

Self-Ownership and Justice in Acquisition

Lamont Rodgers
Tulane University

1. Introduction

Edward Feser has argued not only that there have been no unjust initial acquisitions, but that there cannot be.¹ He reaches this judgment by way of an argument to show that questions of justice do not apply to acquisitions. If this thesis is correct, it blocks the claim that since many current holdings are the result of unjust initial acquisitions, they must be rectified by a scheme of redistributive taxation. Importantly, Feser thinks he can block this claim while not giving up the self-ownership proviso (SOP) that Eric Mack has developed.² Feser regards Mack's SOP as "a major contribution to the theory of self-ownership and to libertarian theory in general."³

Section 2 of this article sketches Robert Nozick's entitlement theory and Mack's SOP, both of which Feser accepts. I then construct the argument Feser wishes to block. Section 2 ends with a presentation of Feser's argument to show that questions of justice do not apply to acquisitions.

Section 3 constructs two arguments. The first finds within Feser's position a rationale for believing that questions of justice do apply to acquisitions. This argument is generated by distinguishing between possessive

¹ Edward Feser, "There Is No Such Thing as an Unjust Initial Acquisition," *Social Philosophy & Policy* 22 (2005), pp. 56-80. There are other ways of arguing for Feser's thesis. Most of those arguments turn on denying the self-ownership proviso. I do not argue against that move here, since Feser does not wish to make it. Also, the arguments presented here may not be a problem for Feser himself. He has moved from the position he defends in "There Is No Such Thing as an Unjust Initial Acquisition"; see Edward Feser, "Reply to Block on Libertarianism Is Unique," *Journal of Libertarian Studies* 22, no. 1 (2010), pp. 261-72. Still, I speak as if I am addressing Feser's position so as to avoid syntactic oddities.

² Eric Mack initially constructed the proviso in his "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy & Policy* 12 (1995), pp. 186-215. He takes up the topic again in "Self-Ownership, Marxism, and Egalitarianism, Part II: Challenges to the Self-Ownership Thesis," *Politics, Philosophy & Economics* 1, no. 2 (2002), pp. 237-76.

³ Feser, "There Is No Such Thing as an Unjust Initial Acquisition," p. 76.

acquisitions, on the one hand, and destructive and consumptive acquisitions, on the other. Feser's position allows for the latter sort of acquisitions to fall under the purview of justice. Crucial to Feser's position is the idea that an acquisition can violate the SOP only if some other individual had a right to the acquired object. The second argument I construct shows that the acceptance of the SOP requires the rejection of this claim. The upshot is that Feser must choose between two alternatives. He must either give up the SOP or he must admit that questions of justice do apply to acquisitions.

In Section 4, I first reinforce the argument to show that there can be unjust initial acquisitions. This is accomplished by blocking two objections. The first is an attempt to wiggle out of the argument presented in Section 3. The second is an attempt to show that the argument from Section 3 proves too much. Perhaps this article shows that it is too easy for there to be unjust initial acquisitions, so surely there have been many, and thus redistributive taxation is justified. This conclusion is blocked by referring to Feser's separate, powerful argument to block the claim that a scheme of redistributive taxation is justified as a means of rectification, *even if there can be unjust initial acquisitions*. So the fact that there can be unjust initial acquisitions does not by itself justify redistributive taxation. We can only demand compensation and rectification from those who have done wrong. The entitlement theory is historical, so the fact that there *could* be unjust initial acquisitions does not show that justice demands that we act as if everyone has committed them. However, this article shows that, contrary to what Feser argues, we cannot regard unjust initial acquisitions as conceptual impossibilities.

2. There Are No Unjust Initial Acquisitions

Feser begins his discussion by articulating the motivation for his thesis:

If, as nearly all of Nozick's commentators, friendly and unfriendly, agree, Nozick fails to give an adequate theory of justice in acquisition, then his libertarianism appears to have at most *partial* foundations, and this may be enough to undermine it. For if, contrary to what Nozick implies, existing inequalities in holdings reflect significant injustices in the initial acquisition of resources, then redistributive taxation of a sort incompatible with Nozick's libertarianism may be justified.⁴

Nozick's entitlement theory consists of three parts. Individuals can acquire portions of the unowned world, they may transfer their holdings, and they may engage in transfers and acquisitions that are just or unjust. Accordingly, the three parts of the theory are an account of justice in acquisition, an account of justice in transfer, and an account of rectification of unjust acquisitions and transfers.

