

DUTY-SENSITIVE SELF-OWNERSHIP*

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Abstract: This essay defends duty-sensitive self-ownership, a view about the special authority people have over their bodies that is designed to capture what is attractive about self-ownership theories without the implausible stringency usually associated with them.

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Most of us believe that we have some kind of special moral authority over our own bodies. We tend to think, for instance, that I am not morally permitted to treat your body the same way that I am permitted to treat mine. While I may make decisions about what foods to put in my body or what kinds of medical procedures to undergo, I may not typically make the same decisions about your body. Some philosophers have tried to explain this in terms of self-ownership: people own their bodies and can do as they please with them. Just as I may not simply walk into your messy house and start cleaning up, I may not step in and force you to eat a healthy diet or make the right medical decisions. Like your house, proponents of self-ownership argue, your body is yours.

To unfamiliar ears, the idea of self-ownership may not seem especially contentious. After all, it is a matter of dispute just how stringent the rights are that people have over the things they own. There appears to be conceptual space, then, for different conceptions of self-ownership with different views about what kinds of interferences self-ownership prohibits. Self-ownership, however, has typically been defended by libertarian political philosophers who also defend highly stringent conceptions of ownership. As a result, the notion of self-ownership has become synonymous with the idea that people have incredibly stringent rights over their bodies. In fact, self-ownership is often understood to involve having the most stringent rights one can possibly have, consistent with everyone else having the same rights. According to Peter Vallentyne, Hillel Steiner, and Michael Otsuka, for instance, “full self-ownership is the logically strongest set of ownership rights that one can have over one’s person that is compatible

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with someone else having the same kind of ownership rights over everything else in the world."¹

This essay offers an alternative conception of self-ownership—Duty-Sensitive Self-Ownership—that is designed to overcome a crucial problem faced by highly stringent conceptions of self-ownership: the problem of minor intrusions. Anytime I make a noise that you did not consent to hear, or slightly pollute the air you breathe, I am intruding on your space in a small way. Such intrusions seem plainly permissible. Traditional, highly stringent conceptions of self-ownership, however, seem to prohibit such intrusions. Duty-Sensitive Self-Ownership is designed to make sense of the permissibility of such intrusions in a way that still captures the ideal of self-ownership.

The basic idea behind Duty-Sensitive Self-Ownership is this: while people have strong rights over their bodies, they have some duties to one another other than to leave one another alone. These duties explain why we may sometimes interfere with people's bodies, even against their will, to prevent grave harm to others. According to Duty-Sensitive Self-Ownership, however, people do not have enforceable duties to themselves or duties simply to promote good outcomes. This means that we cannot justify interference with people merely because it would benefit them or would produce an outcome that is good overall. Justifying interference against people requires appeal to an enforceable duty owed to other individuals. Because it allows that people have some limited but enforceable duties of assistance to one another, this view may sound like a move away from self-ownership. I will suggest, however, that this constitutes something of a return to the roots of self-ownership.

I. EXISTING ATTEMPTS TO SOLVE THE PROBLEM OF MINOR INTRUSIONS

There has been much recent debate about whether it is possible to construct a conception of self-ownership that solves the problem of minor intrusions while retaining the attractions of the ideal of self-ownership. Defenders of self-ownership have long recognized that there is a need to explain how some minor intrusions are permissible, and they have tried to do so. Most famously, Robert Nozick tries to account for this by allowing that it is sometimes permissible to cross boundaries specified by people's rights provided that we compensate the rights-holder.² In a pair of recent

¹ Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, Or Irrelevant: A Reply to Fried," *Philosophy and Public Affairs* 33, no. 2 (2005): 205. In their defense of self-ownership, Vallentyne, Steiner, and Otsuka draw on the formulation of full self-ownership that G. A. Cohen gives in his well-known criticism of self-ownership. See G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), 213.

² Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), chap. 4.

papers, David Sobel argues that all of the strategies self-ownership theorists use to make sense of the permissibility of minor intrusions—including Nozick’s “cross and compensate” approach, which Sobel gives special attention—fail.³ He considers a variety of ways of trying to back away from the most stringent forms of self-ownership and argues that they all end up either failing to solve the problem of minor intrusions or abandoning the spirit of self-ownership. Most interestingly, Sobel suggests an alternative “Value-Sensitive Self-Ownership View,” which would permit trivial interferences when they produce sufficiently good results, but he concludes that such a view cannot make sense of the permissibility of such interferences without giving up many of the hallmarks of self-ownership views.⁴ Eric Mack argues in response that defenders of stringent property and self-ownership rights can address the problem of minor intrusions by appealing to what he calls “elbow room reasoning.”⁵ Elbow room reasoning allows us to interpret rights less strictly than we might otherwise interpret them, if interpreting them strictly would prevent them from serving the normative role they are designed to serve. This means that in order to figure out whether self-ownership rights protect us against minor intrusions like small amounts of pollution or unwanted noise, we must ask what normative role those rights play and whether protecting us against these small intrusions allows those rights to play that role. Mack argues that self-ownership rights do not play their role—allowing people to have moral space to live their own lives their own way—if they prohibit the sort of minor intrusions that Sobel worries about. Mack concludes, then, that the permissibility of minor intrusions can be justified entirely in terms of the normative logic of self-ownership; there is no need to back away from self-ownership to account for the permissibility of minor intrusions.

In order to understand the kind of rights that Duty-Sensitive Self-Ownership attributes to people and to see why a new account of self-ownership is needed, it will help to take a closer look at both Sobel’s Value-Sensitive Self-Ownership and Mack’s elbow room reasoning. Sobel himself argues that Value-Sensitive Self-Ownership only solves the problem of minor intrusions by abandoning the attractions of self-ownership thinking. I will argue that Mack’s elbow room reasoning, while it avoids backing away from self-ownership, does not provide a full solution to the problem of minor intrusions.

