The State of Nature, Prehistory, and Mythmaking

Karl Widerquist
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The state of nature has been defined in many ways including the absence of society, morality, the state, and the property rights system. Some states of nature are purely hypothetical. There have never been peoples without society or some conception of morality—individuals perhaps but not the populace of any region at any time. Anything one might say about these states of nature is purely hypothetical.

The other two definitions of the state of nature (the absence of the state and the absence of a liberal property regime) refer to real situations. Many peoples throughout the 200,000 years of human existence have lived outside of sovereign states and/or in communities without property rights at least in the sense of the full liberal ownership rights that state of nature stories about property rights are usually used to justify.

Yet, philosophers and political theorists treat these versions of the state of nature almost the same as they treat the genuinely hypothetical states of nature. They make hypothetical claims about these states of nature, use those claims as premises in their arguments, and support those claims, if at all with purely a priori reasoning or only the most cursory empirical evidence. Nothing is wrong with a story that makes hypothetical use of a real situation if it is merely an illustrative example with no empirical content. But something is wrong with a hypothetical story that illustrates important empirical premises and gives them the air of plausibility while freeing the
storyteller from the responsibility to provide evidence for their empirical claims. That’s destructive mythmaking.

Not all mythmaking is destructive. Consider a Garden of Eden story used to illustrate the belief that people are born not knowing right from wrong, but when they eventually learn the difference, sooner or later, they choose to do wrong. That is a constructive myth, which given some conception of right and wrong, illustrates a truth people can verify from their everyday experiences. But consider a Garden of Eden story used to illustrate the belief that women are temptresses with bad judgment and men should always make decision for them. That is a destructive myth, illustrating false empirical claims used to justify oppression.

Nothing is wrong with a state of nature story used like the first Garden of Eden example—illustrating some obvious truth people can verify from their everyday experience. But this article previews and summarizes a research project, in which, over the course of two books and several articles, Grant S. McCall and I argue that many state of nature stories and other elusions to prehistory in contemporary political philosophy have more in common with the second Garden of Eden story. They amount to mythmaking in the destructive sense of giving plausibility to false empirical claims that play important, misleading roles in contemporary political theories.

The four principle sections of this chapter provide overviews of a how we name, define, and debunk the following false claims that still play important roles in contemporary political theories although they are seldom defined explicitly:

1. *The Hobbesian hypothesis*: sovereign states and/or the liberal private property rights system benefits everyone (or at least harms no one) relative to how well
they could reasonably expect to live in the state of nature—i.e. a society lacking one or both of these institutions.

2. *The appropriation hypothesis:* private property in the form of liberal ownership rights develops naturally while collective, communal, common, or government-held property rights systems do not.

3. *The natural inequality hypothesis:* inequality is natural and inevitable, i.e. economic, social, and/or political equality cannot exist and/or cannot be created without a significant loss in negative freedom.

4. *The market-freedom hypothesis:* a market economy (and/or capitalism) is more consistent with negative freedom than any other economic system.

The third and fourth of these claims are not obviously claims about prehistoric or small-scale societies, but they are universal claims about all societies and so they include claims about even the most remote and distant societies from contemporary thinking.

These false claims persist, we argue, in part because they played (or play) into conventional prejudices of the past (or present), in part because they have been repeated so long that they gain plausibility, and in part because of the sloppy, ambiguous way they tend to appear in prominent theories. Authors telling state of nature stories are seldom clear whether their stories relate important empirical truths about prehistory or whether they are illustrative examples meant to relate something about the present day or about a fact-independent, purely a priori theory. Writers telling the stories seldom clearly explain exactly what these stories are supposed to illustrate. Because of the ambiguity, our books devote a great deal of space to show that these misconceptions are empirical claims and that they are embedded in many influential theories in contemporary political philosophy.⁶
If these claims and the reasoning surrounding them are so weak, one might expect critics would have discarded them years ago, but obscurity and ambiguity have actually helped perpetuate these beliefs. The lack of clarity creates an ambiguity that allows anyone using these stories to go back and forth between the implication that the empirical content of the story is necessary but obviously true and the implication that the story has no empirical content at all. The illustrative interpretation protects them from the need to provide any evidence for the empirical interpretation, and the implication that empirical claims are obvious protects them from specifying how the illustrative interpretation can support their conclusions without any empirical claims. And so, neither version gets questioned or defended at a deep level. The claims we accept without thinking get far less scrutiny than the ones we self-consciously choose to accept.