⁴ Ibid., p. 57.

I ignore justice in transfer here, because it is not particularly relevant to Feser's thesis. Of course, he does claim that all past injustices were the result of unjust uses of property, and some of those uses may count as unjust transfers. However, the primary concern for this article is whether considerations of justice apply to acquisitions; if they do, then unjust acquisitions need to be rectified.

In most discussions of justice in acquisition, two questions arise. The first question is how an individual can generate private property rights in the external world. The second question is whether there are limits on how the acquisitions of some may bear on the situation of others. The first question receives no treatment here, because Feser's argument is aimed entirely at showing that the *second* question of justice in acquisition requires no answer.⁵ Accordingly, the present article is directed at the second question of justice: Are there limits on how the acquisitions of some may bear on the condition of others? Feser's argument is that the question of how one individual's actions can bear on another arises only in relation to *uses* of property. Thus, this article focuses on whether there is a way to use Feser's argument for that conclusion to show that there can be unjust acquisitions.

On the second question of justice, Nozick writes that acquisitions are unjust if they prevent individuals from "improv[ing their] situation by a particular appropriation or any one."⁶ What Nozick wants his proviso to do is prevent the acquisitions of some from putting others in a position where they cannot improve their lives via an acquisition. To illustrate the sort of thing he wishes to prevent, Nozick has us imagine an individual acquiring the lone water hole in a desert.⁷ This individual then either precludes others from accessing the water altogether, or allows access only if others pay some exorbitant fee. Nozick thinks there is something wrong with the behavior of the owner of the water hole, and his proviso is intended to explain what that is.

When individuals engage in unjust acquisitions, they owe others compensation. That compensation can be some sort of payment, but it can also be the case that the acquisition itself creates more opportunities for others to

⁵ There may be a back-door response to Feser. Such a response would show that the most plausible answer to the first question of justice in acquisition requires us to believe that acquisitions can be unjust. However, that route is not essayed here. One reason for not pursuing the back-door strategy is that the present article shows that it is unnecessary, for there is available a more direct rebuttal of Feser.

⁶ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 176. The violation of the proviso is a sufficient, but not necessary, condition for injustice in acquisition. For a discussion of this issue, see Eric Mack, "The Natural Right of Property," *Social Philosophy & Policy* 27, no. 1 (2010), pp. 53–78.

⁷ Nozick, *Anarchy, State, and Utopia*, p. 180.

improve their situations. John Locke defends this idea in the following passage:

[H]e who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind. For the provisions serving to the support of human life, produced by one acre of enclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness, lying waste in common. And therefore he that encloses land, and has a greater plenty of the conveniences of life from ten acres, than he could have from a hundred left to nature, may truly be said to give ninety acres to mankind. For his labour now supplies him with provisions out of ten acres, which were but the product of a hundred lying in common.⁸

While Nozick expresses very much the same idea, he judges that not all acquisitions allow others the opportunity to improve their situation. When this happens, the acquisitions are unjust and need to be rectified. As Feser observes in the quotation that begins this section, Nozick grants that unjust acquisitions are possible. This concession opens the door to the claim that many current holdings result from past unjust initial acquisitions. Thus, the argument goes, significant redistributive taxation is justified in order to rectify those past injustices. The upshot of this would be that the libertarianism Nozick defends is not something we can implement immediately. Of course, this shows that Feser overstates his case. If current taxation *is* rectification of past unjust acquisitions, there is no incompatibility between libertarianism and taxation. What Feser must mean is that it would be a long time before we can get to a minimal, tax-free (but not dues-free) state that Nozick endorses as the ideal.⁹

Justice in acquisition is, for Nozick and Locke, underpinned by the self-ownership thesis. This thesis is a normative claim about who has discretionary power over persons and their world-interactive powers. The persons and powers that are owned are simply “bodies, faculties, talents and energies.”¹⁰ The concept of self-ownership thus introduces a reflexive relation

⁸ John Locke, *The Second Treatise of Government*, in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), sec. 37. Spelling modernized.

⁹ It is the ideal unless individuals contract into more extensive states. Nozick rejects the idea that there is one social arrangement that is best for everyone apart from the framework for utopia that protects side-constraints; see Part 3 of *Anarchy, State, and Utopia*, p. 312.

