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A Dilemma for Libertarianism

Karl Widerquist[1]
Department of Politics
University of Reading

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> "Is it right to pay taxes to the Roman Empire?"
>
> "Show me a coin in which the taxes are paid. … Whose image is on it?"
>
> "Caesar's."
>
> "Render unto Caesar what is Caesar's…"
>
> -Property theory from *the Bible*: Mathew, Chapter 22, Verses 17-21

Libertarianism can be thought of in at least three ways: It is the ideology supporting (1) maximal equal liberty understood as self-ownership or noninterference, (2) strong, inviolable property rights without regard to the pattern of distribution of those rights, or (3) a so-called libertarian state, which is either a government limited to protecting property rights and self-ownership or no government at all.[2] Natural rights libertarians think of their philosophy as embodying all three of these claims, believing that a commitment to maximal equal freedom entails a commitment to strong property rights, which in turn entails a commitment to a libertarian state.

I call the connection between these claims the "argument from liberty" for a libertarian state.[3] This article concerns the argument from liberty and does not apply to other arguments for the libertarian state, such as arguments that a libertarian state is more efficient and productive[4] or more suitable to human nature[5] than other states. Libertarians in the natural rights tradition consider the argument from liberty to be the most important argument for the libertarian state.[6]

Critics of the argument from liberty have usually focused on the first two claims, arguing that freedom is not the most important value,[7] that the libertarian conception of freedom is flawed,[8] or that self-ownership does not necessarily imply strong property rights.[9] The connection between the second and third claims is often accepted by both opponents and supporters of libertarianism. This article challenges that connection, making a fundamental criticism of the argument from liberty by demonstrating that the inviolability of property rights does not necessarily imply a libertarian state. This article argues that natural rights principles may allow a libertarian state to exist but they could as well allow monarchy or an activist welfare state, and would seem to imply the acceptance of whatever property-rights regime happens to be in place. This article argues for that conclusion by making the case using natural rights theory that the state has extensive property rights in privately-held assets. Under this view, taxation and possibly regulation do not constitute interference with private property rights; they are manifestations of government-held property rights.

If this article successfully demonstrates that a libertarian state does not necessarily follow from libertarian principles of natural property rights, it poses a serious dilemma for libertarians, forcing them to choose *between* the argument from liberty and the

argument that only a libertarian state is justifiable. The term "right-libertarianism" is more accurate for the philosophy under scrutiny here because it does not concern left-libertarianism and libertarian socialism. For simplicity, I call right-libertarians by the term call themselves. Except where clarification is necessary, this article uses the term "libertarian" as shorthand right-libertarians in the natural rights tradition.

Part 1 considers the natural rights principles of property ownership and liberty. Part 2 demonstrates how a very unlibertarian state, a property-owning monarchy, can develop out of a commitment to property rights, and how government rights to tax and regulate property can be consistent with natural property rights. Part 3 briefly discusses the possibility of divided ownership between government and private holders. Part 4 considers historical arguments that might eliminate or limit the extent of government property rights. Part 5 considers objections that libertarians might make against the legitimacy of any property-owning government. Failing to eliminate a property-owning government, Part 6 considers the limits that libertarian theory might put on government property rights. Part 7 discusses the larger implications of this dilemma for libertarianism.

1. Natural Rights Libertarianism

To have liberty, in the libertarian understanding, is to be free from interference with whatever rights a person happens to possess. Rights necessarily include self-ownership and might include property ownership of external assets (i.e. everything not covered by self-ownership). This is the rights-based conception of negative liberty. It is not the only conception of negative liberty, but it is the only one under concern here.

Interference with a right that a person holds violates liberty, but interference with something a person does not hold as a right cannot violate this conception of negative liberty. If you own a knife and I take it away from you, I have interfered with your negative liberty, because you have a right to hold that knife. If instead you attempt to plunge that knife into my chest, and I stop you, I have not interfered with your negative liberty because you had no right to stab me.

To have self-ownership is to have all the rights over oneself that the owner of an object has over it. Formal self-ownership means that a person is the legal owner of her own body, skills, and ideas. A starving person who must sell her labor to others has formal self-ownership, but lacks effective or robust self-ownership. This article uses the term "propertyless" for people who do not have enough external assets to maintain effective self-ownership.

The natural rights argument for libertarianism asserts four principles that are meant to exhaust the conditions necessary for establishing just property rights in external assets. Robert Nozick names three of them—original acquisition, voluntary transfer, and rectification.[10] I argue that natural property rights theory logically requires a fourth principle that I call "statute of limitations."

Most libertarians—including Nozick, David Boaz, Erick Mac, and Murray Rothbard[11]—use modified versions of John Locke's labor mixing theory of unilateral appropriation to justify original acquisition.[12] Under this theory, the first person to significantly alter an asset by laboring with it attains ownership of it as long as what Nozick calls "the Lockean proviso" is fulfilled.[13] The proviso states that appropriation is valid at least where there is "enough and as good left in common for others,"[14] which "is

meant to ensure that the situation of others is not worsened" by appropriation.[15] Some libertarians—including Jan Narveson and Israel Kirzner—replace labor mixing with other principles such as first use or discovery and reject the proviso.[16] Section 6C considers the ramifications of the proviso.

Once ownership is established, voluntary transfer and rectification of past wrongs determine how property rights can be legitimately transferred from one person to another. A complete theory of property would have to spell out rectification more fully, but a general theory of property only needs to recognize that some such principle exists.

These three principles must be supplemented by a fourth because, on their own, they cannot establish property rights in a world where little or no property can be traced in an unbroken chain of just transfers to original appropriation. Therefore, natural rights libertarians are logically committed to some kind of statute of limitations. Richard Epstein in a consequentialist argument for libertarian property rights gives a thorough description of the principle using the terms adverse possession, statute of limitations, and prescriptive rights. He concludes that for a property system to work there must be some period of time after which the original claim against unlawful takings expires.[17] A statute of limitations would have to be spelled out fully to create a complete theory of property, but to do so would require a legal treatise. Epstein offers one important specification, the principle of relative title,[18] which essential means that A cannot claim property against B because B stole it from C. Only C (or C's heirs) can make that claim. If B's title is older than A's, B's claim beats A's. Relative title upholds a statute-of-limitations principle that Rothbard endorses without naming, writing, "where the victims are lost in antiquity, the land property belongs to any non-criminals who are in current possession."[19] Other

libertarians rely on it tacitly or explicitly.[20] Nozick does not explicitly mention it, but some of his statements imply tacit endorsement.[21]

This conception of property rights demands that a person has a right to the freedom from interference with the property she happens to own, but no natural right to become a property owner[22] or to gain possession of any particular asset that she has not acquired through trade or appropriation. Importantly for my argument, libertarians claim that a person with limited rights in a piece of property does not necessarily have a claim to greater rights in that property. For example, a renter holds some property rights in her house, but she does not therefore obtain the additional rights that would make her a full owner. Absent some application of the statue of limitations principle, only a voluntary transfer from or rectification of past wrongs by the holder of those rights can be reasons to transform a person's partial claim to an asset into a claim to full ownership in that asset. A renter and a homeowner have different property rights, but both have the same negative liberty—whatever property rights they happen to hold are free from interference.

According to the argument from liberty, governments may not interfere with anyone's negative liberty to create positive opportunities for others. Libertarian equality under the law is achieved when the state protects everyone's rights while letting the four principles determine what rights people have. The belief that these four principles exhaust the conditions necessary for determining the legitimacy of the distribution of property rights implies that the pattern of inequality has nothing to do with the justice of the distribution of property. Nozick summarizes this claim in the statement, "Whatever arises from a just situation by just steps is itself just."[23] As long as the distribution of property was determined according to these four principles (including whatever version

of the proviso is employed), it is just according to the argument from liberty: no matter what the pattern of distribution is; no matter how poor some individuals are; no matter how small the group that controls property is.

Natural rights libertarians believe that limited government (restricted to enforcing private property rights) entails no limits on inequality in property ownership, but this article argues, to the contrary, that limited government *embodies* substantial limits on inequality. That is, the libertarian concept of limited government has to rule out the pattern of property ownership in which a king, a corporation, or a cooperative owns partial or full property rights in some or all of the nation's assets. None of the libertarian authors I have found examine the full implications of truly allowing *no limits* on inequality other than the proviso. Part 2 examines these implications.