³ David Sobel, “Self-Ownership and the Conflation Problem,” in Mark Timmons, ed., *Oxford Studies in Normative Ethics: Volume 3* (Oxford: Oxford University Press, 2013), 98–122. David Sobel, “Backing Away From Libertarian Self-Ownership,” *Ethics* 123, no. 1 (2012): 32–60.

⁴ Sobel, “Self-Ownership and the Conflation Problem,” 118–22.

⁵ Eric Mack, “Elbow Room for Rights,” in David Sobel, Vallentyne Peter, and Steven Wall, ed., *Oxford Studies in Political Philosophy, Volume 1* (Oxford: Oxford University Press, 2015), 194–221.

A. *Value-Sensitive Self-Ownership*

Making self-ownership rights sensitive to consequences seems like a natural response to the problem of minor intrusions. The idea is simple enough: people have strong rights over their bodies, but not absolute rights. If the consequences of an infringement are sufficiently good compared to the costs, then the infringement is permissible. At first glance, this seems to offer just what self-ownership theorists need: a way to maintain that people have stringent rights over their bodies without implausibly concluding that small intrusions are impermissible. Sobel argues, however, that this approach—which he calls “Value-Sensitive Self-Ownership,”—cannot solve the problem of minor intrusions and retain the distinctive attractions of the ideal of self-ownership.⁶

There are two forms Value-Sensitive Self-Ownership might take, depending on how we evaluate the costs of infringements. On the one hand, we might think that the seriousness of an infringement should be evaluated subjectively. On this subjective reading, Value-Sensitive Self-Ownership permits us to interfere with someone’s body when the good achieved by interference is sufficiently larger than the cost *as that cost is understood by the person interfered with*. On the other hand, we could evaluate the seriousness of infringements on self-ownership objectively. On this objective reading, Value-Sensitive Self-Ownership permits us to interfere with someone’s body when the good achieved by the interference is sufficiently larger than the objective cost of the interference. Sobel argues that both approaches fail to save self-ownership. While I will raise some doubts about whether Sobel’s arguments for this conclusion succeed, I will argue that the conclusion is right. The more attractive version of Value-Sensitive Self-Ownership (the objective version) cannot solve the problem of minor intrusions without abandoning the attractions of self-ownership.

It may seem natural for self-ownership theorists to evaluate the cost of infringements from the point of view of the person who is interfered with. This appeal to subjective value seems consonant with the notion of self-ownership. Sobel worries, however, that the subjective reading of Value-Sensitive Self-Ownership has an implication that ought to be unattractive to self-ownership theorists: people lack stringent protections against interference in the parts of their life that they do not especially value. If, for example, someone does not have particularly strong views about the importance of interferences with her choice of diet, then she would not have strong protections against interference in that sphere. “The threatened result,” Sobel worries, “would be that the status of our supposed libertarian protections of our Millian liberties on the value-responsive libertarian account will be quite subject to empirical fortune, not unlike

⁶ The following discussion of Value-Sensitive Self-Ownership and the problems with it follows Sobel, “Self-Ownership and the Conflation Problem,” 118–22.

consequentialism.”⁷ I am not so sure self-ownership theorists should be worried by this result. It is true that the subjective version of Value-Sensitive Self-Ownership makes people’s rights depend on what parts of their life they value. But this simply makes people’s rights sensitive to *facts about them*. It seems odd to describe this as a matter of making rights depend on “empirical fortune,” and it’s not obvious why self-ownership theorists should be particularly unsettled by it.

In any case, a further problem, which Sobel himself does not consider, arises when we consider the opposite kind of person: the sort of person who takes all interferences with his body to be extremely serious. Imagine, for example, a thoroughgoing misanthrope, who cares nothing for anyone and who views all interference with him—indeed, all contact he has with other human beings—as an extreme moral affront. Subjective Value-Sensitive Self-Ownership implies that the only way that it would be permissible to make the slightest noise near such a person is if doing so would produce profoundly good consequences. We would have to more or less save the world to justify a mere whisper in the presence of such a thoroughgoing misanthrope. While there may be no one like this in the real world, subjective Value-Sensitive Self-Ownership would entail that the more someone is like this extreme misanthrope, the more protected they are against interferences for others’ sake, even when those interferences are minor and there is something serious at stake (for example, others’ freedom to make the slightest undesired noise). There is something perverse about this. The point of moving in the direction of something like Value-Sensitive Self-Ownership is to allow that people’s rights are not so wildly stringent. It is odd to think that individuals who are especially unresponsive to this concern are immune to it. But that is the implication of the subjective reading of Value-Sensitive Self-Ownership.

We might try evaluating infringements objectively instead. Unlike subjective Value-Sensitive Self-Ownership, objective Value-Sensitive Self-Ownership makes the relative costs of infringements unresponsive to the point of view of the person who is interfered with. Imagine, for example, that we can choose between two interferences with a person that would produce the same good. One interference is objectively more serious but not as objectionable to that person. The other is objectively less serious but more disturbing to that person. The objective reading of Value-Sensitive Self-Ownership requires us to favor the latter interference. Sobel worries that this insensitivity to people’s point of view is out of step with self-ownership thinking.⁸ For my part, I am not sure it is problematic to fail to take into account people’s views about the seriousness of interferences with them. It’s one thing to treat people as having strong rights against interference; it’s another to say that their beliefs about the seriousness of

⁷ Sobel, “Self-Ownership and the Conflation Problem,” 121.

⁸ *Ibid.*, 120.

interferences with them determine how strong those rights are. As the case of the extreme misanthrope shows, the latter has the bizarre implication that people can become nearly immune to interference for the sake others by caring nothing for them. If one thinks that this is a perverse and implausible consequence, then Sobel's complaint that objective Value-Sensitive Self-Ownership fails to take into account people's beliefs about the seriousness of interferences with them will seem less than compelling.