¹⁰ Eric Mack, “Self-Ownership, Marxism, and Egalitarianism, Part I: Challenges to Historical Entitlement,” *Politics, Philosophy & Economics* 1, no. 1 (2002), p. 76.

between what owns and what is owned. The thing that owns has ownership over itself.¹¹

Part of the task of a fundamental moral norm is to explain common moral judgments. Some of the appeal of the self-ownership thesis lies in its ability to explain why “unprovoked acts of killing, maiming, imprisoning, enslaving, and extracting labor from other individuals” are wrong.¹² Each of these actions in some way violates the ownership rights individuals have over themselves and their world-interactive powers.

Another task of any fundamental moral norm is to limit how individuals may treat each other. The self-ownership thesis claims that it is only the individual who rightly has discretionary control over his body, mind, and powers. It is only if some contractual agreement or other abdication of rights changes this that an individual can lose ownership rights over himself.¹³ The self-ownership thesis poses a limitation on how individuals may treat each other, and this limitation is called the self-ownership proviso (SOP).

The SOP has been articulated mostly by Eric Mack. The SOP claims that, morally speaking, we are not allowed to employ our holdings in a way that nullifies the world-interactive powers of others. These world-interactive powers include the individual’s “capacities to affect her extra-personal environment in accord with her purposes.”¹⁴ As Mack sees it, these powers are “essentially relational. The presence of an extra-personal environment open to being affected by those powers is an essential element of their existence.”¹⁵ Because the powers individuals own are essentially related to an extrapersonal environment, Mack presents the following argument:

I maintain that recognition of persons’ rights over their world interactive powers, and of the essentially relational character of these powers, supports an “anti-disablement constraint” according to which individuals may not deploy themselves or their licit or illicit holdings in ways that severely, albeit noninvasively, nullify any other agent’s capacity to bring her talents and energies purposively to bear on the world. The SOP is a special case of this anti-disablement constraint.¹⁶

¹¹ This is G. A. Cohen’s helpful explanation; see his *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), pp. 69 and 211.

¹² Mack, “Self-Ownership, Marxism, and Egalitarianism, Part I,” p. 76.

¹³ Crimes, insanity, and the like may account for the “other abdications” I mention above.

¹⁴ Eric Mack, “The Self-Ownership Proviso: A New and Improved Lockean Proviso,” p. 186.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 187.

The SOP is distinct from the Lockean proviso that Nozick offers. The Lockean proviso seems to be a restriction on acquisitions. This is why Nozick discusses the proviso largely, but not entirely, in relation to acquisitions.¹⁷ The SOP limits not only the kinds of acquisitions in which individuals may engage, but how individuals may employ their property. If acquiring all of the water available in a certain area and preventing others from accessing it violates the rights of others, so would the following scenario presented by Mack:

Imagine that Adam, who along with Zelda inhabits a bountiful pre-property state of nature, possesses a device that causes any physical object he designates to disappear. Imagine further that, for whatever reason, he continually designates precisely those objects toward which Zelda begins to direct her talents and energies. Zelda reaches for this branch, Adam designates it, and it disappears. Zelda snatches at that apple, Adam designates it, and it disappears. And so on.¹⁸

The idea here is that individuals might violate the ownership rights of others both invasively *and* non-invasively. The former violations involve disabling the capacities of another agent by directly impinging on her body. The latter have the same effect, but do not involve directly impinging on her body. So Mack's argument is that the very same good reasons we have for regarding invasive disabling as wrong, yield the conclusion that non-invasive disabling is wrong as well. In the scenario presented above, while Adam does not invade Zelda's body in any way, he does wrong her. The SOP is developed to explain that wrong. Adam nullifies Zelda's world-interactive powers. Similarly, in the water hole case, it *seems* that the owner of the hole disables the talents and energies of the travelers. Accordingly, Nozick and others regard the acquisition as unjust. What Feser will challenge is the judgment that it is the *acquisition* that disables the talents and energies of the travelers. Feser does not deny that there is something wrong with what the owner of the hole does, and he does not deny that the SOP explains why the owner does something wrong.

A second way in which the SOP is distinct from Nozick's proviso is that Nozick's proviso deals with whether an acquisition allows others to

¹⁷ Nozick does seem to regard his proviso as limiting transfers as well. He says, "If the proviso excludes someone's appropriating all the drinkable water, it also excludes his purchasing it all"; see Nozick, *Anarchy, State, and Utopia*, p. 179. Of course, this is not explicitly a limitation on property *use*; instead, it seems to be a limitation on how much one may *acquire via transfer*.