A few critics have questioned these claims. Their credibility—from-repetition comes more from ignoring critics than from unanimity of belief. One would expect better from philosophers. Their job is to expand human knowledge by looking for weaknesses in past theories, improving or replacing them with new theories supported by the strongest evidence and argument they can find, and to submit their theories to the scrutiny of their peers, who in turn will probe those theories for weaknesses. This method is a good but imperfect.

Unlike more applied fields, philosophers have nothing but the scrutiny of our peers to improve our theories. Although they do their best to improve theories when contradictory evidence is apparent, researchers, like all people, share the prejudices of their day. Modern science and philosophy inherited a lot of shared prejudices about “civilized man” and “the savage,” about settled people and nomads, about the benefits of our existing institutions, and so on. The evidence that contradicts shared prejudice is
the hardest to see—especially today when scientific knowledge is far too large for any single person to grasp, and academia, therefore, must be divided into many increasingly separate subfields.

Scientists in anthropology, archaeology, ethnography, history, area studies, biology, climatology, and many other fields have found evidence the contradicts claims philosophers make about prehistoric and small-scale peoples, but it’s not their job to troll through the political theory and philosophy literature looking for false claims to debunk. Yet, political philosophers understandably lack the time to sift through the voluminous anthro-archaeology literature to look for evidence that might contradict empirical claims that play an ambiguous role in theory and are widely believe to be obviously true. Therefore, a combination of shared prejudice, ambiguity, authority-by-repetition, and lack of time have allowed many claims about prehistory to persist for a very long time. Even critics of the theories that employ these claims tend to accept them and challenge other aspects of the arguments in question.

Many of false beliefs about prehistoric and small-scale societies exist across a great number of fields. In response, a genre of books and articles debunking them has developed in recent years. Works include *The Art of Not Being Governed* and *Against the Grain* by James C. Scott; *Debt: The First 5,000 Years* by David Graeber; “Farewell to the ‘childhood of man’” by David Wengrow; *Paleofantasy* by Marlene Zuk; *Privatization in the Ancient Near East and Classical World* by Michael Hudson and Baruch A. Levine; *The Myth of the Noble Savage* by Ter Ellingson; *Communal Property: A Libertarian Analysis* by Kevin Carson; “Property, Legitimacy, Ideology: A Reality Check,” by Enzo Rossi and Carlo Argenton; “The Early Modern ‘Creation’ of Property and its Enduring Influence” by Erik Olsen, and many more. This edited
volume in general and this chapter specifically can be considered a contribution to that genre.

1. The Hobbesian hypothesis

The first book to come out of this project was *Prehistoric Myths in Modern Political Philosophy*, which addresses several paleofantasies associated with the claim we defined above as “the Hobbesian hypothesis.” That book shows how one version of this claim appeared in the mainstream justification of the state thanks to Thomas Hobbes’s social contract theory, and another appeared in the mainstream justification of private property thanks to John Locke’s “appropriation”-based theory of property. Both of these theories rely on an ethical premise that David Gauthier identifies as “the Lockean proviso” although he uses that term more widely than most previous authors. Following Gauthier’s expend use we define it as, an institution can justly be imposed on people providing everyone is better off under its authority than they could reasonably expect to be outside its authority. The proviso is essentially a principle of mutual advantage. It is a first-order, fact-independent ethical principle which is not subject to empirical verification or refutation.

Hobbes’s version of the proviso (which he does not name) applies the principle to the justification of state society: the state can be imposed on individuals if it makes them better off than they would be in a stateless society. Hobbes uses a two-step process in which people must consent but they consent if they are sufficiently better off. Later versions of social contract theory tend to drop the literal requirement of consent in favor of pure mutual advantage—usually through a discussion of what people would agree to if they were rational, reasonable, and fully informed.
Locke’s version of the proviso applies it specifically to the property rights system: private property is justified if everyone—including the propertyless—is better off in a society with a private property rights system than they could reasonably expect to be in a society without such a system—that is in a common property regime, in which land and other resources are available for nonexclusive use by everyone or at least by every member of a political community.22

The existence of such a principle in these two theories is uncontroversial, but surprisingly the following consequence of this principle is controversial. To get from this fact-independent ethical premise to a conclusion justifying any existing state or property rights system requires the empirical premise that people living under this institution are—as a matter of fact—better off than people not living under this institution. This empirical premise is what we call “the Hobbesian hypothesis.” It is simply the claim that the Lockean proviso is fulfilled. An attempt to justify an institution by appealing to the moral premise that an institution is justified when criteria X is obtained requires the empirical premise that criteria X is obtained.