Whatever we make of that objection, the objective reading has another problem: its implications for paternalism. On the objective reading of Value-Sensitive Self-Ownership, all of a person's rights over her body—including those against paternalistic interference—are consequence-sensitive. This is more than a defender of self-ownership should concede in order to deal with the problem of minor intrusions. It is one thing to concede that I may interfere with your body for others' sake; this is just to acknowledge, as David Schmidtz does, that "the right to say no is not a weapon of mass destruction."⁹ It is another thing altogether to claim that I am permitted to interfere with you, against your will, for your own sake. To allow that kind of interference is to say that I may prevent you from using your rights over your body as a weapon of *self*-destruction. But that is just to deny that you are a self-owner. If self-ownership does not at least involve claiming that people are free to do as they please in their self-regarding affairs, then what is distinctive about self-ownership? All we're left with is the claim that there is *strong reason* to let people do what they want with their bodies. Perhaps we could call that self-ownership, but then self-ownership would no longer be an interesting, distinctive view about the moral authority people have over their bodies.

B. *Elbow room reasoning*

Sobel concludes that there is no way to save self-ownership. If we allow that our rights over our bodies are consequence-sensitive, so that minor intrusions are permitted, it seems to amount to an abandonment of self-ownership. Mack, however, offers a way out of this predicament. He argues not only that self-ownership can be saved, but also that it can be saved without any appeal to consequences. I will argue, however, that Mack's solution is incomplete. While it solves one problem associated with minor intrusions, there is a further problem that Mack's solution does not address.

Mack's elbow room reasoning is designed to address an important objection to excessively stringent conceptions of rights, which he calls "the hog-tying complaint." He describes that complaint as follows:

The distinctive complaint that Railton and Sobel bring against stringent libertarian rights is that such rights morally hog-tie their possessors.

⁹ David Schmidtz, "Property and Justice," *Social Philosophy and Policy* 27, no. 1 (2010): 82.

The purported difficulty is that these rights systematically make their exercise morally impermissible . . . The hog-tying complaint is not that the domains of some individuals may be too small; i.e., that they may include too little in the way of personal or extra-personal resources. Rather, the complaint is that much of whatever is within one's domain in the sense that others may not destroy or seize or control it without one's permission will, nevertheless, not be within one's *sovereign* domain in the sense that one's chosen use of that material is morally allowed and protected.¹⁰

The worry is that there is something wrong with a view that attributes liberties to people but then usually morally requires them not to exercise those liberties. That is what happens if we interpret self-ownership so strictly that no one is permitted to make others hear or breathe anything without getting their consent. Respecting such strict rights would keep us so busy that no one would ever be morally permitted to take advantage of her own rights to live her own life.

Mack argues that there is a way of explaining why this kind of hogtying is problematic *by appealing to self-ownership* instead of by moving away from self-ownership or qualifying it in some way. He calls this solution "elbow room reasoning," which he describes as follows:

I offer an alternative "elbow room for rights" explanation for the permissibility of minor intrusions. The key idea is that, when one thinks about how to articulate or delineate the character or the boundaries of the rights one ascribes to persons, one crucial guide is the moral elbow room postulate. According to this postulate, a reasonable delineation of basic moral rights must be such that the claim-rights that are ascribed to individuals do not systematically preclude people from exercising the liberty-rights that the claim-rights are supposed to protect. When Railton and Sobel point out that the impermissibility of minor intrusions would be hog-tying, they are pointing out that this impermissibility would systematically morally preclude individuals from exercising the liberty-rights that are ascribed to them—the exercise of which is supposed to be protected by the claim-rights ascribed to them. The elbow room postulate tells us that, since the impermissibility of minor intrusions would be hog-tying, a reasonable delineation of rights does not construe minor intrusions as boundary crossings.¹¹

Mack argues that when we attribute a morally protected liberty to people, the claim rights designed to protect that liberty must allow people to exercise that liberty in the way that justified their having it in the first place.

¹⁰ Eric Mack, "Elbow Room for Rights," 195.

¹¹ Mack, "Elbow Room for Rights," 197.

This means that the claim rights that protect our liberty to do as we please with our bodies cannot be so stringent that no one is actually morally permitted to do as she pleases with her body. This, of course, is what happens if we interpret self-ownership rights as ruling out all pollution or unwanted noise.

Mack argues that a scheme of rights must ensure that people are *entitled* to exercise the liberties that the scheme of rights is meant to protect. He does not argue that people must be *able* to exercise their rights. If Mack were concerned with people's *ability* to live lives of their own, then the implications would extend far beyond permitting minor intrusions. It would also permit major intrusions. If people were entitled to be *able* to exercise their liberty to live as they please, they would be entitled to provision of whatever goods are needed to survive and live lives of their own. On this view, if someone needs a kidney in order to live, he would be entitled to one. This clearly isn't what Mack has in mind, as he explicitly rejects the idea that people are entitled to one another's kidneys.¹² Elbow room reasoning only demands that we interpret self-ownership in such a way that prevents self-ownership rights from being self-undermining. This requires only that people not be *required by others' rights* not to live lives of their own.

While elbow room reasoning may provide an adequate response to the hog-tying worry, it does not deal with all of the problems presented by minor intrusions. There are some minor intrusions that are not permitted by elbow room reasoning that seem plainly permissible. Imagine, for example, that in order to save the life of your friend Alice—who does not realize that she is about to step into the path of an oncoming bus—you must quickly step in front of her, which requires that you bump into Andy. Pushing Andy seems clearly permissible, even if Andy would prefer you not. Elbow room reasoning, however, cannot explain why. In order for elbow room reasoning to show that Andy lacks a right against being shoved in this case, it would need to be the case that Andy's having a right not to be shoved would hogtie someone (that is, morally require someone not to exercise the liberties protected by self-ownership). But no one in this situation would be hogtied if Andy retains a right against being shoved. If he had such a right, you, Alice, and Andy would all still be entitled to live your lives your own way. To be sure, Alice has chosen to use her body in a way that will turn out rather poorly for her if you do not intervene. But she is free to choose how to use her body. Your lacking the right to run into Andy does not somehow undermine Alice's entitlement to live as she pleases. (Your being unable to intervene would lead to her losing her *ability* to live as she pleases, but as we noted above, that is not what elbow room reasoning protects.) Nor does your lacking the right to run into Andy undermine *your* entitlement to live as you please. Your entitlement

¹² Mack, "Elbow Room for Rights," 199.

to do as you please with your body is limited by Andy's same entitlement and does not allow you to push him out of your way whenever it prevents you from doing as you please. Your self-ownership would not permit you to push Andy out of the way just to greet Alice or so that you could quickly snap a picture of the funny bumper sticker of a passing car, even if those things are more important to you than saving Alice. Your self-ownership right, then, cannot explain why it's permissible to interfere with Andy to save Alice.