2. The property-owning monarch

This part shows by example how a state can come to have rights in all the property in a nation and thus have the right to tax and regulate property without violating the four principles of libertarian natural property rights. This story is meant to be taken as literally and as seriously as the libertarian story connecting current title holders to original appropriation.

Imagine an island called Britain. In the state of nature, all of the land is appropriated by individuals following whatever rule of appropriation a libertarian reader prefers. Economies of scale or astute entrepreneurship allow a relatively small number of proprietors to control most property. Assume the Lockean proviso (however specified) is

satisfied. In this early stage, there is no government; each proprietor is *sovereign* over her estate; according to Narveson, "property rights … are *liberty* rights. You may … do *what you wish* with what is yours."[24]

From a similar starting point, Nozick traces the development of government from voluntary for-profit protective associations. He shows that a government so constituted must be a minimal state.[25] Nozick's argument is only applicable to a government so constituted, but a union of protective associations is not the only legitimate state. Suppose instead proprietors prefer to protect their own property without creating any protective associations. Propertyless people come to proprietors offering their labor in exchange for protection and access to resources. Each proprietor insists that tenants accept her as the arbiter of disputes.

A proprietor makes different deals with different people. To some she sells indefinite tenancy rights, a quasi-ownership called "title" that tenants can buy and sell from each other, subject to the proprietor as overlord. She retains the right to charge a royalty on all titles, to change the royalty rate at any time, to regulate the use of privately held titles, and to reclaim any rights granted under title. Tenants who do not hold titles rent through quasi-owners with the understanding that the proprietor collects further royalties directly from them in whatever form she wants—as a portion of tenants' income, a portion of their sales, a portion of their day in work direct for her, etc.

Proprietors enlarge the size of their estates through voluntary transfer and rectification. They trade, form strategic marriage alliances, defend themselves against aggressors, and use primogeniture in inheritance. Over the generations, estates become larger until one proprietor owns the entire island of Britain. At this time she decides to

call herself “Queen” rather than “proprietor.” She refers to her “estate” as her “realm,” her “tenants” as “subjects,” and her “royalties” as “taxes.” But the nature of the Queen’s revenue has not changed.

The Queen is a *property-owning monarch* who derives enormous power not from divine right, social contract, or consent of the governed, but from her inviolable libertarian property rights. Her tax revenue is a form of return on the rental of her property; it is hers to do with as she will. She can use it for public works, defense of the realm, alms to the poor, or her own amusement. Being a “taxpayer” gives one the right hold property, but it does not give one the right to decide how the Queen spends her revenue; just as being a rent payer does not give one the right to decide how the landlord spends her profits. Similarly, being a private title holder does not make one free of the Queen’s regulations any more than being a private lease holder makes one free of a landlord’s regulations. Her powers to regulate property come not from some social responsibility but from her rights as overlord.

The point of this example is that the formal principles of natural property rights allow the government to own property rights in everything, and that under such circumstances it may tax and regulate property without violating anyone’s property rights. The property-owning monarch represents both the monarchs of earlier times and the strongest property rights that a government might have in property. But there are two more questions to ask to connect this story of the Queen with modern governments’ property rights. Is a property-owning monarch, strictly speaking, a government, or just an extremely wealthy individual? How can her rights be claimed by modern governments?

In Nozick's terms, the Queen can be a government. Nozick's state develops out of profit-seeking protective associations with no necessary responsibility to be democratic.[26] The Queen is able to fulfill the role Nozick sets for the state: she protects everyone's formal self-ownership and the property rights of everyone who happens to own property (i.e. herself).

The people could create a Parliament to protect their self-ownership and their rights under the proviso against the Queen, but Parliament cannot protect individual "property rights." The one property owner is able to protect her property without Parliament; and she is the arbiter of disputes involving her property. Under some version of libertarianism, Parliament needs the Queen's permission to use any property to enforce laws protecting the self-ownership of others. It seems that the two powers together make up the government.

There are at least two ways to unite the Parliament's authority to protect self-ownership with the Queen's authority to tax and regulate property. A monarch could bequeath her property to Parliament, or the story can be retold so that the original appropriators were democratic cooperatives. Through either of these routes, this story endows government with enormous powers over privately held titles by virtue of the libertarian principles of appropriation & voluntary transfer and (if necessary) rectification & statue of limitations—principles that are supposed to *exhaust* the conditions for establishing just property rights.

This illustration shows that government property rights are merely a pattern of inequality. Small equal-sized ownership is one pattern. Unequal ownership with very rich and very poor people is another. A monarchy in which one person owns everything is

another. A democratic government which owns a partial interest in everything is another. Libertarianism claims to be unconcerned with the pattern, but if so, they cannot rule out patterns in which governments own property.

The Queen in this story claims stronger ownership rights than most modern governments, which primarily claim the power to tax and regulate private titles. Such powers might amount to the government being a landlord who must respect her tenant's long-term leases, but they might amount to a weaker form of interest in property such as that of a condominium association. Part 3 addresses the strength of government's historical property claims. Otherwise, I consider a Queen with full ownership that she may exercise arbitrarily, just as libertarians permits all land-owners to do. The Queen's title holders have the same claim over their property that a renter has over an apartment with a month-to-month lease; as long as they pay their rent and comply with the owner's rules, they may stay, but the owner can change the rent or the rules every month. The Queen (or any property-owning government) may decide that arbitrary power is imprudent. She may decide to make her quasi-titles very strong to take advantage of the market mechanism. The question for natural rights libertarianism is not *will she* act arbitrarily, but *does she have the right* to act arbitrarily. Her historical entitlement to property rights implies that she does. The question becomes: if you're a property rights advocate, why aren't you a monarchist?

Monarchy—especially with strong arbitrary powers—is anathema to most modern conceptions of justice. Liberals, communitarians, egalitarians, left-libertarians, democratic socialists, and the average person can make many consistent complaints against the property-owning monarch. She is hogging all the resources. She has assumed

privileges for herself in violation of principles of democracy and equal rights. The question is not whether monarchy is unjust—it certainly is—but whether libertarianism can establish that a property-owning monarch (or any other strong government) is unjust consistently with the argument from liberty. Arguments based on the Queen's unequal control of resources are not open to libertarians, because they do not allow any egalitarian constraints on property ownership. Natural rights libertarianism has only four principles to establish justice in property rights—appropriation, voluntary transfer, rectification, and statute of limitations—none of which have been violated. A review of rights-based libertarian literature, including works by David Boaz, Israel Kirzner, Charles Murray, Jan Narveson, Robert Nozick, Murray Rothbard, and others,[27] found no reasoning consistent with the argument from liberty that favors a libertarian state over a property-owning government. This article considers arguments libertarians might make against a property-owning government, but first it makes a brief aside to address the issue of how ownership can be split between two parties such as government and private holders.

3. Divided ownership

Most modern governments do not claim full ownership of property, but they do claim substantial rights in property through the powers of taxation and regulation. If these rights are limited but legitimate, ownership is divided between government and private holders.

Ownership is not *one* right but *a bundle of rights and duties* (or incidents) that can be held over a piece of property. Tony Honoré analyses full ownership as a bundle of 11

incidents, which are the right to posses, the right to use, the right to manage, the right to income, the right to capital, the right to security, transmissibility, absence of term, the duty to prevent harm, the liability to execution, and residuary character.[28] These incidents can be divided in many different ways. Weaker forms of ownership are include easements, leases, partnerships, joint-stock companies, property with liens on it, and so on. Taxation is directly a share in the right to income, and regulation is directly a share in the right to manage, but they also give the government indirect power over all 11 incidents.

There are several possibilities about how ownership could be divided between government and private holders. Private titles could constitute full liberal ownership, making all taxation and regulation usurpation. Government could have full liberal ownership, giving private title holders the rights of a renter with a month-to-month lease. Private titles could constitute longer-term protected leases. Government and private holders might both have an interest in property while neither alone is the full owner of property. The questions of what the current arrangement is and whether that arrangement is legitimate are separate.

Under the current arrangement, private title holders can hold property permanently so long as they pay the taxes on it and abide by the regulations on it. Yet, the government can change the tax rate and the regulations on property at almost any time. It would seem then, that the relationship between a private title holder and government is similar to the relationship between a renter and a landlord. However, government rights might somewhat weaker, making private rights more akin to the ownership of a

condominium, which includes permanent, transferable ownership rights subject to fees and regulations.

There are substantial political and constitutional barriers to that power, limiting what the government will do. However, natural rights libertarians are more concerned with what the government has the moral right to do than what it will do. Few libertarians would be satisfied to find out that the political barriers to what government will do are greater that the moral limits on what a government has the right to do.