In social contract theory, the Hobbesian hypothesis is that everyone in such-and-such a state is better off in the relevant sense than everyone in stateless society. In property rights theory, the Hobbesian hypothesis is that everyone in a society with a private property regime is better off than everyone in societies with common property regimes. There have been many societies with neither of these institutions, and so the justification of them requires the empirical premise that everyone in those societies are worse off in the relevant ways than everyone in the societies with institutions being justified.23

Yet, in the 350 years or more in which the Lockean proviso has play a crucial role in these two theories, the role of the Hobbesian hypothesis has been largely
ignored. Few theorists discuss its role and meaning. Fewer theorists state clearly that their conclusions rest on this empirical premise. Those who clearly assert this hypothesis rarely cite evidence to support it. And in the 350 years of that this premise has dominated these fields, we have not found anyone asserting the truth of the Hobbesian hypothesis who cites more than the most cursory evidence.24

Hobbes asserts the premise as an empirical hypothesis writing, “Out of civil states, there is always war of every one against every one.” He doesn’t say “sometimes.” He says always. He backs up this claim with a psychological argument, in which the natural human inclinations of competition, diffidence, and glory (or gain, fear, and reputation) inevitably lead to conflict whenever “men live without a common power to keep them in awe.” He backs up his claim with empirical observations about civil war, and he states explicitly that that his characterization of the state of nature is an empirically accurate description of stateless peoples, when he writes, “It may peradventure be thought, there was never such a time, nor condition of war as this; and I believe it was never generally so, over all the world; but there are many places where they live so now. For the savage people in many places of America … have no government at all; and live at this day in that brutish manner.”25

Hobbes was empirical correct that many Native American societies at the time were stateless. But he was empirically wrong to claim that their lives were more solitary, poorer, nastier, more brutish, or shorter than all English people in his time (see below).

Locke endorsed Hobbes’s claims about Native Americans and connects it to an argument justifying not only state sovereign but also the liberal private property regime. He writes, “Americans … who are rich in land … have not one hundredth part of the conveniencies we enjoy: and a king of a large and fruitful territory there, feeds, lodges,
and is clad worse than a day-labourer in England … in the beginning all the world was
America.” 26 The day-laborer comment is connected to his argument that even
propertyless people benefit from the private property rights system. Hence, in our
terms, he claims the Lockean proviso is satisfied; the property rights system is justified
in part by the asserted truth of the Hobbesian hypothesis. For this and other reasons
many contemporary historians of though agree the social contract theory in general or
at least Hobbes’s theory in particular requires this empirical premise. 27

Like Hobbes, Locke was empirically correct that many Native American
peoples lived without liberal private property rights system, but he was empirically
wrong that they were poorer or had more miserable lives than lower-class English
people at the time.

If there is a way to state Hobbes’s or Locke’s argument to make their empirical
claims irrelevant, neither of them spell it out, nor does it seem possible. The argument
for the existence of the proviso might be a fact-independent, normative theory. But the
argument applying the proviso must be a fact-dependent, applied, empirical theory. The
proviso logically entails the need for empirical application if it is to justify anything.
The Lockean proviso is a mutual advantage principle at the heart of the most popular
theories justifying the state and the property rights system. As we argue much more
thoroughly in the book, attempts to create a fact-independent version of the proviso or
to reduce its level below the way people could reasonably expect to live in a society
that did not impose the relevant institution either involve other dubious premises or
amount to discarding the principle of mutual advantage altogether. 28

The book argues that many contractarians equivocate between two versions of
the contractarian justification of the state: an a priori version that is not logically
coherent (the Hobbesian hypothesis doesn’t matter) and an empirical argument based
on a false premise (the hypothesis matters, but it’s obviously true). In the first the state of nature illustrates only normative claims; in the second it illustrates an important but obvious claim about the world that can be examined with easy-to-find evidence. Most contractarians have not had a strong incentive to probe for this equivocation, perhaps because they share the belief that both the empirical and the a priori versions of the argument work. Perhaps, they are unaware of their equivocation between two different arguments as they focus attention on the stronger aspects of their arguments.