Given that no one in this situation would be hogtied by your lacking the right to bump into Andy, elbow room reasoning will not explain why you may bump into Andy. What has gone wrong in this situation is not that the claim rights protecting people's liberties do not let them exercise those liberties, but that people's exercising their liberties leads to a result that seems unacceptable in some other way. If that case isn't troubling enough, imagine that more is at stake. Suppose, for example, that bumping into Andy against his will is the only way to prevent a nuclear power plant from exploding and killing a million people. Elbow room reasoning cannot explain why bumping into Andy is permissible in this case either. Though the people who die from the explosion would lose the *ability* to exercise their liberties, they would not have moral duties that require them not to exercise those liberties. And such duties are all that elbow room reasoning protects people from. To insist that we may bump into Andy in either of the cases we have considered, however, is to insist that people are entitled to something more than to be protected from crippling moral duties that never permit them to exercise their liberties.¹³

Cases like these will be rare in the real world. It is not often the case that the only way we can prevent some dire harm to one person is to interfere with someone else's body. The same problem, however, arises with respect to property rights as with bodily rights. It is less difficult to imagine realistic cases in which it is permissible to trespass on someone's property to prevent serious harm. The most commonly cited such case is the case of a hiker who has to break into a cabin in order to survive.¹⁴ It's easy however, to imagine more mundane cases: someone crossing private property during a chase to catch a violent criminal, or someone entering private property to help someone else who has nonculpably made her way onto

¹³ Some self-ownership theorists may be willing to bite the bullet and claim that interfering with Andy is wrong. One of the attractions of a strict conception of self-ownership is that it starts from a simple first principle and works down from there. Someone attracted to this method might be willing to accept the unsettling implications of an attractive first principle. That seems plausible enough when the stakes are relatively small; one might be willing to bite a few bullets if the principle that leads one to do so is especially attractive. I have trouble imagining, however, that any first principle is more plausible, attractive, or obvious than the claim that it is permissible to bump into someone against his will to save a million lives. I do not, however, have much to say to persuade philosophers who are willing to bite such bullets. The view I develop below will seem to them unnecessarily concessive.

¹⁴ The classic formulation of the cabin case is in Joel Feinberg, "Voluntary Euthanasia and the Inalienable Right to Life," *Philosophy and Public Affairs* 7, no. 2 (1978): 102.

private property (perhaps a child unknowingly wandering from a park into a nearby yard or an injured driver whose car is pushed on to private property by a car accident). In such cases, elbow room reasoning cannot account for the permissibility of minor intrusions. If we want to explain the permissibility of such minor intrusions, then, we have to move beyond elbow room reasoning.

II. DUTY-SENSITIVE SELF-OWNERSHIP

Mack's elbow room reasoning permits many minor intrusions, but leaves out some that seem plainly permissible. Meanwhile, we have already taken perhaps the most natural solution to this problem—making self-ownership value-sensitive—off the table. While the more plausible (objective) version of Value-Sensitive Self-Ownership does permit the small intrusions that elbow room reasoning does not, it also permits us to interfere with people for their own sake against their will. And that concession seems to amount to an abandonment of self-ownership. If self-ownership is to be defended, then, we must find a conception of self-ownership that concedes more ground than Mack's elbow room reasoning but doesn't go so far as Value-Sensitive Self-Ownership. I want to propose just such a view: Duty-Sensitive Self-Ownership.

A. *What is Duty-Sensitive Self-Ownership?*

Duty Sensitive Self-Ownership makes the following three claims:

1. It is permissible to interfere with people's bodies against their will when and only when doing so enforces an enforceable duty.
2. People have at least some enforceable positive duties to others.
3. People do not have enforceable duties to themselves.

The first claim, on its own, is not especially revolutionary. Half of this biconditional—the claim that we may interfere when doing so enforces an enforceable duty—is trivial. To say that a duty is enforceable duty *just means* that it is permissible to coerce someone into fulfilling it. The other half of the biconditional—the claim that we may interfere *only* to enforce such duties—simply registers a commitment to a pure deontology: consequences do not contribute directly to the permissibility of interferences with people's bodies; *only* duties can justify interferences. Since enforceable duties correlate with rights, we could also put this in terms of rights: we may interfere with people against their will only when someone has a right that we do so.

So far, we have said nothing that conflicts with stricter self-ownership views. It is the second claim—that people have at least some enforceable positive duties—that takes us in a different direction. Defenders of

self-ownership typically think that the only enforceable duties we have are duties of noninterference. Duty-Sensitive Self-Ownership, however, acknowledges that we have at least some minimal enforceable duties to help others, which allow us to interfere with people for others' sake.