Modern libertarians are aware that the incidents of ownership can be divided.[29] It appears that they have not considered whether the power to tax and regulate trade reflect divided ownership because they have believed that appropriation, voluntary transfer, rectification, and statute of limitations can only support *private* property. Now that it has been shown that the story of original appropriation and transfer can support governments' interests in property, libertarians need an additional argument. The following sections consider whether libertarians have any arguments consistent with the argument from liberty to rule out or limit full or partial government ownership of property either in principle or based on particular history.

4. Historical arguments

The historical argument is not first best for libertarians who claim that a libertarian state is the strongest state that can ever be ethically justified. However, a libertarian might base a powerful conclusion on the historical argument, if she could show that history was very unlikely to produce a just property-owning government.

Section A rejects this view in terms of the statute of limits. Section B rejects it terms of original appropriation. Section C considers whether the particular histories of nations place limits on government property rights.

A. The story of the Queen is not literally true

Few if any governments can trace their property rights in an unbroken chain of just transfers to original appropriation. This statement is obviously true, but using it to imply that government property rights can be ignored is possibly the worst argument a libertarian might make against a property-owning government, because the libertarian original appropriation story is not literally true either. Few if any private title holders can trace their property rights in an unbroken chain of just transfers to original appropriation.

Libertarians would like to put forward a connection between original appropriators and current title holders as a justification of property rights. If that connection proves false, they rely on the statute of limitations, arguing that current title holders have relative title over propertyless individuals who might demand redistribution. But they have focused on the wrong opponent. Monarchists can put forward a story of the connection between the original appropriator and the Queen's property rights. If that connection proves false, monarchists can rely on the statute of limitations, arguing that governments have relative title over many of the incidents of ownership they now hold.

For an individual to defend his property "right" he has to trace the origin of his *title*, but a "title" is a legal concept, owing its existence to government. This fact would not matter if government titles simply recognized natural property rights, but title holders cannot necessarily make this claim. Ownership claims often trace to a government

arbitrarily declaring so-and-so to have a title. Any title created in such a way remains a legal construct conferring only such rights as declared by whatever authority created it, no matter how many times it has subsequently been traded.

For example, William I conquered England and established titles to various parts of it to his lords. These titles have since become the basis for modern property rights in England.[30] Therefore, the only claim that English title holders have to titles is *through* William's conquest.

It is likely that governments dispossessed some people with a prior claim, and so rectification to someone might be justifiable, but Edward Feser argues:

> [R]ectification could only be achieved … by dealing with *specific claims* of *specific* past injustices filed by *specific* individuals against other *specific* individuals, and treated by the state on a case-by-case basis rather than as a matter of general social policy.[31]

Feser uses this argument to defend current title holders against claims by the descendants of slaves and native peoples, but it also defends government property rights against those wishing to establish a libertarian state as general social policy. Introducing libertarianism does nothing to compensate the heirs of people dispossessed by conquering governments. Such claimants are not necessarily current title holders or even individuals. Many (perhaps most) of the property holders dispossessed by governments were *previous governments*. William I did not displace a libertarian state, nor did the Anglo-Saxons, nor did the Romans.

As for the Americas, Kirzner uses Columbus as an example of the kind of discoverer he wishes to promote,[32] but Columbus was under contract to the Spanish Queen. The descendents of Inca and Aztec kings might have claims against the property rights of the successor states of the Spanish Empire, but not those whose titles derive from the Spanish conquest.

Even if a title can be traced back beyond a point at which a government usurped power over that piece of property, compensation would be due to the heirs of the person who held the title at the time of the taking, not to anyone who bought the reduced title subsequently.

Neither accepting nor rejecting the statute of limitations implies the moral necessity of a libertarian state. If libertarians accept the statute of limitations, they must accept at least some government property rights. If libertarians reject the statute of limitations, they must reject nearly all private claims to property, except perhaps for a few native peoples in out-of-the-way places. Without a statute of limitations no verifiable story connects original appropriation to capitalism, monarchism, or any other patter of property ownership, and natural rights libertarianism implies no reason to select one of these patterns over any other.

B. Plausibility

Libertarians might claim that their appropriation story—although false—is more plausible than the Queen's story, arguing such strong, concentrated property rights could only have been accumulated unjustly. Of course, egalitarians can also claim that capitalist inequality could not have happened justly. Libertarians would probably reply to that

claim by asking the egalitarian to prove it and to prove injury. Libertarians therefore must meet the same standard if they have a plausibility claim against government property rights.

One could argue that plausibility is not relevant either way. The plausibility claim is: I did not get my property justly, but I could have; you did not get your property justly, and you couldn't have. That claim hardly establishes that my holdings are just or that I should assume the rights over the property you know hold.

Nevertheless, if the only path to government power was the usurpation of private property rights, the justification for a property-owning government could only rest on the statute of limitations. Establishing a libertarian state for this reason would violate Feser's prohibition on using rectification for general social policy,[33] but the claim would certainly weaken the moral authority activist governments. Can the plausibility claim be established?

The simplest way one might try to establish the plausibility claim would be to argue that a trading economy with many small private owners is unlikely to reach a point at which one entity owns everything. Therefore, no single entity should own everything. There are two problems with this line of reasoning.

First, the factual claim may not be true. For example, suppose the levees around New Orleans or Amsterdam had been established by a private company with no regulation limiting its behavior. The owners of that company would already have Queen-like power over the land inside the levees.

Second, even if the factual claim is true, the argument fails because it involves circular reasoning. The starting point of this argument *is* a libertarian state. It amounts to

justifying a libertarian state because only a libertarian state can develop out of a libertarian state. A libertarian state is one possible pattern of property ownership; monarchy is another; neither one is entitled to be the privileged starting point. It is no more reasonable to declare that monarchy is implausible because it cannot develop from libertarianism that it is to say that libertarianism is implausible because it cannot develop from monarchy. To get from original appropriation to the Queen of England, we have to go from small to large, but we do not have to pass through libertarianism along the way. If there is a privileged starting point, it must be the transition from nomadic to settled lifestyle and the original appropriation of land.

There are four reasons to believe the Queen's story is at least as plausible as the libertarian appropriation story. First, if as I have demonstrated, government ownership of property is simply a pattern of property rights, as legitimate as any other, it seems likely that the power of government and some of the powers of ownership would become united in the thousands of years that have elapsed since the first appropriation of land.

Second, empirical evidence indicates that libertarian states are the unlikely development. Several anthropological studies of the earliest agrarian economies in the Neolithic period show something very different than a libertarian state. Property rights were nonexclusive, complex, and overlapping. There was no group of owners with the power to exclude others to appropriate share of what amounted to resources held at least partially by the community.[34] Moving beyond the Neolithic into the Bronze Age, the earliest holders of individual fixed property rights in land were chiefs, who bore a surprising resemblance to the proprietor in the story above.[35] Their monopoly on the ownership of land and infrastructure was the key to their power. Early chiefs in Hawaii,

for example, were *owners* of land who *allocated* plots to farmers and kept control over commoner's labor through their *ownership* of irrigation systems.[36] Chiefdoms and monarchies developed in almost every region of the world that passed out of the Stone Age before colonialism; we do not know of a libertarian state developing from original appropriation anywhere. It seems that the just development of a libertarian state is an extremely unlikely event.

Third, Nozick's story of the establishment of a government out of protective association is unlikely to be factual. Perhaps a Nozickian appropriator could legitimately establish control over an estate a few kilometers in diameter with 10 or 20 employees, but I find it unlikely that such a proprietor would cede any power to a Nozickian protective association. She might protect herself and insist her employees accept her rule or leave her estate. If so, government power and ownership power are already united. The (libertarian) injustice in the creation of a large monarchy would have involved big monarchs usurping from small monarchs rather than governments usurping from libertarian property owners.

Fourth, agriculture is unlikely to have been first employed by lone individuals. It might have been conducted by a group of individuals acting together. Such appropriators would have had no moral obligation to create a libertarian state. They had the option to parcel the land out into individual libertarian plots, but they also had the option to retain full or partial collective ownership. Usurping monarchs might have taken power from groups like this rather than from prehistoric libertarian proprietors, or groups like this might have unwisely, but voluntarily, traded their land for the services of a monarch.