¹⁸ Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," pp. 186-87.

improve their situation by making an acquisition. If an acquisition fails to allow this opportunity, then compensation is required. As I explain above, this compensation can occur simply because an acquisition may improve the stock of objects available for acquisition. The SOP does not focus on whether others can engage in acquisitions; instead, what matters is that others may bring their powers to bear on the world. So even if individuals cannot make acquisitions, they may come to have plenty of opportunities to bring their world-interactive powers to bear in some other way. The example Mack uses to illustrate this possibility is Tokyo. There is no opportunity for initial acquisitions in Tokyo, but the prospects of bringing one's world-interactive powers to bear have increased dramatically. Thus, the initial acquisitions do not run afoul of the SOP.¹⁹

While he accepts the SOP and not the Lockean proviso, Feser denies that the following example from Mack illustrates an unjust initial acquisition. Here is Mack's *Adam's Island* example:

Since his arrival at a previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal entitlement theory, confer upon him sole dominion over all of this island. Now the innocent, shipwrecked Zelda struggles toward the island's coast. But Adam, in what purports to be a legitimate exercise of his property right, refuses to allow Zelda to come ashore.²⁰

It certainly seems that Adam is preventing Zelda from bringing her world-interactive powers to bear, so it also seems that Adam's interaction violates the SOP. Just as any acquisition or use of property that violates the SOP is unjust, it seems we should regard Adam's acquisition of the island as unjust.

Feser believes that an important fact about acquisitions blocks the conclusion that taxation is justified to rectify unjust acquisitions. He writes, "There is *no such thing* as an unjust initial acquisition of resources; therefore, there is no case to be made for redistributive taxation on the basis of alleged injustices in initial acquisition."²¹ This is a strong modal claim: it is not merely that there have been no unjust acquisitions—the point is that there cannot be.

In order to establish this conclusion, Feser argues: "The concept of justice . . . simply does not apply to initial acquisition. It applies only after initial acquisition has already taken place. In particular, it applies only to

¹⁹ This is no vindication of the Japanese government's actions. It is merely an illustration of what could happen legitimately.

²⁰ Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," pp. 187–88.

²¹ Feser, "There Is No Such Thing as an Unjust Initial Acquisition," p. 58.

transfers of property (and derivatively, to the rectification of injustices in transfer). This, it seems to me, is a clear implication of the assumption (rightly) made by Nozick that external resources are initially unowned.²² He then offers the following explanation for why initial acquisitions cannot be unjust:

Suppose an individual A seeks to acquire some previously unowned resource R. For it to be the case that A commits an injustice in acquiring R, it would also have to be the case that there is some individual B (or perhaps a group of individuals) against whom A commits the injustice. But for B to have been wronged by A's acquisition of R, B would have to have had a rightful claim over R, a *right* to R. By hypothesis, however, B did *not* have a right to R, because *no one* had a right to it—it was unowned, after all.^[23] So B was not wronged and could not have been. In fact, the very first person who could conceivably be wronged by anyone's use of R would be, not B, but A *himself*, since A is the first one to own R.²⁴

What, then, of the examples of (purportedly) unjust acquisition Nozick himself adduces? Nozick clearly says that the Lockean proviso precludes a person's acquiring the only water hole in the desert and charging what he will for access to it.²⁵ Feser claims that the only way it can be wrong for the individual to acquire the water hole is if others have already homesteaded it. Otherwise, there is nothing wrong with the acquisition. He writes:

The correct interpretation of this sort of case is, I suggest, as follows: The water hole is not unowned in the first place when the person in question tries to acquire it. After all, other people had been using it, and their use (especially since it is presumably regular, continuous use) *itself* amounted to initial acquisition of the water hole. Their use counts as a kind of labor-mixing, a bringing of the resource under their control. Thus, they have every right to object to what the would-

²² Ibid.

²³ Feser seems to overstate his position here. Surely one can be *harmed* by the acquisitions of others, even if one lacks the right to the objects the others require. Since Feser endorses the SOP, we should read him to say that individuals may be harmed by acquisitions that do not violate their rights, but that this sort of harm is irrelevant to the question of justice. I thank Tristan Rogers for bringing this to my attention.

²⁴ Feser, "There Is No Such Thing as an Unjust Initial Acquisition," pp. 58-59.