The truth-value of the Hobbesian hypothesis cannot be obvious. It compares the welfare of two groups of people whose lives are very remote to privileged people in Western society: the least advantaged people in capitalist states and people in stateless societies. Few academics have significant, first-hand experience with either group; fewer still have experience with both; those who do are almost certainly specialists in more than one field. There is nothing obvious about this claim. It might have seemed obvious to Hobbes and Locke who lived in a place and time where nearly everyone shared the prejudice that the lowliest “civilized man” was far superior to any “naked savage.” But that prejudice was or should have been discarded long ago. If the Hobbesian hypothesis seems obvious today, it’s probably because of reputation by repetition. It has been repeated so many times since that prejudice was in fashion that everyone assumes someone, somewhere must have proven it at some time.

Although some people questioned Hobbes and Locke’s empirical comparisons from the start and have from time-to-time ever since, very myriad philosophers and political theorists repeated then claims and/or used them in their arguments. Our book chronicles dozens of versions of these claims from the long before Hobbes to the present, including claims by a spokesperson for the first emperor of China, Samuel Pufendorf, David Hume, Adam Smith, Edmund Burke, Immanuel Kant, G.F.W. Hagel,

Not all social contract or natural property rights theory relies on this faulty premise. For example, John Rawls’s contract-based theory is invulnerable to this criticism, because his discussion of disadvantaged people is aspirational, calling on society to research how well off the least advantaged are and to improve their position relative to any other conceivable social arrangement.\(^{31}\)

Critics of the empirical claim include Lord Shafesbury, Baron de Montesquieu, Thomas Paine, Henry David Thoreau, Herbert Spencer, Henry George, Karl Marx, Friedrich Engels, Henry Sumner Maine, John Rober Seeley, Peter Kropotkin, Henry Sidgwick, Carole Pateman, Alan Ryan, Charles Mills, Alasdir Macintyre, Thomas Pogge, and Peter Lindsay.\(^{32}\)

That’s a lot of prominent critics: enough, one might hope, to spark an attempt to resolve the issue with an extensive empirical investigation, but the issue remains unresolved. Peter Kropotkin published the most extensive empirical investigation into this issue so far back in 1902,\(^{33}\) but the bold assertions of this claim went on without regard for his findings and the others’ claims. Part of the reason might be the critics, including Kropotkin, also rejected social contract theory and natural rights justifications of private property on theoretical levels, allowing the discussion to continue focusing on theoretical differences and allowing the empirical disagreement to go unresolved.
Therefore, our examination of the Hobbesian hypothesis, and the whole of this research project, is a purely internal critique of the theories in question. Taking their normative premises as given, we examine whether their conclusions follow when applied to the actual factual situation in the world we live in. The project is not about the norms, just the facts. At least we are free to focus on the facts after several chapters of cutting through ambiguity and lack of clarity to show that factual claims about prehistory are used as essential claims in the relevant theories. As far as we know, this project is the most extensive empirical investigation of philosophical claims about prehistory yet conducted.

The empirical section of the book includes a full chapter examining Hobbes’s claim that stateless societies are always violent societies. The evidence is extremely limited, but there’s enough to contradict Hobbes’s claim that violence levels are usually or always intolerable in stateless societies. There is enormous variation in homicide rates in observed stateless societies from less than 1/100,000 to more than 1,000/100,000. While the average in observed stateless societies is less than in contemporary state societies, state societies also have an enormous range in homicide levels, and some stateless societies have less observed violence than any known state societies.34 Some have more than all or most state societies in peacetime, but clearly, few if any stateless societies have homicide levels beyond a threshold of intolerability as Hobbesian theory requires to make the state universally preferable, and some states during war and famine do have intolerable levels violence, such that people are observed fleeing from their homes.

Life expectancy in stateless societies is short relative to state societies today, but it is about the same as it was state societies in Europe at the time Hobbes made is claim, and it is not short for the reason Hobbes supposed. The longer life expectancy in
state society is explain by better healthcare, nutrition, and sanitation rather than differences in violence levels. Longer life expectancy did not spread to the lower classes in Europe and North America until perhaps the middle of the nineteenth century. They did not spread to the poorest countries until the last decades of the twentieth century, and they have still not reached the poorest populations in the poorest countries. Yet, stateless peoples are often healthier in some ways, and healthier during their lives in many ways. Many of the things that kill them have been eliminated by stateless societies, but many of the things that kill people in stateless societies do not affect stateless peoples. Someone who dies young of cancer or other diseases connected to toxins in our environment or in our diets has a claim that they might have lived longer in a stateless society.35