Such duties explain the permissibility of the minor intrusions that elbow room reasoning leaves out. These duties would explain why, for example, we can interfere with Andy to save Alice. And they would do so without appeal to consequences. Of course, appealing to consequences may seem attractive at first glance—it may seem natural to think that the explanation of why we may interfere with Andy to save Alice is that Alice's death would be a bad result, and sometimes we may interfere with people to produce good results. But we might instead explain the permissibility of bumping into Andy in terms of duties: you may bump into Andy to save Alice because Andy has an enforceable samaritan duty toward Alice.¹⁵ This samaritan duty need not be a duty specifically *to help*, but will be what we might call a *helping* duty, whose precise content will depend on the details of the situation. If Andy is not aware that Alice is in danger, for example, he cannot be obligated to take some action to help. But it does seem plausible to think that he owes it to Alice to accept some costs so that someone else is able to help. The stringency of this duty may be a matter of dispute, but will fall within certain bounds. Surely Andy owes it to Alice to accept the cost of being lightly brushed up against, and even to accept being more forcefully pushed out of the way. On the other hand, he probably does not have an enforceable duty to sacrifice his life. I will not try here to defend a particular view about how stringent these duties are. The point is that it seems plausible to think that we have at least minimal duties of this kind.¹⁶

We can also put the second tenet of Duty-Sensitive Self-Ownership in terms of correlative rights: people have at least some positive rights. This claim, especially put in this way, may seem out of place in a self-ownership view. Self-ownership is often thought to rule out entirely the existence of positive rights. But it is only recently that self-ownership has come to be

¹⁵ It may be tempting to think that the duty of others to save Alice is what explains why others may interfere with Andy for Alice's sake. But that won't do the work. Others' duties to Alice don't obligate Andy. The fact that I have a contractual duty to deliver something to Alice by a particular time, for example, does not mean I can shove Andy out the way to deliver it on time.

¹⁶ One might worry that people who are currently unable to help can have no duty to help. I cannot fully address this here, but will note that it seems wrong to me to think that duties go away when one cannot currently act to fulfill them. If I stole something from you and am currently asleep, I have a duty to return it, which permits others to take it back from me and return it to you. We might instead say that when interference is permissible depends on what enforceable duties people *would* have, were they able to fulfill them. For present purposes, not a lot hinges on this difference, as duties still do the underlying work. For a fuller treatment of this matter, see Victor Tadros, "Duty and Liability," *Utilitas* 24, no. 2 (2012): 264–68.

understood so strictly. John Locke, the very source of self-ownership talk, argues that ownership rights are limited by positive rights of charity:

But we know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God, the Lord and Father of all, has given no one of his Children such a Property in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denied him, when his pressing Wants call for it: and therefore no Man could ever have a just Power over the Life of another by Right of property in Land or Possessions; since 'twould always be a Sin, in any Man of Estate, to let his brother perish for want of affording him Relief out of his plenty. As *Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every Man a Title to so much out of another's Plenty as will keep him from extream want, where he has no means to subsist otherwise;¹⁷

While Locke takes property rights seriously, he argues that they have limits: whatever our ownership of land and possessions involves, it does not involve the right to let other people die by no fault of their own.¹⁸ If we apply this view to *self-ownership* we get something that is very much in the spirit of Duty-Sensitive Self-Ownership: whatever our self-ownership amounts to, it does not involve the right to let others die by no fault of their own. Of course, we need not accept Locke's particular view about what our positive rights are (not to mention his theological arguments for that view) in order to accept the basic idea behind his argument. That basic idea is the motivation behind the second claim of Duty-Sensitive Self-Ownership: whatever our ownership of our property or selves amounts to, it does not mean that we owe one another nothing more than to leave one another alone.

The first two claims of Duty-Sensitive Self-Ownership do not yet amount to a self-ownership view. They tell us we are sometimes allowed to interfere with people to enforce positive duties, but they tell us nothing about the kinds of *protections* people have against interference. That is where the third tenet of Duty-Sensitive Self-Ownership comes in. According to this tenet, people do not have enforceable positive duties to themselves. Combined with the first tenet, this generates a protection: we may not interfere with people simply for their own sake.

¹⁷ John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988 [1689]), I.42. Italics in original. All references to Locke's *Two Treatises* indicate the number of the treatise as Roman numeral, followed by the number of the section.

¹⁸ A similar duty to assist the poor (at least when they are poor by no fault of their own) seems to be presupposed by Locke's "An Essay on the Poor Law," John Locke, *Political Essays* (Cambridge: Cambridge University Press, 1997), 182–98.

The claim that people have no enforceable duties to themselves is a way of capturing the central idea of self-ownership: each of us is entitled to pursue his or her own good his or her own way. You may owe it to yourself (not) to live in certain ways, but others do not have the moral standing to force you to do so. I may encourage you to live well and perhaps even put some social pressure on you, but I may not coerce you. *Your* pursuit of *your* good is *your* business. To insist that I may interfere with you against your will simply for your sake is to insist that we belong to another in some sense—that your pursuit of your good is my business too, whether you like it or not. The core of self-ownership, as Duty-Sensitive Self-Ownership understands it, is the denial of this claim. You are your own; your good is *not* my business whether you like it or not. This “whether you like or not,” of course, is crucial. Defenders of self-ownership can recognize that there is something attractive about the ideal of people whose lives are woven together, whose good is one another’s business. They simply insist that lives of competent adults be woven together in this way voluntarily.

B. Duty-Sensitivity and self-regarding behavior

This view leaves people a kind of absolute authority over their self-regarding behavior. By self-regarding behavior, I mean behavior that no one else has an enforceable moral claim over—behavior that, morally speaking, is none of their business. What I choose to eat for breakfast, for example, is self-regarding in this sense. I do not have an enforceable duty to anyone else to eat one thing for breakfast rather than another. It is, morally speaking, no one else’s business. On the other hand, whether I pay for my breakfast *is* someone else’s moral business. The owner of my local bakery, for instance, has a right that I not take a bagel without paying for it. By denying that we have enforceable duties to ourselves, Duty-Sensitive Self-Ownership carves out a self-regarding sphere in which people are sovereign. While I may owe some things to others, my own pursuit of my own good is my business and no one else’s.

This does not mean that we may never interfere with people for their own good. Sometimes interfering with people for their own good doesn’t violate their authority over their self-regarding behavior. The most obvious case is when people consent to being interfered with. When you have consented to your doctor performing surgery on you, for example, her cutting you open does not undermine your authority over your body. It also seems plausible that we may interfere with people for their sake when we are unable to get consent from them, but they would consent if they could. It is permissible, for example, to perform surgery on people who are unconscious due to a medical emergency, so long as they would consent to it if they were conscious. To be sure, we should secure consent if we can. But in cases where we are unable to ask for consent, the best we can

do to respect people's authority over their bodies is to treat them as they would have us treat them if they were able to consent.¹⁹ This is why the first tenet of Duty-Sensitive Self-Ownership prohibits interfering *against people's will* unless doing so enforces an enforceable duty. When I interfere with your body in ways you consent to, or would consent to if you could, I leave you in charge of your self-regarding sphere.