²⁵ Nozick, *Anarchy, State, and Utopia*, p. 180.

be acquirer tries to do, precisely because *they* have already acquired it.²⁶

There is an alternative case. Suppose that nobody is using the water hole and then someone acquires it. Suppose that other individuals merely happen upon the hole and it is the only way for them to remain alive. Can the owner still charge what he will for access? In dealing with this possibility, Feser outlines two types of responses. One he calls the “hardliner” and the other the “softliner.”

The hardline response “involves holding that this is the place where the advocate must simply bite the bullet and argue that however selfish, cruel, or wicked the initial acquirer would be to exploit his water hole for personal gain, or even to refuse (from sheer misanthropy) to let anyone drink from it, he still commits no *injustice* in doing so.”²⁷ This view holds that others have no right to the water hole; thus, the acquisition is not unjust, because it violates no one’s rights. The acquirer “has a *right* to act that way, even if there are other moral considerations that ought to move him not to use his right in that way.”²⁸

Feser feels some sympathy for the hardline response, though he officially takes on the weaker “softliner” stance. The softline approach involves acknowledging “that the initial acquirer who abuses a monopoly over a water hole (or any similar crucial resource) does commit an injustice against those who are disadvantaged, but such an approach could still hold that the acquirer nevertheless has not committed an injustice in acquisition.”²⁹ Feser locates the injustice not in the acquisition of the water hole, but in the individual’s *use* of the water hole. He writes:

[H]is injustice is an unjust *use* of what he owns, on a par with the unjust use I make of my self-owned fist when I wield it, unprovoked, to bop you on your self-owned nose. In what sense does the water-hole owner use his water unjustly, though? He doesn’t try to *drown* anyone in it, after all—indeed, the whole problem is that he won’t let anybody near it!³⁰

Feser ultimately endorses the softline response. His argument turns on the idea that one can have a property right in something without having the

²⁶ Feser, “There Is No Such Thing as an Unjust Initial Acquisition,” p. 68.

²⁷ *Ibid.*, p. 70.

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 71.

³⁰ *Ibid.*

ability to exercise all of the incidents of those property rights. Mack finds nothing untoward about this conclusion. Though he does not argue that there can be no unjust acquisitions, Mack does think that circumstances can shrink the sphere of acceptable exercises of property rights. However, Mack claims that this does not deny that individuals have full ownership over their property.³¹ Instead, property rights are always limited by the SOP. Thus, Mack writes, “The existence of this constraint against Harry’s inserting *his* knife into Sally’s chest does not at all show that Harry has anything less than full ownership of his knife.”³² This is because the property right is itself constrained by the self-ownership of others. So the owner of the water hole owns it, even though he cannot preclude the travelers from drinking from it. The owner may well have a right to demand compensation for the access, but he cannot fully exercise his right to exclude people from the hole.

This point is crucial, for it allows Feser to hold that initial acquisitions are neither just nor unjust. This is so because the acquisition itself does not nullify the world-interactive powers of others. Instead, it will only be the use of acquired property that does so. The softliner can hold that the acquisition in the water hole case is fine; the problem is just that the acquirer does not have a right to exercise the exclusion incident of property rights. Or, more guardedly, he did not have the right to exercise that incident in the fashion he did. Accordingly, Feser concludes with the following claim: “In particular, the SOP allows me to defend my central thesis in this paper without having to take on board what I have called the ‘hard-line thesis.’ And it does all this without drawing us into the briar patch of the Lockean proviso, understood as a constraint on initial acquisition, with all the redistributionist hay that critics of libertarianism have tried to make of it.”³³

3. Justice in Acquisition

This section aims to show that, for the very same reasons Feser regards the use of property as unjust, we should regard certain acquisitions as unjust. In particular, I try to show that the question of justice does pertain to acquisitions. I begin here by illustrating something that standard examples of allegedly unjust acquisitions share, and I agree with Feser that these are not cases of unjust acquisition. I then introduce two other sorts of acquisitions, and argue that they are unjust.

In the standard cases of alleged unjust acquisition, we find individuals who acquire and then keep the items they acquire. This has to be

³¹ As far as I can tell, Feser himself seems to think this does show that individuals do not have full ownership over the objects; see his “Reply to Block on Libertarianism Is Unique,” p. 262.

³² Mack, “Self-Ownership, Marxism, and Egalitarianism, Part I,” p. 98.