State societies today produce far more luxuries than stateless societies, but that ability often does not translate into higher material wellbeing for the least advantaged. Many people in state societies clearly have a much higher material wellbeing than anyone in stateless society could dream of, but their ability to meet the basic needs of the least advantaged is very often lower. Our high-luxury environments are often socially isolated and dedicated largely to the production of positional goods rather than goods that make everyone better off. State societies have no particular advantage in leisure or work effort for the average person, and the least advantaged people in state societies—sweatshop works for example—work for more than people in any observed stateless society.36

We argue that disadvantage people in state society are very often less free than their stateless counter-parts in terms of political freedom, negative freedom, status freedom, sexual freedom, and freedom from group-based oppression. Expressed preferences and observed choices of people who are familiar with both state and
stateless societies do not show any solid trend in favor of state society. For almost all of human history, state societies tended to have stateless communities on their peripheries made up of people who intentionally tried to avoid incorporation into the state. Most of these peripheries are gone today not because their residents realized the benefits of state societies with liberal property rights systems, but because governments forcibly incorporated that territory.\textsuperscript{37}

The verdict is overwhelming: the Hobbesian hypothesis is false. Neither the state nor the property rights system achieves mutual advantage. Dozens of leading anthropologists have made reference to Hobbes’s description of life outside of the state only to debunk it in whole or in part.\textsuperscript{38} Ernest Gellner sums up the anthropological consensus best, writing, “Hobbes [was] wrong: the life of pre-state man is not solitary, poor, nasty, brutish and short. Rather, it is gregarious and cohesive, relatively well-off, human and participatory, and with about as good a chance of longevity as that of his centrally governed contemporary.”\textsuperscript{39}

To deny that everyone is better off in state society is not to say that everyone is better off in stateless society, nor is it to say that the average person is better off in stateless society—although in Hobbes and Locke’s time the average person was arguably better off in stateless society. The falsity of the claim of mutual advantage says only that as difficult as stateless life is, states today make life worse for a significant number of people. The tragedy of capitalist states today is that for all their wealth and achievement they have so consistently failed to surpass very low bar they have set for their own justification. The solution to justify the state and/or the property rights system in terms of that social contract theory and most natural-rights based versions of property theory have set for themselves is to treat disadvantaged people
better. Until then, the proviso remains unfulfilled. Mutual advantage remains unachieved.

2. The appropriation hypothesis

Our forthcoming book, *the Prehistory of Private Property*, begins by addressing the claim that the normative principles of appropriation and voluntary transfer applied in our world support a liberal private property rights system. Literature on the natural property rights justification (call it “propertarianism”) for the liberal property rights system focuses almost exclusively on the principles of the theory but not on the connection between those principles and application of them necessary to justify the property rights system they favor. They usually gloss over that connection with a fictional, state of nature story about an original appropriator. The mythology of the original appropriation story allows them to treat it as obvious that their principles applied in this world lead necessarily to a private property system.

We argue, the facts of this world’s history don’t oblige. The very principles designed to establish the private property rights system if actually applied in this world, support a much more communal or collectivist property rights system. Private property rights systems tend not to develop without state aggression against small-scale societies practicing far more collectivist institutions and holding much better claims of a connection to “original appropriation” than people establishing individualist private property rights. To show this result, we examine the theory, the lack of attention to the relevant historical application of it, and then examine the relevant evidence from history and prehistory.

In Robert Nozick’s characterization, natural property rights theory involves the moral principles of appropriation, voluntary transfer, and rectification of past wrongs.
That is, there is some method by which an individual or individuals can transform unowned external objects into their property; it remains theirs until they voluntarily transfer it to others, by for example sale, gift, or bequest; and there must be some method by which wrongful transfers can be rectified. Although this is Nozick’s characterization, and propertarians differ substantially on many issues, these principles are at the heart of most rights-based justifications of private property.

What do these principles have to do with a liberal private property rights system? Why are appropriators and rights holders always private individuals or private corporations rather than peoples, communities, or states? Propertarians almost invariably employ one of two strategies to make that connection: treat it as obvious or tell a version of John Locke’s appropriation story from 1689. In his story, during the state of nature before any government comes into existence, an individual goes into a virgin wilderness, clears a piece of land, plants crops, and thereby appropriates property in accordance with propertarian theory.

