of rights rather than a contradiction. For example, if a person has both a duty to act in some way and a duty to not act in that way, strictly speaking, no logical contradiction obtains. However, on some theories of rights, such a conflict might still be theoretically unacceptable even if it is not a logical problem for the theory. For these purposes, no stance needs to be taken regarding how best to define clause (b) of the maximality desideratum, as the subsequent argument is valid even if one adopts the weaker version of the desideratum.

5 Libertarians have argued that the possession of ownership rights allows people to pursue the projects that make their lives meaningful (Lomasky op. cit.), to act purposively and, thereby, ‘[live] their own lives in their own chosen ways’ (Mack, Eric. 2010. “The Natural Right of Property.” Social Philosophy and Policy 27(1): 53–78, p. 62); to live with others ‘without fear’ (Schmidtz, David. 2010. “Property and Justice.” Social Philosophy and Policy 27(1): 79–100, p. 82); and to feel ‘at home’ in the world (Brennan, Jason. 2014. Why Not Capitalism? New York: Routledge, p. 81). Presumably self-ownership rights would be even more important vis-à-vis realizing these goods, with the natural thought being that maximally strong rights realize these goods to the maximal degree.

6 It may seem puzzling how there could be some rights that are neither entailed nor not entailed by the self-ownership thesis. One way of making sense of this proposal is to posit that there are certain ambiguous terms in the thesis that might be specified in multiple ways. If a right would be entailed by one specification of a term but not a rival specification, one might say that there is no fact of the matter with respect to whether or not the self-ownership thesis entails the right – at least, absent further specification. By contrast, if every rival specification of each ambiguous term would still result in the thesis entailing that people possess some set of rights, then there would be a determinate core of rights even absent the further specification that would render the thesis fully determinate.

7 See Vallentyne, Peter. 2012. “Left-Libertarianism.” In The Oxford Handbook of Political Philosophy, edited by D. Estlund. New York: Oxford University Press, p. 158. As Vallentyne ibid., p. 152, notes, there are two ways
of construing rights and duties in a theory. On the one hand, the theory might attempt to articulate the totality of all moral requirements that persons have. Alternatively, it might limit itself to expressing those rights and duties that are coercively enforceable. When libertarians contend that there is not a duty to rescue, typically they are denying that there is an enforceable duty to rescue, as is noted by Zwolinski, Matt. 2018. “Libertarianism and the Welfare State.” In The Routledge Handbook of Libertarianism, edited by J. Brennan, B. van der Vossen, and D. Schmidtz. New York: Routledge, p. 325. However, for the purposes of this argument, one might construe duties in either fashion. For the sake of simplicity, the subsequent discussion will speak of rights and duties more generally. For those who take the self-ownership thesis to only pertain to enforceable duties, any subsequent claim that some action is permissible should be read as asserting that an agent has no enforceable duty to refrain from carrying out that action. Thus, when it is claimed below that the self-ownership thesis assigns each person the right to permissibly use her body in various ways, that thesis can be read as asserting that others cannot permissibly prevent her from using her body in those ways (even if she has a non-enforceable duty to refrain from using her body in those ways).

8 ‘There are libertarians who will assign self-owners a duty to rescue others; for example, Ben Bryan endorses a weaker version of the self-ownership thesis that is designed to be compatible with an enforceable duty to rescue. Bryan, Ben. 2019. “Duty-Sensitive Self-Ownership.” Social Philosophy and Policy 36(2): 264–83. However, this sets him apart from most libertarians who believe that a virtue of the self-ownership thesis is that it negates such a duty.’