³³ Feser, “There Is No Such Thing as an Unjust Initial Acquisition,” p. 76.

true, if we agree with Feser that the problem lies in the *use* of the holding, for one cannot use what one does not have.³⁴ This is the case with the water hole scenario Nozick presents and Feser discusses. This is also the case with Mack's *Adam's Island* scenario. In these cases we can grant that the problem is with *how* Adam uses his property. Adam comes to possess the island, as often occurs when individuals acquire things. Since the island still exists, Adam can use it, and he may use it in ways that do or do not violate the rights of others. I call these standard sorts of acquisitions "possessive acquisitions." Such acquisitions are characterized by the fact that some part of the object remains in the world to be used.

There are other ways of acquiring things, though. Suppose instead that Gulliver wanders around Lilliput searching for water holes for which lost travelers are roaming. He then stomps on the water hole as a means of mixing his labor with the land. When he stomps on the water hole, all of the water is forced into the ground and thus becomes undrinkable. Gulliver has acquired the plot of land via his labor-mixing, but his acquisition has prevented others from bringing their world-interactive powers to bear. Gulliver's acquisition has just the same effect on others as would his both acquiring the water hole and refusing to allow others to access it. So Gulliver has acquired something (a patch of land), but his acquisition has removed something (the water) from the world so that it may no longer be used. I call these sorts of acquisitions "destructive acquisitions."

Individuals can also engage in purely "consumptive acquisitions." In consumptive acquisitions, individuals use up portions of the unowned world, but leave nothing behind to be used in any relevant sense of the term. Here we might imagine Gulliver roaming the seas in Lilliput. Gulliver can thrive by eating standard fare, but what he enjoys doing is searching for unowned islands toward which castaways are unknowingly swimming. When Gulliver finds those islands, he eats them. He finds this sort of thing amusing because he likes to watch people drown.³⁵

It is important to note a temporal consideration at work in the two previous examples. Perhaps acquisitions like those described above are not subject to questions of justice if they occur a relevantly long enough time before the castaways arrive. After all, proponents of self-ownership deny that we have enforceable obligations to rescue others. So why would we have an obligation to preserve resources on the off chance that others might need

³⁴ One need not be in physical contact with an object in order to possess it. One can possess a water hole, even if one does not sit there attending to it. One might, for example, put a fence around it.

³⁵ We might also imagine Adam going about in search of unowned islands with the appropriate castaways swimming toward them. Then Adam burns those islands, sand included, so that he can acquire the carbon dioxide and water. He then packs the carbon dioxide and water in special containers and jettisons them into space. He, like Gulliver, finds this sort of thing amusing.

them? I do not wish to deal with this issue here, so I stress the stipulation that Gulliver looks for water holes and islands that lost travelers are currently approaching. The travelers have not yet seen the holes and islands, and the travelers do not know that the water holes and islands exist. There is thus no sense in which those individuals have homesteaded the items Gulliver acquires.

Destructive and consumptive acquisitions are distinct.³⁶ Destructive acquisitions occur when the process of acquiring something involves rendering some object unusable by others. Importantly, destructive acquisitions do result in an individual's still holding some portion of the world which he may then use. Gulliver holds a portion of the world in the water hole case: the ground he claimed. He can allow individuals access to that patch of land, but there is now no water on that land.

Consumptive acquisitions, on the other hand, leave nothing to be used. Gulliver cannot use the island he ate.³⁷ What is crucial about the two kinds of acquisitions, though, is that they would prevent others from bringing their world-interactive powers to bear, if others were in the right area. It is this factor that runs the risk of violating the SOP. The fewer opportunities there are for others to employ their world-interactive powers, the more likely it is that the acquisition will nullify those powers.

I want to be clear about what the problem is here. The problem is not the fact that the acquisitions diminish aggregate opportunity. The SOP does not require that acquisitions increase or preserve maximum aggregate opportunity. The problem is that consumptive and destructive acquisitions *can* nullify the world-interactive powers of some individuals; *when* they do this, they violate the SOP.³⁸ If they violate the SOP, they are unjust. Thus, unjust acquisitions are possible.

The acceptance of the SOP thus does not require us to believe the following claim from Feser: "For it to be the case that A commits an injustice in acquiring R, it would also have to be the case that there is some individual B (or perhaps a group of individuals) against whom A commits the injustice. But for B to have been wronged by A's acquisition of R, B would have to have had a rightful claim over R, a *right* to R."³⁹ We do not need to grant that the individuals in question have a right to the island; instead, they have a right not to have their world-interactive powers nullified. It is possible for the

³⁶ They find their motivation in Locke's discussion of spoilage; see Locke, *Second Treatise of Government*, sec. 46.