This stance about self-regarding behavior—that the only time we can interfere with people simply for their own good is when they consent (or they would consent if they could)—captures the ideal of self-ownership in a way that Value-Sensitive Self-Ownership does not. The trouble with Value-Sensitive Self-Ownership is that it reduces the stringency of all bodily rights. Thus, in order to allow minor intrusions for the sake of others, it allows interference with people for their own sake. Duty-Sensitive Self-Ownership, however, avoids this result. It allows some intrusions for others' sake that are not permitted by elbow room reasoning, but retains strong protections against paternalism. This takes into account the worries that motivate revising self-ownership, but does so without abandoning the spirit of self-ownership. To put it in terms we used above, Duty-Sensitive Self-Ownership allows us to prevent people from using their self-ownership as a weapon of mass destruction, but insists that we not prevent them from using it as a weapon of self-destruction.²⁰

It is worth noting that, while Duty-Sensitive Self-Ownership bears some important similarities to Locke's view, this complete rejection of paternalistic justifications for interference carries it away from one important aspect of Locke's position. Locke denies people at least some protection of their self-regarding behavior, because he denies that we have a right to kill ourselves.²¹ Locke, of course, has religious reasons for this position. As Richard Arneson points out, however, one might well have secular reasons for the claim that people's authority over themselves is limited.²² Value-Sensitive Self-Ownership could account for such limitations: self-ownership does not protect self-harm when that self-harm would produce sufficiently bad results. Arneson himself,

¹⁹ This view about paternalistic interferences and consent is not new. Donald VanDeVeer defends a view along these lines, arguing that we can interfere with people for their own good when they would consent if they could. He calls this "hypothetical individualized consent" (to be distinguished from hypothetical *rational* consent). Donald VanDeVeer, *Paternalistic Intervention* (Princeton, NJ: Princeton University Press, 1986), 75. Nor is the view compatible only with Duty-Sensitive Self-Ownership. A self-ownership theorist who doesn't wish to concede that we have any enforceable positive obligations could still accept this view about paternalism.

²⁰ Of course, the fact that people have the right to destroy themselves does not mean that it is right for them to do so.

²¹ II.6. Italics in original.

²² Richard Arneson, "Self-Ownership and World Ownership: Against Left-Libertarianism," *Social Philosophy and Policy* 27, no. 1 (2010): 188.

in fact, proposes a form of Value-Sensitive Self-Ownership.²³ While Arneson doesn't make the connection explicit, this view would place limits on the authority of people's self-regarding behavior, just as he suggests the secularized neo-Lockean should want.²⁴ Duty-Sensitive Self-Ownership, however, rejects this aspect of Locke's view. It maintains that people have no enforceable duties to themselves and thus that people are absolute sovereigns over their self-regarding sphere.

C. *Duty-Sensitive Self-Ownership and aggregation*

Because Duty-Sensitive Self-Ownership makes self-ownership sensitive to duties rather than value, it leaves room for its defenders to avoid the odd implications of aggregating the benefits produced by interferences. According to Value-Sensitive Self-Ownership, it is permissible to interfere with people for the sake of any sort of value, so long as there is enough of it. This will sometimes have worrisome implications. Suppose, for example, that by doing harm to one person I can provide a tiny bit of amusement to a large number of people. Because Value-Sensitive Self-Ownership treats all values the same, it will entail that there is some number of people whose minor amusement is sufficient to make such an interference permissible. So, according to Value-Sensitive Self-Ownership, I could permissibly film myself punching a stranger on the street and breaking his nose, so long as it provided minor amusement to a sufficient number of viewers (or enough more viewers than it upset). Defenders of Duty-Sensitive Self-Ownership, however, are able to argue that people don't have enforceable duties to provide such trivial benefits. While people may have duties that make it permissible to harm us to save others from death or great harm, they plausibly do not have enforceable duties to provide others with mild amusement. Working out the details here will, of course, be tricky. It's not obvious that people have *no* enforceable duties to promote aggregate goods (or prevent aggregate harms). It seems plausible, however, that there are limits to the kinds of harms people can be obligated to take on. Defenders of Duty-Sensitive Self-Ownership have room to disagree about what these are. Someone else might argue that I am wrong that it is impermissible to punch

²³ Arneson proposes this view as a more authentically Lockean alternative to left-libertarianism. Arneson, "Self-Ownership and World Ownership: Against Left-Libertarianism," 192–95. Sobel cites Arneson as an example of the kind of view he has in mind when he formulates Value-Sensitive Self-Ownership. Sobel, "Self-Ownership and the Conflation Problem," 117, note 37.

²⁴ It's not clear, however, that this view would place the *kind* of limits on people's authority over themselves that the secularized neo-Lockean should want. Arneson suggests that the secular argument for limitations on people's authority over their own bodies could appeal to people's duties to themselves as rational agents ("Self-Ownership and World Ownership: Against Left-Libertarianism," 188). It's not obvious that self-regarding duties of this sort would have the same implications as the consequence-sensitive view Arneson proposes (unless people's duty to themselves as rational agents is simply not to do harm to themselves beyond some threshold).

someone to get millions of laughs, but argue that we cannot kill someone for any number of laughs. Some people might think that there are some kinds of harms that no one can have an enforceable duty to take on for the sake of others, while other people might argue that what harms we are obligated to take on depends on what harms we are preventing. Because Duty-Sensitive Self-Ownership itself does not say what our duties to others are, it leaves room for disputes about these matters.