9 For example, Robert Nozick contends that persons have ‘rights not to be forced to do certain things’, where these rights entail that ‘the state may not use its coercive apparatus for the purpose of getting some citizens to aid others’. Nozick, Robert. 1974. Anarchy, State, and Utopia. New York: Basic Books, p. ix. Specifically, he takes these rights to be self-ownership rights, as when people ‘force you to do certain work … [that] makes them a part-owner of you … a shift from the classical liberals’ notion of self-ownership’ (ibid., p. 172). Similarly, Eric Mack (Mack, Eric. 1990. “Self-Ownership and the Right of Property.” The Monist 73(4): 519–43, p. 531) endorses Cohen’s contention that an implication of self-ownership is that the self-owner ‘owes none of [her] services to anyone else’ (Cohen, G. A. 1986. “Self-Ownership, World-Ownership and Equality.” In Justice and Equality: Here and Now, edited by F. Lucash. Ithaca, NY: Cornell University Press, p. 109) and argues that the self-ownership thesis is grounded in an ‘individualist prerogative’ that entails that it is ‘at least morally allowable for the individual to decline to surrender her good for the sake of advancing the ends of others’ (Mack, Eric. 2009. “Individualism and Libertarian Rights.” In Contemporary Debates in Political Philosophy, edited by T. Christiano and J.P. Christman. Hoboken, NJ: Wiley-Blackwell, p. 128). Narveson op. cit., p. 9, also approvingly cites Cohen on this point, affirming Cohen’s 1995 op. cit., p. 117, claim that ‘I am not fully mine … if I am required, on pain of coercive penalty, and without my having contracted to do so, to lend my assistance to anyone else’. Rothbard op. cit., p. 222, is particularly explicit on this point, presenting the following case and moral assessment: ‘Suppose that there is only one physician in a community, and an epidemic breaks out; only he can save the lives of numerous fellow citizens … He … has every right to refuse to do anything. While he may perhaps be criticized morally or aesthetically, as a self-owner of his own body he has every right to refuse to cure’. And Vallentyne (who explicitly affirms each of the foregoing desiderata) holds that ‘Having full liberty rights to use one’s person has the countertiuntuitive implication that we have no (initial) duty to provide personal assistance to others’. Vallentyne, Peter. 2009. “Left-Libertarianism and Liberty.” In Contemporary Debates in Political Philosophy, edited by T. Christiano and J.P. Christman. Hoboken, NJ: Wiley-Blackwell, p. 141.

10 As Cohen 1995 op. cit., p. 215, notes, the ‘polemically crucial right of self-ownership is the right not to (be forced to) supply product or service to anyone’.

11 Note that there is a distinction – emphasized by Cohen ibid., p. 209 – between the thesis and concept of self-ownership. Specifically, the thesis of self-ownership asserts that everyone has a particular set of ownership rights over themselves while the concept of self-ownership refers to the rights that people would have were the thesis of self-ownership true. For these purposes, when asking whether the self-ownership thesis has determinate content, the question being posed is whether there is a fact of the matter regarding whether any given right is part of the extension of the concept of self-ownership.