This evidence shows that libertarians have not substantiated the claim that government powers of taxation and regulation can only be established by the usurpation of private property rights. It is up to anyone who bases their case for libertarianism on the supposed implausibility of the Queen's story to present prove implausibility, just as it would be up to anyone who based their argument for egalitarianism on the implausibility libertarian appropriation story.

C. Governments might have overstepped historical entitlements

One might argue that although governments do have historical claims to some property rights, governments have recently overstepped their legitimate powers. Employing this argument would be a significant retreat for libertarians, who would rather rule out all government ownership of property in principle, but it might succeed placing limits on government in a libertarian direction. A libertarian might argue that Western governments gradually began asserting regulatory authority only in the last hundred years or so, but before that, many governments observed laissez faire. Governments, therefore, might owe something back to title holders and they might be prohibited from creating new regulations and taxes. The limits that history puts on government property rights depend on how the principles of statute of limitations and rectification are specified. Libertarians have not fully specified these principles. Therefore, I can at most raise doubts about the likely extent of these limits.

The laissez faire period was historically brief. Before then, most Western countries went through the mercantilist period in which governments asserted strong regulatory powers. Still further back, in the medieval period, many monarchs held

absolute rights over all the land in their realm, and local landlord was the local lord, i.e. the local government. The farther back in recorded history one looks, the more likely one is to find an absolute monarchy. It would seem contrived to choose the expiration date for the statute of limitations just at the point at which laissez faire reach its height.

According to Narveson, the rights that the first appropriator receives depend on what rights she thought of herself as establishing.[37] If current holdings find their lineage in titles created under monarchy, those titles constitute very limited private rights. Medieval monarchs believed they were establishing extremely strong powers for themselves, and they ruled for so long that the heirs of anyone with earlier rights were lost to history. To claim that modern increases in government power (at least in Europe) constitute takings of property rights, one would have to argue not that governments infringed on naturally private rights but that governments made a binding contract to relinquish some of their medieval property rights in the early modern era and then broke that contract when they began establishing activist welfare states. This case is far more difficult to make.

In Britain, William I established *new* titles to nearly the whole of England, bestowed them on *new* lords, and established two salient doctrines. All land is held either directly or indirectly by the crown,[38] and "The King is the fount of all justice,"[39] meaning that if there is any dispute about what a title means, the monarch decides what it means. Even today, British title holders are understood to have not ownership but permanent tenure rights on lands held indirectly by the crown. Over the years, the sovereignty of the British monarch was transferred to the Queen-in-parliament, while these two doctrines remained in effect. Britain's uncodified constitution has maintained the doctrine of

parliamentary sovereignty, under which no parliament can bind its successors. Various parliaments extended more or less control to private holders, and occasionally proclaimed rights of private ownership. However, even as they made those proclamations, they openly retained parliamentary sovereignty. They never promised to bestow any property rights that future parliaments could not take away.[40]

Given that history, I do not see how any English title holder can claim to hold a natural property right against parliament. Perhaps a few people with well-researched Celtic or Anglo-Saxon ancestry can make a claim against the crown, but any other English or British title holder is merely an indirect beneficiary of King William's largess. If William had not created the titles he created, someone else would hold the resources now controlled by British title holders. Whether that person would have weaker or stronger rights than current title holders is immaterial. Anyone who accepted a title in Britain knew—or should have known—that it was not a title to full liberal ownership and that it was subject to parliamentary sovereignty. There are many political barriers in Britain that are likely to keep parliament from exercising more than limited powers of taxation and regulation, but few libertarians will be happy to find out that natural rights imply no greater limits on government.

In most other countries, the historical case for libertarianism is no better. Russia, for example, had no laissez faire period. It went quickly from Czarist authoritarianism to Leninist totalitarianism. Perhaps the principle of rectification requires the heir of Nicholas Romanov to be restored as autocrat.

Libertarians might do better in the United States, where strong private property rights were recognized by the government and the constitution. The introduction of the

income tax took a Constitutional Amendment in the early 20th Century. Trade was free from many regulations such as the minimum wage until the 1930s. Title holders' right to discriminate on the basis of race or any other characteristic was recognized until the 1960s. Therefore, a libertarian might conclude U.S. history is full of verifiable instances in which government aggressively took partial property rights away from private individuals.

This argument has some validity, but also faces difficulties. First, to the extent that title holders have to reach back to the 19th Century to secure their rights, they reach back the century in which the United States took control of most of its current territory away from native peoples. It would again appear contrived to choose the expiration date at the point that maximizes the claims of title holders relative to both government and native peoples.

Second, the U.S. Constitution recognized property rights, but also gave sovereignty to the people who had the power to change the laws and the constitution. If a U.S. title confers only the right to hold property under the laws and constitution, a title places only the limit of legal due process on government's authority to make laws and alter the constitution. Most title holders in the United States chose to acquire titles knowing that they were subject to the sovereignty of the constitution. But it is possible that a U.S. title means more. Before the constitution was written, the U.S. government invested money in a war to take sovereignty away from Britain, and the government could use this as a basis to claim have assumed full sovereignty from the British parliament. However, unlike King William's conquest the U.S. did not establish all new titles after the war. It recognized preexisting rights. Furthermore, both government and

private individuals expended effort to conquer and settle the United States. This history might imply some kind of joint ownership that puts moral limits on changes to the laws and the constitution. The strength of those limitations depends on how strong private claims were before the revolution, how one specifies the rights obtained when government and private individuals together take action to secure territory, and how native claims should be rectified.

This brief examination of history cannot be definitive. Libertarians might be able to claim partial success in the United States, but such a victory would be dissatisfying if the same principles also imply full parliamentary sovereignty in Britain and autocracy in Russia. A thorough examination of history combined with further specification of natural rights principles may be better or worse for the libertarian cause. At most, this discussion demonstrates the difficulty of a historical, natural-rights-based attempt to rule out the possibility that governments have a just claim to fairly broad powers of taxation and regulation.

5. Principled arguments to eliminate the property-owning government

This part and the next return to the example of the Queen as a *full* property owner of her realm with the right to use her properly arbitrarily as any libertarian property owner. I do not suppose that actual governments have rights this strong or use them arbitrarily, but I use this devise to demonstrate that the principles of natural rights

libertarianism cannot rule out an arbitrary monarch with full liberal ownership of her realm.

A. Interference

Perhaps, the foremost libertarian argument against government taxation and regulation is that it is unjustified interference or coercive aggression against individual property rights. Rothbard declares, "Taxation is robbery."[41] However, libertarian theorists also make clear that the only unjustified interference is that which interferes with negative liberty. That is, for taxation to be robbery it must interfere with an existing right that an individual actually holds. If private titles constitute full ownership, government taxation and regulation is robbery of some incidents of ownership. If not, government taxation and regulation rob nothing, and forcing the government to give up these rights robs the government of its property rights—reducing negative liberty only to create positive opportunities for title holders. Libertarianism prohibits the promotion of positive opportunities at the expense of interfering with the property rights of others, no matter how unequal the pattern of property ownership might be. If we take that argument seriously, it must apply even if the ownership of property is so unequal that the Queen owns everything.

Libertarians seem to assume that current titles constitute full ownership including the freedom from taxation and regulation. When did they buy that incident of ownership? Whom did they buy it from? How much did they pay for it? If the story connecting current title holders to the original appropriators were literally true, they could answer these questions positively, but because that story is not true, the answers in order are:

never, no one, and nothing. *Current* title holders do not hold full property rights, and they did not *pay* for full property rights when they bought their rights from earlier holders. Those title holders would have charged more for those titles if they constituted stronger rights of ownership, or perhaps they would have retained those incidents of ownership for themselves. That is, most current title lost nothing to government taxation and regulation, because they never bought the right to be free of it. Even if the power to tax were usurped from someone at some point, the individuals who might have lost rights by any such usurpation are in many cases "lost to antiquity."

Title holders have the same freedom from interference as the propertyless person under capitalism: whatever property rights they own are free from interference; but they do not currently own the right to hold property free of payments and conditions set by another rights-holding body. Narveson unknowingly defends the Queen very well, "coercion is a matter of bringing it about that the coerced person's alternatives are considerably worse than in the status quo ante."[42] In the status quo ante, people who know hold titles were born without property; they then knowingly acquired titles subject to taxation and regulation. The Queen prevents title holders from assuming greater rights, but again according to Narveson, "the fact that having [property] entails having the right to prevent others from using it does not show that there is *now* a restriction on others' liberty which there wasn't previously."[43]

B. Why leave the state of nature?

A Lockean might argue that people leave the state of nature to protect their property rights. If the Queen is liable to redefine private property rights at her pleasure,

why should anyone else leave the state of nature? This argument is not consistent with the argument from liberty, which accepts that the following conditions may occur when society leaves the state of nature. Some people have property; some people do not; and justice has nothing to do with the size of each group. The Queen protects the property rights of everyone who owns property (i.e. herself). Her subjects have all the security of an individual who holds a short-term lease. If we do not allow people in a libertarian state who can only afford a short-term lease to complain that they would rather not have left the state of nature, we cannot allow the Queen's title holders make that complaint either.