D. Duty-Sensitive Self-Ownership as a module

Because it does not say how extensive our positive duties are, Duty-Sensitive Self-Ownership can be combined with a wide range of views about what other-regarding duties we have—anything from a view that admits so few samaritan duties that it has the same public policy implications as traditional libertarian self-ownership views to a view on which people have extensive positive duties that permit substantial redistribution. Duty-Sensitive Self-Ownership, then, is not an entire ethical theory, but a module that can fit into many ethical theories.

Because it is modular, Duty-Sensitive Self-Ownership is a broadly liberal view, not a specifically libertarian one. It makes sense of something that many nonconsequentialists believe: that people enjoy stronger moral protection of their self-regarding affairs than of their other-regarding affairs. This is hard to explain without something along the lines of Duty-Sensitive Self-Ownership. If we adopt a consequence-sensitive deontology (like Value-Sensitive Self-Ownership), it will be hard to make sense of the idea that self-regarding behavior enjoys stronger moral protection than other-regarding behavior.²⁵ If all our rights are sensitive to consequences, then it seems paternalistic interference is just as easy to justify as redistributive interference. Duty-Sensitive Self-Ownership avoids this implication by explaining the permissibility of other-regarding interferences in terms

²⁵ One might wonder why defenders of Value-Sensitive Self-Ownership cannot make sense of this by claiming that only people's other-regarding behavior is sensitive to values. The problem with this view is that it is difficult to square with the idea that it is value that does the work in justifying interferences with people's bodies. According to Value-Sensitive Self-Ownership, what makes an interference with someone's body permissible is that the interference produces sufficiently good consequences in comparison to the costs. Claiming that other-regarding affairs are value-sensitive and that self-regarding affairs are not, however, means claiming that the value of states of affairs sometimes can and sometimes cannot justify our interfering with someone. If the costs and benefits of an interference with someone for their own sake and the costs and benefits of another interference with them for someone else's sake are precisely the same, then to support the claim that one of these interferences is permissible and the other is not, one would have to appeal to something other than the value of the resulting states of affairs. The most obvious story to tell is that there are some outcomes that people have duties to produce and others that they do not. But to accept that story is just to accept a form of Duty-Sensitive Self-Ownership, on which people have a duty to promote good outcomes *for others*, when the goodness of the outcomes exceeds some threshold in comparison to the cost. (This form of Duty-Sensitive Self-Ownership, however, has the same unsettling implications about aggregation that Value-Sensitive Self-Ownership has.)

of duties. Duty-Sensitive Self-Ownership should be attractive, then, to nonconsequentialists who want to combine principled opposition to paternalism with the view that we owe one another something more than to leave one another alone.

Because its most striking feature is its admission that we have positive enforceable duties, Duty-Sensitive Self-Ownership may appear to offer little in the way of protection to self-owners. This appearance is misleading. As we already noted, Duty-Sensitive Self-Ownership rules out justifying interference on paternalistic grounds. It also prohibits all sorts of physical interferences that there is no plausible duty to endure: battery, rape, slavery, and the like. Finally, it prevents justifications for interference that appeal merely to the great benefits to be produced. According to Duty-Sensitive Self-Ownership, the burden is on the person who wishes to claim that there is good reason to interfere with someone else to show that the other person has an enforceable other-regarding duty that the interference would enforce.

III. WHICH FORM OF DUTY-SENSITIVE SELF-OWNERSHIP?

While Duty-Sensitive Self-Ownership itself does offer many substantial protections to self-owners, precisely how much total protection self-owners have depends on the extent of their enforceable positive duties. This raises the question of what view about our positive duties is most plausible to combine with Duty-Sensitive Self-Ownership. I cannot hope to consider all the possible forms of Duty-Sensitive Self-Ownership here. I do however, want to suggest one view that I think is especially attractive: a combination of Duty-Sensitive Self-Ownership with a theory of abstract rights along the lines Mack defends and a minimal samaritan duty. The chief attraction of this view, I will suggest, is that it places limits on the extent of our positive duties.

A. *Abstract rights and elbow room reasoning*

I argued above that Mack's elbow room reasoning cannot explain why what we might call "samaritan intrusions" are permissible. Now, however, I will argue that elbow room reasoning also does not rule out the permissibility of such intrusions. In fact, moving to the sort of theory of rights Mack defends allows room for samaritan duties. Mack's elbow-room reasoning is offered as part of a defense of Lockean natural rights of self-ownership and property. Mack argues that these natural rights are "abstract" rights:

I need to emphasize that it is not the role of armchair philosophy—even natural rights philosophy—to discover and disclose the precise contours of persons' nitty-gritty rights. Those precise contours do not exist out there in the nature of things or as theorems that are deducible

from Lockean axioms. So, it is not the business of a Lockean theory of rights to determine whether or not the owner/operator of a well-established water mill has a right against individuals living upstream that they not significantly diminish the flow of water that turns his mill. It is not the business of this or any other philosophical theory to determine exactly how loud the noise has to be that emanates from *A*'s property in order for *B* to have a right to enjoin *A*'s drum playing. The relatively concrete rights that are reasonably ascribed to individuals in a given society—e.g., the right not to be subjected to noise over a certain decibel level—provide a structure of reasonably expected liberties and immunities that facilitate peaceful coexistence and voluntary cooperative interaction among those individuals. A theory of rights can only provide an abstract framework for that relatively concrete structure.²⁶

On Mack's view, our natural moral rights prohibit certain actions and set bounds on what kinds of social practices are acceptable, but they don't entail a complete, precise set of concrete rights. This means that on Mack's theory, social practices must specify the precise contours of our concrete rights. The social practices that assign concrete rights to us are only legitimate, however, when they assign concrete rights in ways that meet the constraints imposed by our abstract rights.

Mack argues that our abstract rights—property, self-ownership, a right to have promises to us kept, and so on—are justified by "the moral principle that each individual is to be allowed to live his own life in his own chosen way."²⁷ We have these abstract rights because we have a fundamental right to live a life of our own. This means that whether our social practices about matters of right are justified depends on whether they leave people the right to live their own lives their own chosen way. This is the standard that Mack appeals to when he argues against overly strict conceptions of self-ownership: if we had social practices in which people were prohibited from producing small intrusions like unwanted noise or minor pollution, no one would have a right to live her own life her own way. We'd all be obligated to spend all of our time avoiding minor intrusions.