In appropriation stories, it goes without saying that these individuals set themselves up as private property holders, and go about trading, gifting, or bequeathing their property to each other. The possibilities that the original appropriators might appropriate together to set themselves up as collective property holders or they might act individually to set themselves up as monarchs of the territories they duly appropriated is seldom taken seriously. That would open the door to empirical investigation. In the story, collectives and governments do not appropriate. They only come along later. They might have rightly limited powers respecting the preexisting rights of private property holders or they might exceed those powers and “interfere” with those rights.
This fictional story (illustrating one possible scenario by which the appropriation principle might be applied) supposedly explains why we must have a private property rights system. But the work is being done not by propertarian more principles, but the mindset the story adopts. Only private, individual appropriation occurs naturally; collective, common, or government claims to property require interference with naturally established property rights. The important empirical proposition in the appropriation story is not that contemporary property holders have a direct connection with original appropriations, but only a liberal private property rights system could have a connection with original appropriation. Therefore, only a market economy with such a property rights regime is justifiable.45

Propertarians would like to believe that they have a first best, a priori normative argument that rules out collective or government ownership of property and all circumstances or at least in any plausible circumstances, but we go through a great deal of propertarian literature showing that no such argument is available. The normative principles propertarians stress establish no connection without the empirical truth of the claim that only a liberal private property rights system could have a connection with original appropriation.46

Only a few propertarians have defended that empirical claim. Most propertarians seem to believe either that the appropriation hypothesis is obviously true or that their theory somehow rules out the very possibility of the peoples’ ownership of their territory.47 That ambiguity probably helps protect the hypothesis for more serious scrutiny as the ambiguity of the Hobbesian hypothesis protects it. Even many critics of propertarianism accept this view.

The few propertarian who do cite evidence include Friedrich Hayek, Bruce L. Benson, John Hasnas, Jeffrey Evans Stake, Thomas Mayor, and David Schmidtz, but
going through their evidence we find they don’t cite very much of it. If a more thorough historical-empirical investigation supporting the appropriation hypothesis exists, it has escaped the notice of the prominent propertarian theorists cited throughout our book. In many cases, the anthropological sources propertarians cite undercut rather than support the appropriation hypothesis, showing that flexible, exception-laden, overlapping, and partly collectivist property rights regimes are far more common than the institutional structure propertarians present as natural. Propertarians tend to play up the aspects of their empirical sources that support their expectations and play down the aspects that contradict their expectations.

A better investigation is necessary. The book reviews the relevant anthropological and historical information to conduct a more thorough investigation than we are able to find in the relevant literature. It demonstrates not only that the appropriation hypothesis is unproven, but also that it is clearly false and that nearly the opposite is true. Property rights were not originally private, and in the absence of aggressive interference they have not tended to become or remain fully private. Complex, flexible, overlapping, common, and at least partly collective resource rights have tended to develop and remain in place in the absence of significant violations of the appropriation and transfer principles.

Nomadic hunter-gatherers—who meet many of the stated criteria for being the first appropriators—preceded all other forms of social organization to the vast majority of the world’s habitable territory. If the social and political organizations of early, small-scale, nomadic hunter-gatherers were at all similar to observed nomadic hunter-gatherer “band” societies, as archaeological similarity seems to indicate, they were voluntary associations, which people could abandon at a moment’s notice, and therefore, we can consider all of their rules voluntary. All observed band societies have
treated land as a commons—open for the shared use of all but the property of none. Ownership rights in tools and food were never fully private but generally had to be shared whenever there was enough to go around. That is, property systems of the original inhabitants on most of the world’s land had little resemblance to those propertarians portray as “natural.”

Long before states appeared many stateless peoples gave up the band lifestyle and settled into small agricultural villages of usually less than six hundred, with diets usually supported by some amount of hunting in commons surrounding the village. Many such societies have been observed living at this scale, and their property institutions are nearly as communal as bands. Like farmland, agricultural land is treated as a commons. Everyone has a right to some space where they can farm, but not necessarily on the same plot every year. Crops tend to be private within the limits of meeting everyone’s needs. No landless people work for wages. Many villages pick up and move every few years to avoid depleting the land, and individuals could easily leave the village at that time, but no known individual appropriators in indigenous societies at this scale set out on their own to set up private Lockean homesteads. They would leave in groups to set up similar communities or join similar communities nearby. If the original farmers are taken to be the original appropriators, and if autonomous villages all over the world today can give any indication of how people practicing similar techniques lived thousands of years ago, the original appropriators exercised their free will to create common or communal property systems.