³⁷ Digesting something does not seem to count as a use. Still, I leave aside both this question and the possibility that Gulliver might regurgitate the island. The latter could count as a use, if he does it intentionally, say, as part of a side show.

³⁸ I do not say that they always do this, but only that they can.

³⁹ Feser, "There Is No Such Thing as an Unjust Initial Acquisition," pp. 58-59.

acquisitions of some to nullify their world-interactive powers. Thus, the concept of justice applies to acquisitions. This is a point that Mack stresses. He has us imagine the following scenario:

Here between Red and White is a nice, ripe, recently fallen acorn. Surely either of them may permissibly appropriate it as long as she or he does not violate various antecedent rights which the other actor has over *other things*.⁴⁰

It is clear from Mack's remarks that acquiring the acorn can be unacceptable even if others have no right to the acorn. In particular, acquiring the acorn can be wrong if it somehow violates the self-ownership rights of others. This is what happens in the acquisitions in which we imagined Gulliver engaging above.

In order to reinforce this conclusion, notice that Gulliver and Adam might rescue the castaways by taking them to the mainland and refusing to allow them on the island, and this is not what we may do to individuals who have rights to things. If the individuals have a right to the island, Gulliver and Adam may not preclude those individuals from accessing it.

It is the right to our world-interactive powers that at least sometimes precludes others from engaging in destructive and consumptive acquisitions. The arguments from this section thus show that Feser has a choice: he can give up the SOP and hold that there are no unjust initial acquisitions, or he can retain the SOP but grant that there can be unjust initial acquisitions.

Having established that there can be unjust initial acquisitions, I turn in the final section to objections. First, I block attempts to avoid the conclusion that the concept of justice applies to initial acquisitions. Second, as a proponent of the SOP and entitlement theory, I do not wish to saddle those principles with commitments that undermine them. Thus, I defuse a response that claims that the argument from this section has proven too much.

⁴⁰ Eric Mack, "What Is Left in Left Libertarianism?" in *Hillel Steiner and the Anatomy of Justice*, ed. Stephen de Wijze, Matthew H. Kramer, and Ian Carter (New York: Routledge, 2009), pp. 101-31; italics in original. Mack makes this point to stave off Hillel Steiner's claim that individuals must have original rights to all of the physical components involved in acquiring something in order to have an ultimately vindicable title in the acquired object. Mack's response involves showing that no such titles are required in order for an acquisition to be just; what must be the case is that the acquisition does not violate any rights others have over other things. So while Mack's point is distinct from the one I am pressing here, the idea that an acquisition can be unjust even if others do not have a claim to the object in question is at work in Mack's writings.

4. Objections

One way of avoiding the conclusion that there are unjust initial acquisitions is to take the hardline approach Feser suggests. Here one claims that there is nothing wrong with actions of individuals in possessive acquisitions and there is thus nothing wrong with Adam's acquisitions described above. This view, as Feser himself seems to grant, requires rejecting the SOP. I will not explain why I think rejecting the SOP is a bad idea. All that needs to be noted is that Feser himself wishes to retain that proviso, and he cannot do so if he regards destructive and consumptive acquisitions as neither just nor unjust. Those acquisitions *ex hypothesi* clearly prevent individuals from bringing their powers to bear on the world.

Another means of responding to the argument from the previous section involves slicing finely between an acquisition and the manner in which the acquisition occurs. This response would target the destructive acquisition in particular. What one might hold is that there is nothing wrong with the acquisition in which Gulliver engaged. After all, no one else had a right to the island. The problem lies instead in the way he acquired the island. The idea here is to distinguish between two aspects of an action. There may be nothing wrong with what one does, but there may be something wrong with *how* one does it.⁴¹

There is no real need to refute this response, because it seems to deny two crucial claims in Feser's initial argument. Importantly, it seems to deny his conclusion. If there are unjust *ways* of acquiring unowned things, the question of justice *does* apply to acquisitions.⁴² So it does not matter for the purposes of the argument I present against Feser whether acquisitions themselves are unjust or whether the manner in which the acquisitions take place is unjust. Either option grants that the concept of justice applies to acquisitions, and on either option, acquisitions, whether because they themselves were unjust or because the fashion in which they occurred was unjust, may need to be rectified. It is not a conceptual truth that such is the case.