While elbow room reasoning can prevent us from interpreting rights against interference in a way that is hogtying, it cannot explain why we have positive duties of assistance. That does not entail, however, that we have no such duties. While Mack himself does not endorse such duties, there is nothing in the Lockean abstract rights theory that rules them out.

²⁶ Mack, "Elbow Room for Rights," 199–200.

²⁷ Mack, "Elbow Room for Rights," 198. He explores this style of argument in more detail in relation to property in Eric Mack, "The Natural Right of Property," *Social Philosophy and Policy* 27, no. 1 (2010): 53–78.

Some positive duties may be compatible with the ideal that Mack articulates, without being justified by it. If natural rights are abstract, then there are multiple acceptable sets of concrete rights that a society might follow. Imagine a set of concrete rights that not only has enough elbow room to avoid hogtying people, but has more than enough elbow room. Now, suppose we add to that set of rights a samaritan duty—a duty to help others who are in dire need when you can do so at low cost to yourself. So long as there is more “elbow room” in the social practice than is necessary, there is room for *some* such positive duties.

B. Samaritan duties properly understood

One might worry, however, that allowing even a minimal samaritan duty will lead to an explosion of duties of assistance that would effectively eliminate all “elbow room.” Indeed, it is a common strategy—most famously pursued by Peter Singer²⁸—to argue that embracing a duty of easy rescue ultimately requires embracing incredibly demanding requirements to assist others. Not all ways of understanding a samaritan duty, however, lead to this conclusion. Defenders of a duty of easy rescue often think that in *each case* where we might help people, we must evaluate whether the cost to the possible helper is low. This, however, produces the odd consequence that we have a duty to help others at *very great* cost to ourselves.²⁹ Perhaps, instead of evaluating the cost to the duty-holder locally we should evaluate it globally. That is, instead of asking *in each case* whether someone’s assistance involves reasonable cost to him, we should ask whether the overall cost of assistance in his life is reasonable.³⁰ On this reading, the samaritan duty is, in Mack’s terms, an abstract duty: a broad duty to assist when the overall cost to you is reasonable, which can be fulfilled in a variety of different ways, and whose precise requirements might be worked out differently in different social practices. This understanding of a samaritan duty seems compatible with elbow room reasoning. In fact, we might understand the notion of low or reasonable cost *in terms* of elbow room reasoning: people can have enforceable duties to assist only so much as is compatible with their having lives of their own.

²⁸ Peter Singer, “Famine, Affluence, and Morality,” *Philosophy and Public Affairs* 1, no. 3 (1972): 229–43.

²⁹ I owe this observation to Sarah Stroud, “They Can’t Take That Away from Me,” in Mark Timmons, ed., *Oxford Studies in Normative Ethics: Volume 3* (Oxford: Oxford University Press, 2013), 206–207.

³⁰ This view might have more plausible implications about cases than views like Singer’s, on which we have extremely demanding views about duties to rescue. As Sarah Stroud has pointed out (“They Can’t Take That Away from Me,” 232–33), while easy rescue seems required if we look at individual cases, it’s not so obvious that people are obligated to help when such cases are iterated. If someone lives by a shallow pond, it’s not clear that they do wrong by not spending every waking moment of every day saving lives. If it’s difficult to show that we are morally required to help in such cases, it’s harder still to make the case that this duty is enforceable and other people are morally permitted to make us help.

I cannot give a full defense of this particular version of Duty-Sensitive Self-Ownership—let’s call it “Samaritan Duty-Sensitive Self-Ownership”—here. Much would need to be worked out about this view,³¹ and then we would need to compare it to alternative forms of Duty-Sensitive Self-Ownership (which would be as numerous as plausible views about the scope of our other-regarding duties). It is worth noting, however, that Samaritan Duty-Sensitive Self-Ownership would retain some attractive features of more stringent forms of self-ownership that other forms of Duty-Sensitive Self-Ownership lose. All forms of Duty-Sensitive Self-Ownership protect us against paternalism. Duty-Sensitive Self-Ownership itself, however, does not include any limitation on the extent of other-regarding duties. Combining Duty-Sensitive Self-Ownership with the sort of samaritan duty I’ve proposed, however, would place serious limits on how much we may be interfered with for the sake of others. At the same time, like all forms of Duty-Sensitive Self-Ownership, it acknowledges that we do have some positive duties of assistance.

C. *Returning to the roots of self-ownership theory*

As we noted above, this view is very much in the spirit of Locke’s view. Consider a crucial passage from Locke’s *Second Treatise*:

TO understand Political Power right, and derive it from its Original, we must consider, what State all Men are naturally in, and that is, a *State of perfect Freedom* to order their Actions, and dispose of their Possessions and Persons, as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.³²

Here Locke claims that the kind of freedom we should care about is freedom *within the bounds of the law of nature*. In the paragraphs that follow, Locke famously goes on to argue that this law of nature includes a trio of negative rights: life, liberty, and property.³³ But as we saw earlier, Locke also claims that we have some positive rights. In other words, Locke affirms the basic idea behind Duty-Sensitive Self-Ownership: our freedom is bounded by duties that require us to do more than simply leave one another alone. Perhaps, then, Duty-Sensitive Self-Ownership is best understood not as a departure from the self-ownership tradition, but as a return to its roots.

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³¹ For example, we might worry, as Sobel does in a reply to Mack, that the fundamental right to live one’s life one’s own way is too vague or needs further working out in order to do the kind of work Mack would need it to do. See David Sobel, “The Point of Self-Ownership,” in David Schmidtz and Carmen E. Pavel, eds., *The Oxford Handbook of Freedom*, (Oxford: Oxford University Press, 2018), 124–40.

³² Locke, *Two Treatises*, II.4. Italics in original.

³³ Locke, *Two Treatises*, II.6.