12 Ronald Dworkin informally advanced an argument along these lines, as cited by Cohen ibid., p. 213. Similarly, Edward Feser abandoned his commitment to the self-ownership thesis on the grounds that it was indeterminate in this way. Feser, Edward. 2012. “The Road from Libertarianism.” http://edwardfeser.blogspot.com/2012/08/the-road-from-libertarianism.html. Accessed 17 July 2020. This point is also influentially pressed by Fried, Barbara. 2004. “Left – Libertarianism: A Review Essay.” Philosophy and Public Affairs 32(1): 66–92.
An anonymous reviewer suggests that libertarians might revive Cohen’s reply and thereby avoid the tetralemma by contesting premise (b) of this argument – i.e. by denying that use rights are ownership rights. If use rights are not ownership rights, then they will not be included in the maximal set of ownership rights that the self-ownership thesis assigns to each person. And this, in turn, would eliminate the contradiction that results when each person is assigned both use rights and exclusion rights, thereby solving the thesis’ indeterminacy problem. However, there are four reasons for thinking that libertarians cannot avoid the proposed tetralemma by denying that use rights are ownership rights. First, libertarians consistently affirm that use rights are ownership rights (see e.g. Brennan, Jason, and Bas van der Vossen. 2018. “The Myths of the Self-Ownership Thesis.” In The Routledge Handbook of Libertarianism, edited by J. Brennan, B. van der Vossen, and D. Schmidtz. New York: Routledge, p. 306; Hidalgo, Javier. 2018. “The Libertarian Case for Open Borders.” In The Routledge Handbook of Libertarianism, edited by J. Brennan, B. van der Vossen, and D. Schmidtz. New York: Routledge, p. 378; Mack 2010 op. cit., p. 60; Narveson, Jan. 1988. The Libertarian Idea. Philadelphia, PA: Temple University Press, pp. 65–6; Rothbard, Murray. 2006. For a New Liberty: The Libertarian Manifesto, 2nd ed. Auburn, AL: Ludwig von Mises Institute, pp. 33–4; Vallentyne, Steiner, and Otsuka op. cit., p. 206; van der Vossen, Bas. 2019. “Libertarianism.” The Stanford Encyclopedia of Philosophy (Spring 2019 Edition), edited by Edward N. Zalta. https://plato.stanford.edu/archives/spr2019/entries/libertarianism/. Accessed 27 March 2022; and Wendt op. cit., p. 318. Further, they sometimes contend that all rights are property rights, where this contention negates the possibility that use rights are not ownership rights (see Narveson 1988 op. cit., p. 66 and Steiner, Hillev 1994. An Essay on Rights. Oxford: Blackwell, p. 93). Thus, denying that use rights are ownership rights would force libertarians to abandon one of their standard commitments, transforming the article’s tetralemma into a pentalemma. Second, there does not appear to be a principled reason for denying that use rights are ownership rights. Granted, there is a tradition of philosophers arguing that property ownership is fundamentally a right of exclusion, with this view being prominently advanced by Penner, J.E. 1997. The Idea of Property in Law. Oxford: Oxford University Press; Ripstein, Arthur. 2013. “Possession and Use.” In Philosophical Foundations of Property Law, edited by J. Penner and H. Smith. Oxford: Oxford University Press; and Schmidtz op. cit. However, it is not clear that any of their arguments support the contention that use rights are not ownership rights. For example, while Penner op. cit., p. 71, asserts that ‘the right to property is a right to exclude others from things’ (emphasis original), he also urges the reader to ‘understand the right to property equally as a right of exclusion or a right of use, since they are opposite sides of the same coin’. Given this latter claim, there is little reason for thinking that Penner’s former claim entails that full ownership does not include a permission to use the owned thing. Further, Penner ibid., p. 72 takes property to give one ‘the right’ to dispose of property any way that one wishes …
but only in so far as those dispositions are protected by the specific duties on others to exclude themselves from the property’ (emphasis original). This suggests that Penner does not take ownership to include a Hohfeldian permission to use; it is just that this permission must be accompanied by a claim against others that they not undermine this use. Similarly, while Ripstein op. cit. focuses on the importance of exclusion, he does not deny that ownership includes use rights. Rather, he argues for the priority of exclusion, where this priority only seems to imply that the exclusion rights assigned by existing property systems cannot be grounded in owners’ interests in using owned objects. Finally, Schmidt op. cit., p. 80, merely maintains that exclusion ‘is at the heart of any property right’ while allowing that there are other rights entailed by property (though they are of secondary importance). Additionally, Penner, Ripstein, and Schmidt all emphasize that property rights give people control over their owned things; however, genuine control would not be possible without a permission to use the thing in question. It would, thus, be surprising if they did not take ownership to imply permissions to use. Further, even if one did take these authors to be making the stronger claim that property rights are strictly exclusion rights, this position seemingly fails to account for the fact that property norms often explicitly grant non-owners rights to use resources (see Lindsay, Peter. 2018. “Re-Envisioning Property.” Contemporary Political Theory 17(2): 187–206), limit owners’ right to exclude, and grant owners other kinds of rights such as governance rights (see Dagan, Hanoch. 