Notice that the present objection also denies the following premise in Feser's argument. Feser argues that the only way A's acquisition of R can be unjust is if some other individual B has a claim over R. However, the present objection would say that A can acquire R in an unjust manner, even if B has no claim over R. So it seems that distinguishing sharply between acquisitions

⁴¹ An anonymous referee suggested a response similar to this when commenting on an earlier draft of this article. If the response now lacks force, it is because I have reshaped the examples used to illustrate destructive and consumptive acquisitions in a fashion that avoids earlier, better objections.

⁴² Of course, acquisitions that occur by violating rights that individuals have in other things are a different question. If I acquire land by using a shovel I have stolen from you, injustice infects the acquisition because of my theft, which represents an unjust transfer.

and the manner in which they occur is of no help to Feser. Doing so seems to deny both his conclusion and a key premise in his argument for that conclusion.

Having established that the concept of justice applies to acquisitions may raise broader concerns for proponents of the entitlement theory, though. Does the argument from Section 3 require an extreme version of conservatism? Can we never acquire things that others might, under some strange circumstances, require in order to bring their world-interactive powers to bear on the world? I do not believe that this conclusion follows, but I lack the space to offer a complete explanation. Here I offer a series of responses. The first is found in both Nozick and Feser.

Suppose an individual does engage in a purely consumptive or destructive acquisition. Suppose also that someone's ownership rights are violated by that acquisition. Is it the case that taxation is justified so as to rectify the situation? Not if the taxation is levied on all members of society. The following point from Feser is very important: "'We as a society,' as any good Nozickian knows, never commit injustices against anyone, past or present; it is only *specific individuals* and *groups* of individuals who can commit them."⁴³ It is only the individuals who in fact have their rights violated who can make a claim, and it is only the individuals who have in fact violated those rights who owe compensation.⁴⁴ If we tax everyone in order to right the wrongs committed by specific individuals, we likely cause new injustices. Feser rejects a policy of taxing everyone so as to rectify past injustices on two grounds. First, he writes, "this would only result in new injustices against those whose current holdings were *not* a result of past injustices in acquisition."⁴⁵ Second, such a policy of taxation as rectification would likely generate injustices "against those whose holdings partly resulted from [past] injustices, but not to an extent that would justify the inevitably arbitrarily-set level of taxes they would be forced to pay in restitution."⁴⁶ So the conclusion that we can go ahead and tax everyone is not licensed by the mere possibility of unjust initial acquisitions.

The previous argument blocks concerns about taxation. However, it may be that the argument from Section 3 shows that we should entirely *preclude* purely consumptive and destructive acquisitions. I do not think that follows, because the mere fact that an acquisition *could* violate the SOP is insufficient for showing that the acquisition is unjust. The individual needs to exist in order to have a right against others. In order to illustrate this point,

⁴³ Feser, "There Is No Such Thing as an Unjust Initial Acquisition," p. 78.

⁴⁴ Innocent individuals holding stolen property can be required to return it, and they may seek redress from those who gave or sold them that property. I sidestep a detailed analysis of this issue here.

⁴⁵ Feser, "There Is No Such Thing as an Unjust Initial Acquisition," p. 78.

⁴⁶ *Ibid.*

think of unjust property uses. If an individual puts a fence around a water hole, the fact that he may need to allow access in order to avoid violating the SOP, does not show that putting the fence around the hole is unjust. It is only when someone precludes access to the water hole in a manner that violates the SOP that the use is unjust. Similarly, it is only when an individual has his or her rights violated that destructive and consumptive acquisitions are unjust. So the most extreme version of the suggested conclusion does not follow.

Finally, the point that I believe makes the argument from Section 3 convincing to proponents of self-ownership is the stipulation that Gulliver engaged in his acquisitions as individuals were *on the verge* of saving themselves. Gulliver intervened in a manner that prevented them from doing this. So I suggest the intuitive appeal lies in the fact that there is an urgency requirement at play in the unjust acquisitions developed in Section 3. I do not develop this idea here, though.

The primary upshot of this article is that the concept of justice does apply to acquisitions. It is then an empirical matter to determine whether the acquisitions that are taken to warrant redistributive taxation are destructive or consumptive, and whether there are individuals who have a right to compensation as a result. Those individuals will have claims against specific individuals, so Feser's general conclusion stands. However, it stands because it is not a conceptual truth that unjust initial acquisitions are impossible.