The first states in various areas probably dispossessed earlier holders, as propertarians suppose, but they seldom if ever dispossessed people holding private, individualistic property rights, as propertarians just as firmly suppose. The book uses an extensive historical investigation to argue that private property system now nearly
ubiquitous around the world was almost always established, not by appropriation and voluntary transfer, but by aggressive and violent private and government force—disappropriating people practicing much more collectivist property institutions.53

Early states and chiefdoms sometimes establish more centralized property systems, such as large-scale irrigation projects run from the top down, and they sometimes in some areas managed to place a state representative at the head of agricultural villages with otherwise similar institutions to their autonomous-village forbearers. Historical evidence shows that partially communal villages (with state-sanctioned leaders or lords with varying levels of actual control over the village) persisted in rural areas throughout the world until the enclosure movement in Europe and the colonial movement elsewhere forced the adoption of private land rights—usually by treating the government-appointed head as full owner. Institutions resembling private property rights developed earlier in the cities usually by privileged people carving private rights over things that had been centrally controlled by government or communally held by villages.54

Every step in this process separating people from their common access to the land involved force to benefit privileged people at the expense of people with a much better claim to the be heirs of original appropriation.

If this reading of evidence is correct, it has strong implications for the historical application of natural property rights theory in terms of both who owns property and what kind of property rights structure is justifiable. Most propertarians are open to the possibility that at least some non-titleholders have a legitimate claim to redistribution and rectification for past violations of the appropriation and transfer principles. But they assume any such redistribution will be private titles to private titles.55 Without the appropriation hypothesis, the private nature of property no longer has sole claim to
legitimacy or perhaps any claim to legitimacy. The propertarian ambition of strengthening the private nature of property by removing those remaining collective controls over it becomes clearly illegitimate. Restoring common access and communal control to the people (whether on a small or large scale) would be more appropriate.

Our historical and prehistorical investigation shows that propertarian principles provide good reason to favor other property regimes over an individualistic, liberal property rights structure, because such a liberal structure is less likely to develop via appropriation and voluntary transfer than a more complex and partly collectivist structure. It also shows that there is no reason to rule out governments, ethnic groups, or other collective entities as potentially justifiable landholders. Governments might have as much or more right to tax their land as landlords have to charge rent for theirs. To the extent that private holders have any rights to land, it is derivative from and dependent on the legitimacy of government-held property rights in land.

3. The natural inequality hypothesis

Another popular claim that has been used to justify highly unequal property rights is the natural inequality hypothesis: inequality is natural and inevitable, or equality is naturally in conflict with freedom. This claim is not obviously about prehistory but it is a universal claim that must hold at all times to be true. The book argues that it is widely believed only because its adherents make such a narrow search for evidence. A look at small-scale stateless societies shows that this claim is unsustainable. Inequality is neither natural nor inevitable, and equality is neither naturally nor inevitably in conflict with freedom. Many indigenous communities known to anthropology have successfully maintained very high levels of political, social, and economic equality, probably for thousands, perhaps tens or hundreds of thousands of
years. This evidence falsifies the natural inequality hypothesis in simple terms, but it does more than that. Many policies dismissed as reducing freedom to promote equality, opportunity, or welfare, might in fact promote freedom by compensating people who are the least free under the prevailing system of highly unequal property rights. Additionally, contemporary egalitarian theory can benefit from the experience of small-scale egalitarian societies.56

The claim that inequality is natural and inevitable is far older than the private property rights system. The earliest historic states all over the world justified their inequalities with claims that it was natural and inevitable and there is good reason to believe prehistoric chiefdoms and states that preceded the first literate societies made similar claims.57 Despite the egalitarian themes of Abrahamic texts, medieval and early modern Christian churches were dominated by the ideas such as divine providence and the Great Chain of Being, which promoted the idea that there was a divinely ordained hierarchy in which every person belong in a specific station in life.58 Edmund Burke and other conservatives gave this idea a more scientific basis by arguing that accumulated wisdom, rather than (or along with) divine providence indicated that current arrangements, including social inequalities and prejudices, are better for everyone and beyond our comprehension—better than any improvements a social reformer might devise.59 Pseudo-scientific explanations for natural inequality, such as eugenics and the “head and hand” analogy (in which some people are natural thinkers and others natural workers) became popular in the nineteenth and twentieth centuries.60

Hobbes’s argument for absolute sovereignty remains popular today as a functionalist argument for natural inequality. In Ralph Dahrendorf’s words, “[B]ecause sanctions are necessary to enforce conformity of human conduct, there has to be inequality of rank among men.”61
The Lockean property rights tradition raises a new version of the natural inequality hypothesis, which is now extremely popular in the United States and other Western countries. While egalitarianism is not necessarily impossible, it is necessarily in conflict with freedom because freedom is to exercise one’s property rights. Property rights are presumably individual, liberal property rights, which when traded lead to large inequalities.62

The book sketches the history of these and other claims of natural inequality in greater detail. This sketch reveals both wide agreement that inequality is inevitable and strong disagreement about how, why, and in what ways people will inevitably be unequal. Dominant ideologies tend to assert that the level and type of inequality in society is close to that which is natural and inevitable. These arguments for the naturalness of inequality are usually used in arguments justifying a coercive power structure to enforce the rules to enforce that inequality that is supposed to be inevitable anyway.