2013. “Inside Property.” University of Toronto Law Journal 63(1): 1–21). This codification of rights to inclusion seems to count against the thesis that all property rights are exclusion rights. A third reason for rejecting the claim that use rights are not ownership rights is that it runs contrary to core intuitions about what full ownership entails. Consider, for example, a person who has a claim against others entering a house but lacks a permission to use the house herself. Such a person does not seem to fully own the house – a result that entails that the right to use the house is an ownership right. Against this quick argument, one might object that a person who merely has a right to use a thing (e.g. a public park) does not seem to own that thing, with this judgment equally counting against the contention that use rights are ownership rights. However, this objection fails because the possession of a property right over a thing need not entail that one owns the thing; rather, it might be maintained that persons must possess a suitably sized bundle of property rights in order to own the thing (see Wenar, Leif. “The Concept of Property and the Takings Clause.” Columbia Law Review 97(6): 1923–46, p. 1943). To put this point more generally, some right is an ownership right iff its possession is a necessary condition of full ownership (hence why the house case entails that use rights are ownership rights), and it is not the case that a right is an ownership right iff its possession is a sufficient condition of ownership. Given the negation of this second biconditional, it follows that the public park objection does not succeed because it merely shows that possessing a use right is not sufficient for ownership, where this does not entail that use rights are not ownership rights. The final reason for rejecting the proposed denial that use rights are ownership rights begins with Section 1’s fourth libertarian desideratum, which holds that the self-ownership thesis should ground the absence of a duty to rescue. This desideratum is relevant because Section 4 will argue that the self-ownership thesis negates the duty to rescue if and only if it assigns self-owners use rights (of a certain kind). Thus, the denial that use rights are ownership rights will preclude the self-ownership thesis from satisfying the fourth desideratum, which, in turn, implies that the proposed move cannot save libertarians from the tetralemma. 21 Cohen op. cit., p. 215. 22 Many actions will involve physical parts, such as the parts of the agent’s body and other external objects that she incorporates into her action. However, insofar as one countenances non-physical actions, one might still identify distinct parts that are included in it, such as particular thoughts or other discrete non-physical objects. 23 An anonymous reviewer points out the need for additional specification regarding when an object can be said to be included in an action. For these purposes, it is not sufficient that an agent thinks about the object, looks at it, draws a picture of it, etc. Rather, she includes an object in her action iff she makes a choice that causes some physical contact with the object (e.g. she touches it, throws something at it, etc.). This specification clarifies that a claim against the inclusion of an object is a claim against any sort of contact being made with the object, irrespective of what is done with the object. 24 Or, alternatively, it might be referring to both the conjunction of the action’s composition and form, i.e. the inclusion of the fist, the inclusion of the other person’s face, and the spatio-temporal arrangement of two objects. Either way, it is not referring to merely the composition of the action. 25 The foregoing discussion has focused on the distinction between the right to include one’s fist in some action and the right to exercise it in certain ways. However, one might wonder whether the relevant distinction, instead, is the distinction between the right to include one’s fist in an action and the right to include the fist and other people’s bodies in an action. After all, it is the latter distinction that explains why there is no incompatibility between one person’s right to use her fist to punch and another’s claim against being punched: the

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former right permits the inclusion of the fist while the latter negates the permission to include both the fist and the other person’s body. Given the adequacy of this explanation, the notion of exercise rights might seem irrelevant vis-à-vis both the punching case and the associated indeterminacy argument. However, first, note that one cannot make sense of the fist-inclusion/fist-and-body-inclusion distinction without having a prior grasp of the inclusion/exercise distinction, as the former makes reference to the latter’s posited notion of inclusion. Second, one needs the inclusion/exercise distinction to explain what has gone wrong in the indeterminacy argument. Specifically, the argument reached its conclusion by presupposing that use rights were exercise rights rather than mere inclusion rights. Thus, the objection to the indeterminacy argument needed to posit the inclusion/exercise distinction and argue that use rights should be construed as inclusion rights rather than exercise rights. Finally, the inclusion/exercise distinction will play a significant role in the argument presented in Section 4.

26 Some might worry that staying on the shore is an omission not an action. However, given that staying on the shore is a spatio-temporal arrangement of objects that has both composition and form, there seems to be no basis for assigning it diminished metaphysical status of the kind that might cause problems for the argument.