Libertarians might respond to this conclusion by recasting their argument in terms of opportunity, claiming that only a libertarian state provide individuals the opportunity to become full property owners.[44] To make this argument work in the context of an economy in which some people will never own their own home or business, one has to define opportunity extremely broadly: a person has opportunity to buy something even if she can never afford it. In that sense people have the opportunity to trade their human capital for a piece of the Queen's estate. The Queen might name a price they cannot afford, but they have the opportunity in the broad sense libertarianism requires. They can marry the Queen's daughter and perhaps one day become monarch. That there are few of these opportunities is merely the result of the extreme level of inequality in the Queen's realm, but the pattern of inequality is not a libertarian concern. According to Narveson, "Acquisition limits opportunity, to be sure. But nobody had a duty to provide you with that opportunity, nor even to maintain it for you."[45] Interfering with the Queen's property rights to provide positive opportunities for title holders violates negative liberty in the

same that interfering with the property rights of title holders to provide positive opportunities for the propertyless violates negative liberty.

C. Monopolization and market power

The acceptance of unlimited inequality also rules out any concern with the market power the Queen acquires from her monopolization of resources. Mack response to market power arguments by asking, "why should this (allegedly) negative externality be thought to render the resulting situation *unjust*?"[46] There is a significant difference in market power between an individual property-owning monarch, and property-owning group of private owners, but natural rights libertarians have not responded to egalitarian complaints about economic inequality by saying that such-and-such pattern of distributional inequality is within acceptable limits, but by declaring *categorically* that *any* argument based on a pattern of distributional inequality is unacceptable. Again a dilemma, if libertarians do not wish to accept the Queen's power to tax as just, they must either drop their prohibition on judging a situation by the end-state pattern of property relations, or they must amend the principles that are supposed to determine whether the distribution of property is just.

D. This is not the vindication of Filmer over Locke

The libertarian natural rights argument considered here has been unable to demonstrate that monarchy is an unacceptable form of government in principle. Several hundred years ago, this conclusion might have been considered a serious defense of

monarchy (the vindication of Filmer over Locke?[47]), but now it has the opposite function—a reduction to absurdity. If the libertarian principles of natural property rights permit monarchy, something must be wrong with them. However, even if these principles cannot prohibit monarchy, they might place limits it. Part 6 discusses this issue.

6. Principled arguments to limit the property-owning government

The following sections argue that libertarian principles meant to protect the propertyless are so weak that they place only minor limitations on the arbitrary rule of a property-owning monarch. If the state is a full property owner, libertarian principles place fewer limits on it than most democracies observe today.

A. The Queen's ownership might not cover new creations

One might argue that the Queen's entitlement includes only goods that existed at the time of appropriation, even if the Queen is the rightful owner of those goods. Many new resources have been invented or discovered by private individuals, including both physical and intellectual property. If the Queen cannot extend her ownership over these things, there is an ever-increasing amount of property free from her rule.

This line of reasoning fails to limit the Queen's reach because, as Kirzner argues, "we must certainly make the producer's discovery-title to what he has produced depend on his having acquired just title to the necessary ingredients of production." If I discover

diamonds in your backyard, they are yours unless you previously signed over the rights to whatever I might find. Because the Queen controls ingredients that are essential to *all* production she can refuse to let anyone use them unless she owns the whole or part of whatever they might discover. The monarch is a harsh mistress who makes it clear that she will tax and regulate any discovery made in her realm. A government with limited interest in all land can use its leverage to obtain a limited interested in new creations as well.

Self-ownership prevents the Queen from directly claiming intellectual property, but she can prevent intellectual property from being *traded* for existing property. If I keep my idea secret, it is mine until someone duplicates my discovery, but if I trade it, I must trade with someone who *owns* property—i.e. the Queen. Anything traded for her titles becomes her property through "voluntary trade."

B. Formal self-ownership

Some libertarians argue that certain government policies, such as income taxes, directly violate self-ownership.[48] This section argues—based on Michael Otsuka's reasoning[49]—that that claim is mistaken. Although the Queen's subjects lack effective self-ownership (addressed in the following section), this section shows that the Queen's property rights do not interfere with anyone's formal self ownership.

Nozick argues that redistributive taxation is on a par with forced labor and "a notion of (partial) property rights in *other* people."[50] According to this view, income taxation is tantamount to forcing an individual to work for others for a portion of the

day.[51] Otsuka counters this argument by arguing that if we can only acquire external assets on the condition that we share some of them with others, then

> the state's forcing each of us to share our harvest with others would be no more an infringement of a libertarian right of self-ownership than in the case in which one purchased a plot of land from someone else on the condition that one share a part of one's harvest with the needy.[52]

Income taxes paid by people with high human capital are no exception to this argument. An income tax is not a tax on *being* a skilled person or even on *using* one's skills; it is only a tax on *trading* one's skills for external assets. If the Queen owns all assets, she can set the conditions of access to them. External assets are necessary for all production and consumption, and therefore the Queen can charge whatever fee she likes on production and consumption. An income tax is not levied an individual's time, effort, or human capital, but on an individual's attainment of property. A lawyer's human capital does not directly give him high income; it gives him the ability to attain high income through trade. If the Lawyer does not want access to the Queen's property, he will not earn income, and he will not pay income tax. Therefore, the libertarian objection to income taxation is not a dispute over self-ownership; it is a dispute over the ownership of external assets.[53] After all, the Queen put her picture on the money to remind people that it is hers they must render it unto her.

Formal self-ownership is simply too weak a concept to offer individuals adequate protection against the Queen. She may not simply go around lopping off people's heads,

but self-ownership and the four principles of natural rights libertarianism do not provide the tools to block her from depriving individuals of food and shelter until they agree to do her bidding, just as they do not block a market system depriving individuals of food and shelter until they agree to do the bidding of someone who owns property. Greater protection for individuals requires the endorsement of effective self-ownership.

C. Effective self-ownership and the Lockean Proviso

The Queen's subjects lack effective self-ownership. They have the legal right to refuse to work for the Queen, but without property of their own, they don't have the effective power to refuse. More radical libertarians, such as Boaz, Kirzner, and Narveson, rule out any concern for effective self-ownership or the proviso,[54] allowing an assertive Queen to create effective serfs by denying food and water to anyone who refuses to serve her.[55] Less radical libertarians give more protection to individuals against a property-owning monarch by attempting to incorporate concern for effective self-ownership into the proviso, but this section shows, that protection is not inadequate.

Nozick believes that a proviso is necessary, and effective self-ownership seems to be a motivation for it.[56] However, the baseline he discusses does not successfully protect effective self-ownership. He admits that identifying the correct baseline for the proviso is difficult problem that he cannot fully solve, but states "I assume any adequate theory of justice in acquisition will contain a proviso similar to the weaker of the ones we have attributed to Locke,"[57] meaning that individuals must have some opportunity to reach at least the living standard they could reach in technologically primitive society in which all assets are held in common. In Nozick's proviso, redistribution is due only to people for

whom the net benefit of society is negative, and the proviso apparently only secures the right to "strive" for what one needs.[58] He mentions a few benefits of a market economy and declares, "I believe that the free operation of a market system will not actually run afoul of the Lockean proviso."[59] By "striving" for resources, Nozick means that individuals must trade their labor with those who control natural resources. Nozick seems unconcerned that the propertyless are effectively forced work for people with property as long as by doing so they can reach the baseline living standard. He, therefore, should be unconcerned if propertyless people must work for the Queen as long as by doing so they can reach the baseline living standard. If so, it seems that the Queen can deprive individuals of food if they refuse to work for her as long as the wages for people who do agree to work for her meet the baseline. Whether this is truly his intent or not, it is all that his stated proviso secures.

Nozick's proviso does not allow people to ask: *How well off would I be if other people's property rights did not put a limit on my property rights?* Instead it only allows people to ask: *Given that my property rights are limited by other's property rights, am I better off than I would be in a primitive hunter-gatherer society?* When libertarians complain that title holders are not as well off as they would be in the absence of taxation and regulation, they are asking the wrong question. The proviso doesn't give them the right to make that complaint. As long as they have baseline living standards, this proviso implies no reason to strengthen their position at the expense of the Queen's negative liberty.

Mack proposes a "new and improved" version called "the self-ownership proviso" (SOP) in articles published in 1995 and 2002.[60] His examples show that it is motivated by

a concern for what I call effective self-ownership.[61] One important feature of the SOP is very favorable to the Queen: it is a constraint not on the ownership of property but how it is used.[62] The SOP prevents the owner of the only waterhole in the desert from denying others all access to it. However, "the constraint against Harry's denying Sally all access to that waterhole ought to be viewed as akin to the constraint against Harry's inserting his knife in Sally's chest,"[63] meaning that it is an entailment of Sally's self-ownership not a reduction in Harry's full ownership of his asset. Thus, the SOP cannot challenge the Queen's ownership of property; it only limits how she can use it.

In the 1995 description, the SOP is violated if an individual's ability to exercise "her world-interactive powers is damagingly diminished."[64] In this work, he defines the baseline in terms of opportunity rather than end-state welfare. He argues, "a well defined liberal market order, if it is operating as those friendly to such regimes expect, is a moral analogue to the pre-property regime."[65] In a pre-property situation, people have various opportunities to bring their powers to bear on the world, most of them involving hunting and gathering. In a competitive market economy people have a greater variety of opportunities to bring their powers to bear on the world, most of them involving seeking employment. For the SOP to be satisfied, an individual "must have before her an array of occupational opportunities that is not strikingly more narrow than what the fan of market processes would predict" for someone with her abilities.[66]

This baseline is dangerously close to circular reasoning. The proviso's function is to justify a private-property-based market economy. Yet the proviso is satisfied if an individual receives what we would expect them to receive in a private-property-based market economy. Mack discusses failure to meet the SOP when monopoly or

cartelization block the economy from reaching the competitive outcome, but he does not discuss whether the competitive outcome can be so poor that it leaves individuals worse off than they would be in the pre-property state.[67] His underlying supposition seems to be that market outcomes are good for everyone, but his literal assertion is that any competitive market outcome justifies itself without meeting any explicit standard of decency. This proviso fails to prohibit some of Mack's own examples of self-ownership violation. In one, a group of people effectively surround an individual in a small circle, and it is meant to be intuitively objectionable. However, surrounding an individual is consistent with the SOP as long as the people doing the surrounding offer a competitive market for the work the surrounded individual must do to earn her way out of the circle. This version of the proviso might require the Queen to use some market mechanism to maintain the baseline, but it does not prevent her from employing heavy taxes on those over the baseline.

Mack's 2002 version defines the baseline in terms of living standards.[68] I am unsure whether this statement is meant to be a clarification or a revision of his earlier SOP. In any case, the relevant baseline in 2002 has nothing to do with the amount of resources a person needs to preserve self-ownership. Instead it is satisfied if the whole system of private property allows workers to enjoy the same living standard (at comparable cost) they would have if the relevant external resources remained in common.[69] This SOP does not free workers from forced work for private property holders as a group; it assures only that those who accept work for one member of that group will reach the baseline. I fail to see how this proviso protects self-ownership. Apparently, the Queen still can deny access to food and water to individuals who refuse to work for her

as long as those who do work for her receive baseline wages. Mack even declares that it would be unreasonable for the propertyless to refuse to work for those who control resources, asserting "costless access [to resources] is never a reasonable baseline."[70] The implied argument seems to be that people would have to expend effort to work for themselves; therefore it is acceptable to effectively force them to expend effort working for property owners as long as they receive a similar rate of return on their effort.

Mack seems to believe that effectively forced work is unproblematic as long as the forced individual has a choice of who to work for.[71] The main reason he gives is that competition among employers is good for workers,[72] but he also shows sympathy with the idea that forced labor with a choice of employers is *inherently* unproblematic.[73] The Queen can meet this standard by employing the market mechanism among quasi-owners to create the necessary variety of competitive choices. The inherent problem in the Queen's domination of all resources seems to be that she does not offer is the choice of whether or not to work for her *in particular*. As attractive as the variety of employments available may be, an individual might object on principle to any employment that directly or indirectly serves the Queen. If this argument does not contain a tacit premise about the pattern of inequality, it should be just as reasonable for an individual to refuse to work for whatever *group* of people controls access to natural resources. As attractive as the variety of employments available in capitalism may be, an individual might object on principle to any employment that directly or indirectly serves that group.

Many libertarians do recognize that if a person is starving and there is no other way, they have a moral right to take what they need,[74] but this is usually stated in such a way that it only applies to someone who cannot find a job. It does not apply to people

who refuse to worked property owners, even if they have no other choice but to work for at least one member of the property-owning group throughout most of their lives. Property owners may provide charity to people in this position, but they are not obliged to.[75] Thus, the SOP effectively empowers property-owners, as a group, to deny food and water to property individuals who refuse to work for any of them.

Suppose person A owns the only waterhole in a desert and allows worker Z access to it only if Z does X. Therefore, Z is effectively forced to do X for someone else. Suppose instead, ten people each own one waterhole in the desert, and any one of them will allow Z access to their water only if Z does X. Still, Z is effectively forced to do X. Competition might be good for Z; he might only be forced to do Y. But the inherent threat to effective self-ownership is that he is forced to do something for someone. Suppose a slave owner leaves his slave to his ten sons with the stipulation that the slave can choose which of the ten to work for. The competition among the brothers will probably be good for the slave, but it makes her no less a slave. A choice of masters is not effective self-ownership, which must be the power to decide whether to work for anyone else. Any unconditional baseline high enough to give individuals the power to refuse to serve a property-owning monarch, must also give individuals the power to refuse to serve a property-owning group. The level of redistribution necessary to protect this individual power is more than most right-libertarians want to endorse.[76]

These issues put doubt on whether the SOP provides adequate protection for propertyless people under capitalism, but the decisive question is whether the proviso forces the Queen to introduce elements of a libertarian state. Mack admits that the SOP is easily satisfied, and that well functioning liberal states can meet it.[77] Nozick and Machan

agree that modern industrialized economies meet whatever standard is necessary to protect the poor.[78] They use this factual claim to argue that a libertarian state can meet the necessary standard. However, because these governments assert the power to tax and regulate property, these factual claims also demonstrate that a property-owning government can meet the standard. Thus, although the proviso sets limits on the living standards and choices that must be made available to poor people, it does not significantly limit governments' ability to have full or partial ownership of all property or to introduce heavy taxes and strict regulations.

7. Implications

If the arguments in this article succeed, they have profound implications for libertarians who use the argument from liberty. This article is not directly aimed at other libertarians, but it pits the argument from liberty against any other arguments for a libertarian state, and it applies to all libertarians in the extent to which they endorse the concept of negative liberty.[79]

The dilemma for libertarianism can be stated in several ways. (A) While libertarianism purportedly involves no limits on inequality in the distribution of property, it requires one severe limit on inequality—no one entity can own all property or an interest in all property. (B) Libertarians claim to oppose both powerful government and pattern-based arguments about distributional inequality, when powerful government is simply a pattern of distributional inequality. (C) Natural rights libertarians have created an argument for property rights so strong that it protects a monarch's right to own a

nation. (D) The principles of appropriation, voluntary exchange, rectification, and statute of limitations put limits only on a government that does not own property, but these principles place few if any limits a government that owns the rights to tax and regulate property. This article has argued that there is good reason to believe modern governments hold at least some rights of taxation and regulation consistently with those principles.

One aspect of the dilemma involves the principle I have called statute of limitations. Libertarianism requires a statute of limitations to justify nearly all private property rights, but a statute of limitations also justifies extensive government rights to tax and possibly also to regulate property. Therefore, neither accepting nor rejecting the statute of limitations successfully justifies a libertarian state.

An important implication of this argument is that taxation and regulation of property do not necessarily constitute interference with any existing right. The libertarian characterization of taxes as interference with negative liberty relies on the belief that a title confers full property rights on the holder. This article has argued that titles often confer a much weaker rights. This implication may provide a small silver lining for libertarians who have argued that it is not important whether or not a person owns property but that her property rights are free from interference. Private property rights *are* free from interference. Individuals have weaker property rights than libertarians had thought, but they have the all-important negative liberty. Even if the Queen owns everything, her subjects have the same negative liberty that propertyless people have today. If the economic inequality between the Queen and the capitalist aristocracy makes the aristocracy unfree, the inequality between the aristocracy and the poor makes the poor unfree in the same way and to the same extent.

Another implication of this argument is that there is no difference in kind between most government powers and most powers of private property holders. The power to collect taxes and the power to collect any other form of income are simple powers that flow from the control of resources. Anarcho-capitalism exists; property ownership just happens to be dominated by about 200 firms called "governments." Feudalism, socialism, welfare capitalism, and unregulated capitalism are equally consistent with the principles of natural property rights. Instead of implying a minimal state, the principles of libertarianism seem to imply a non-ideological nationalism; they support for whatever property rights regime has been in place for a sufficient amount of time.

According to Rothbard, "The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else."[80] Therefore, to create a libertarian state by taking away governments' rights to tax and regulate property would violate *the central axiom of the libertarian creed*. Libertarians do not wish to *defend* private property rights but to *strengthen* them. They do not advocate a return to the status quo ante; they advocate making titles stronger than they were when current owners obtained them, and perhaps stronger than they have ever been. Unfortunately, strengthening one party's property rights can only come by weakening others. If libertarians want to obtain stronger property rights without aggressively taking them from government, they have to buy them. Libertarian investors could pool their resources and offer money to governments in exchange for territory where they could create a libertarian state. That no one has yet done so implies that living under a libertarian state is not worth the cost of purchasing the right to do so.

If taxes are understood as a reflection of the government's power of ownership, their function is different than often portrayed. Taxes are commonly seen as a mandatory purchase of government services, but here they are seen as a fee for the right to hold a private title. The people's right to decide what is done with tax revenue does not follow from their being taxpayers, but from their being owners of the treasury. Just as any other landlord is free to choose how to spend her profits, the owners of the government are free to choose how to spend its profits. Government welfare programs are not "redistribution" but merely distribution of governments' legitimately acquired profit.

One could take this article to imply that both supporters and critics of libertarianism have erred in understanding the nature of their debate. Libertarians have erred in calculating who owns property. Critics have erred by arguing—contrary to libertarian freedom—that citizens through their governments have the right to tax property because society naturally has some collective rights over the Earth. Instead, they could argue—consistently with libertarian freedom—that citizens through their governments have the right to tax property because they inherited that right from their ancestors.

Finally, the dilemma poses a difficult question for natural rights libertarians. Should they remain committed to natural property rights and drop their commitment to the moral necessity of a libertarian state, or should they maintain their commitment to the libertarian state and drop or amend their principles of property rights? Is the liberty embodied in a natural right to property worth having? One could take this article as a criticism of libertarian principles themselves for leading to the absurd conclusion of non-ideological nationalism. If the principles of natural property rights imply respect for

almost any well-established government, even a property-owning monarchy, there must be doubt whether they capture what it means to be free. If we want greater protection for individual liberty, we have to look at principles outside of libertarianism.

Notes

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[2] Libertarians differ about what the libertarian state requires. Most put it somewhere in between the anarcho-capitalism of Murray Rothbard, *For a New Liberty, The Libertarian Manifesto* (New York: Libertarian Review Foundation, 1978) and the minimal state of Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974), including alternative visions such as John Hasnas, 'Reflections on the Minimal State', *Politics, Philosophy & Economics* 2 (2003): 115-128. Some libertarians reluctantly accept a somewhat larger state, such as Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (New York: Harcourt Brace Jovanovich, 1980).

[3] I take this phrase from Shelly Kagan, although I use it differently. S. Kagan, 'The Argument From Liberty', in *In Harm's Way: Essays in Honor of Joel Feinberg*, edited by J. L. Coleman and A. Buchanan (Cambridge: Cambridge University Press, 1994): 16-41.

[4] Richard A. Epstein, *Simple Rules for a Complex World* (Cambridge, MA: Harvard University Press, 1995); Richard A. Epstein, *Principles for a Free Society: Reconciling Individual Liberty with the Common Good* (New York: Perseus Books, 1998); Richard A. Epstein, *Skepticism and freedom: a modern case for classical liberalism* (Chicago: University of Chicago Press, 2003); Milton Friedman, *Capitalism and*

Freedom (Chicago: University of Chicago Press, 1962); F. A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1956).

[5] Tibor R. Machan, *Capitalism and Individualism* (Hemel Hempstead, UK: Harvestor Wheatsheaf, 1990), pp. 79-81; Tibor R. Machan, *Libertarianism Defended* (Aldershot, UK: Ashgate, 2006), pp. 36-45.

[6] Charles Murray, *What it Means to be a Libertarian* (New York: Broadway Books, 1997), for example, uses the efficiency argument for libertarianism, but calls it a "happy accident" that the libertarian state is so efficient, meaning that even if a libertarian state had no other advantages, the argument from liberty is a decisive reason to endorse it.

[7] G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995).

[8] Senera Olsaretti, *Liberty, Desert and the Market* (Cambridge: Cambridge University Press, 2004) defends self-ownership but criticizes the libertarian conception of voluntariness.

[9] For example, B. H. Fried, 'Wilt Chamberlain Revisited: Nozick's "Justice in Transfer" and the Problem of Market-Based Distribution', *Philosophy and Public Affairs* 24 (1995): 226-245.

[10] Nozick, *Anarchy, State, and Utopia*, pp. 150-153.

[11] David Boaz, *Libertarianism: A Primer* (New York: Free Press, 1997); Nozick, *Anarchy, State, and Utopia*; Rothbard, *For a New Liberty, The Libertarian Manifesto*; Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982).

[12] John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1960) Treatise Two, Chapter Five.

[13] Nozick, *Anarchy, State, and Utopia*, pp. 174-182.

[14] Locke, *Two Treatises of Government*, Second Treatise, section 27.

[15] Nozick, *Anarchy, State, and Utopia*, p. 175.

[16] J. Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988), chapter 7; J. Narveson, 'Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*', *The Journal of Ethics* 2 (1998); Israel M. Kirzner, *Discovery, Capitalism, and Distributive Justice* (Oxford: B. Blackwell, 1989).

[17] Epstein, *Simple Rules for a Complex World*, pp. 64-67.

[18] Epstein, *Simple Rules for a Complex World*, pp. 66-67.

[19] Rothbard, *The Ethics of Liberty*, p. 63.

[20] Edward Feser, 'There is no Such Thing as an Unjust Initial Acquisition', *Social Philosophy and Policy* 22 (2005): 56-80 argues that most past injustices simply aren't rectifiable, p. 79; Kirzner, *Discovery, Capitalism, and Distributive Justice*, at one point, seems to rule out the legitimacy of the statute of limitations principle (pp. 154), but at another point, he admits that his argument is limited because he does not consider whether the property rights he defends are justly constituted or justly held by their current owners (pp. 4-6). However, to set aside the question of whether current property rights are justly constituted or justly held is to employ the statue of limitations.

[21] Nozick, *Anarchy, State, and Utopia*, includes several potential endorsements of the statute of limitations include. His Henry Ford example clearly appeals to it, mentioning the possibility that, "the operation of the system washes out any significant effects from the initial set of holdings," but Nozick does not fully endorse that conclusion, p. 158. His slogan "from each as they choose, to each as they are chosen," is meant to summarize his entitlement theory, but he prefaces it by saying "ignoring acquisition and rectification," p. 160. He discusses the problem of missing historical information, suggesting that a something like a short-run Rawlsian difference principle can serve to justify property in the absence of the necessary historical information, implying that some such compensation is a necessary part of his version of the statute of limitations, pp. 230-231. One tacit endorsement of it is that Nozick seems to want to apply his theory to current property holdings even though he is aware that few current property holders can trace their titles back to original appropriation.

[22] Narveson, *The Libertarian Idea*, p. 63.

[23] Nozick, *Anarchy, State, and Utopia*, p. 151.

[24] Narveson, *The Libertarian Idea*, p. 99.

[25] Nozick, *Anarchy, State, and Utopia*, Chapters 2-5.

[26] Ibid., Chapter 5.

[27] Boaz, *Libertarianism: A Primer*; Feser, 'There is no Such Thing as an Unjust Initial Acquisition'; I. M. Kirzner, 'Entrepreneurship, Entitlement, and Economic Justice', in *Reading Nozick: Essays on Anarchy,*

State, and Utopia, edited by J. Paul (Oxford: Basil Blackwell, 1981): 380-411; Kirzner, *Discovery, Capitalism, and Distributive Justice*; Narveson, *The Libertarian Idea*; Narveson, 'Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*'; Nozick, *Anarchy, State, and Utopia*; J. Paul, *Reading Nozick: Essays on Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1981); Rothbard, *For a New Liberty, The Libertarian Manifesto*; Rothbard, *The Ethics of Liberty*; S. Wheeler, 'Natural Property Rights as Body Rights', in *Left-Libertarianism and its Critics: The Contemporary Debate*, edited by P. Vallentyne and H. Steiner (New York: Palgrave, 2000).

[28] A. Honoré, *Making Law Bind* (Oxford: Oxford University Press, 1987), p. 161-175.

[29] Narveson, *The Libertarian Idea*, pp. 65-66.

[30] Simpson, A. W. B. 1986. *A History of Land Law*. 2nd Edition. Oxford: Clarendon Press, pp. 1-3.

[31] Feser, 'There is no Such Thing as an Unjust Initial Acquisition', p. 78.

[32] Kirzner, *Discovery, Capitalism, and Distributive Justice*, p. 152.

[33] Ibid.

[34] M. J. Baily, 'Approximate Optimality of Aboriginal Property Rights' *Journal of Law and Economics* 35 (1992): 183; M. H. Fried, *The Evolution of Political Society: An Essay in Political Anthropology* (New York: Random House 1967); M. J. Herskovits, *Economic Anthropology: The Economic Life of Primitive Peoples* (New York: W. W. Norton 1965); Marshall Sahlins, 1974. *Stone Age Economics*. London: Tavistock, pp. 92-93.

[35] M. H. Fried, *The Evolution of Political Society: An Essay in Political Anthropology* (New York: Random House 1967); M. Sahlins, *Stone Age Economics* (London: Tavistock 1974); T. Earle, *How Chiefs Come to Power: The Political Economy in Prehistory* (Stanford: University Press 1997); T. Earle *Bronze Age Economics: The First Political Economies* (Boulder, CO: Westview Press 2002).

[36] Timothy Earle, *How Chiefs Come to Power: The Political Economy of Prehistory*, p. 7.

[37] Narveson, *The Libertarian Idea*, pp. 83-84.

[38] Megarry, R. E. and Wade, H. W. R. 2000. *The Law of Real Property*, (Sixth Edition by Charles Harpum, Malcom Grant, and Stuart Bridge), London: Sweet and Maxwell Limited.

[39] Simpson, *A History of Land Law*, p. 26.

[40] Parliament might also claim the right to make laws affecting individuals' self-ownership, but on those issues there are some things that parliament has no natural right to do even if it has the power. The difference is that, under libertarianism, all people are born self-owners, but they are not born property owners. Self-ownership never passed into the hands of the monarch as property ownership did.

[41] Rothbard, *For a New Liberty, The Libertarian Manifesto*, p. 25.

[42] Narveson, *The Libertarian Idea*, p. 34.

[43] Ibid., pp. 76-78, emphasis original.

[44] Machan, Capitalism and Individualism, p. 80 makes an opportunity-based argument for a libertarian state, although some libertarians argue that opportunities are not an important consideration, Stephen Kershnar 'Why Equal Opportunity is not a Valuable Goal', *Journal of Applied Philosophy* 21 (2004), 159–172 makes a libertarian argument against the value of opportunity.

[45] Narveson, *The Libertarian Idea*, p. 85.

[46] Mack, 'Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement' p. 93.

[47] Locke's criticism of the monarchist Robert Filmer in Locke's First Treatise is unaffected by the argument here, but his justification of property in his Second Treatise opens the door to a new defense of monarchy. Locke, *Two Treatises of Government*.

[48] Edward Feser, 'Taxation, Forced Labor, and Theft', *The Independent Review* 5 (2000): 219-235; Nozick, *Anarchy, State, and Utopia*; Rothbard, *For a New Liberty, The Libertarian Manifesto*.

[49] Michael Otsuka, 'Self-Ownership and Equality: A Lockean Reconciliation', *Philosophy and Public Affairs* 27 (1998): 65-92.

[50] Nozick, *Anarchy, State, and Utopia*, pp. 169-172, quote, p. 172.

[51] Wheeler goes further arguing, "No significant moral difference in kind exists between eliminating my ability to play softball by taking my knees away and eliminating my ability to play the market by taking my money away." Wheeler, 'Natural Property Rights as Body Rights'.

[52] Michael Otsuka, *Libertarianism Without Inequality* (Oxford: Oxford University Press, 2003), p. 21.

[53] Ibid., p. 19. If we take Wheeler seriously (Wheeler, 'Natural Property Rights as Body Rights'), no significant moral difference in kind exists between eliminating the Queen's ability to play softball by taking

her knees away and eliminating *her* ability to play the market by taking away her power to collect taxes on the use of *her* money.

[54] Boaz, *Libertarianism: A Primer*, p. 65, explicitly argues against a right to necessities. Narveson argues that no one has a right to resources, that therefore no one has a right to life, and that property owners may take advantage of that situation by offering jobs at whatever terms they choose; Narveson, 'Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*', p. 10, p. 23. Narveson, *The Libertarian Idea*, p. 101. Kirzner would allow the owner of the only watering hole in the desert to deny water to people who would otherwise die of thirst. Kirzner, 'Entrepreneurship, Entitlement, and Economic Justice', edited, 405-406 and Kirzner, *Discovery, Capitalism, and Distributive Justice*, pp. 155-160.

[55] This brand of libertarianism is unable to demonstrate the feudalism is unjust. An alternative account of the connection between libertarianism and feudalism is given by S. Freeman, 'Illiberal Libertarians: Why Libertarianism Is Not a Liberal View', *Philosophy and Public Affairs* 30 (2001): 368-388.

[56] Nozick, *Anarchy, State, and Utopia*, p. 55n, pp. 178-182.

[57] Ibid., p. 178.

[58] Ibid., pp. 178-179n.

[59] Ibid., p. 182.

[60] E. Mack, 'The Self-Ownership Proviso: A New and Improved Lockean Proviso', *Social Philosophy and Policy* 12 (1995): 186-218; Mack, 'Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement'; E. Mack, 'Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis', *Politics, Philosophy & Economics* 1 (2002): 237-276.

[61] Mack, 'The Self-Ownership Proviso: A New and Improved Lockean Proviso' pp. 186-202; Mack, 'Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement' pp. 97-99.

[62] Mack, 'The Self-Ownership Proviso: A New and Improved Lockean Proviso', pp. 190-191.

[63] Mack, 'Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement', p. 98.

[64] Mack, 'The Self-Ownership Proviso: A New and Improved Lockean Proviso', p. 216.

[65] Ibid., p. 214.

[66] Ibid., p. 215.

[67] Ibid., pp. 212-216.

[68] Mack, 'Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement'; Mack, 'Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis'.

[69] Mack, 'Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis' pp. 247-248.

[70] Ibid., p. 273, n25.

[71] Ibid., p. 243, p. 271 n13.

[72] Ibid., pp. 249-251.

[73] Ibid., p. 271 n13.

[74] For example, Machan, *Libertarianism Defended*, 296.

[75] T. Machan, 'Does Libertarianism Imply the Welfare State?' *Res Publica* 3 (1997): 131-149, especially p. 146. Machan' argument about a standard of decency is not given with reference to the Lockean proviso.

[76] A few right-libertarians have endorse some form of basic income guarantee that would give individuals that power, but these have tended to be more pragmatic libertarians, including Friedman and Friedman, *Free to Choose: A Personal Statement*; Hayek, *The Road to Serfdom*; Charles Murray, *In Our Hands: A Plan to Replace the Welfare State* (Washington, DC: The AEI Press, 2006). Many left-libertarians have endorse that kind of redistribution, including Otsuka, *Libertarianism Without Inequality*; Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Oxford University Press, 1995).

[77] Mack, 'Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis', p. 245.

[78] Nozick, *Anarchy, State, and Utopia*, p. 182; Machan, 'Does Libertarianism Imply the Welfare State?'

[79] For example, Machan bases his argument primarily on human nature, but uses a rights-based conception of negative liberty to the poor, "although nobody is interfering with them or contributing to their poverty by limiting their negative liberty", *Libertarianism Defended*, p. 271; Machan, 'Does Libertarianism Imply the Welfare State?', p. 146; "Such a person [who needs resources] never had a right to my life and property."

[80] Rothbard, *For a New Liberty, The Libertarian Manifesto*, p. 23.