The two central testable claims from this discussion are: (1) equality is impossible to obtain (efforts to create it either entirely fail or replace one kind of inequality with another), and (2) equality is inevitably in conflict with freedom (efforts to create it also reduce freedom usually understood as negative liberty). The question is not whether we will find complete equality or complete inequality (both of which seem to be unachievable extremes) but whether we can find greater inequality than proponents of the thesis of inevitable inequality use it defend and whether that equality can be shown to conflict with relevant conceptions of freedom.

The evidence for the natural inequality hypothesis comes from the stratification of most states known to recorded history and from the hierarchical organization of our closest primate relatives’ social groups, most of which have continual struggles for
group dominance. To go from this evidence to a claim of inevitability would be a hasty generalization, based solely on the most readily available evidence. Nordic welfare states in the late twentieth and early twenty-first centuries have achieved greater economic equality than proponents of natural inequality usually admit achievable. Some evidence of the existence for substantial equality in early historic or late prehistoric state societies. But the best place to look for socio-political inequality is outside of state societies.

The smallest-scale, loosest, known for of socio-political organization is usually called the hunter-gatherer band. We use the term “band society” to mean nomadic groups of less than 60 people, who get all of their food from foraging and do not store food. Even that name implies greater coherence than band’s actually tend to have. People tend to come and go as they wish—sometimes joining nearby bands, sometimes splitting into smaller groups, sometimes breaking down into single-family units for substantial parts of the year. The subsistence model involves people leaving camp alone or in small groups to hunt and gather, so that they can return and share food if anyone has found enough to go around. Camps are mobile, moving whenever hunting and gathering gets weak in an area.

All observed band societies are leaderless and have tremendous social, political, and economic equality. In an environment where people need to split up to hunt, it’s virtually impossible for one person to dominate others. They would simply walk away. No one could accumulate much in the way of goods, because they are limited to what they can carry from camp to camp. They consume the same varieties of food, live in the same types of shelters, use the same types of tools, and have the same types of ornaments or consumption goods. Food is shared to the point that no one in the band goes hungry unless everyone is going hungry. People are also obliged to share tools
or any other goods if they have more than they need at any given time. Leaders exist only in the sense that some people have greater influence over group decisions than others.

The example of band societies clearly proves that social, economic, and political equality are possible, falsifying the claim that inequality is natural or inevitable. Section 4 (below) argues that band societies also have extremely high negative freedom. If that argument is correct, the example of band society also falsifies the claim that equality is inevitably in conflict with freedom.

Although the circumstances of band societies are favorable to egalitarianism, it doesn’t just happen. Sharing is clearly an obligation for everyone who camps with the band whether they prefer to or not, as is the obligation to avoid obvious displays of superior wealth or ability. Bands maintain a reverse-dominance hierarchy with “leveling mechanisms.” These include sanctions, such as ridicule, criticism, disobedience, expulsion, desertion (noncooperation), and in the most extreme cases execution. Leveling mechanisms other than sanctions include demand sharing, tolerated theft, and appeal to religious beliefs that ascribe equal status to all living people.

Many somewhat larger-scale societies also maintain significant levels of equality. “Autonomous villages” are settled communities of up to about 600 people. Some groups with access to particularly abundant foraging (such as a rich fishery) exist at this scale, but most of autonomous villages practice swidden agriculture, moving every few years to avoid soil depletion. Autonomous villages tend to have a nominal head or a group of big men with greater recognition and respect but without higher living standards or much if any power of command. All known autonomous villages have virtually no trade or specialization. All people, (including headmen & religious
leaders) produce their immediate family’s consumption. There are usually no fixed property rights in land; all members of the village are entitled to access to land for farming, but not necessarily a particular plot. As in band societies, no one in the village starves unless everyone is starving. No one has to get a job taking orders from a boss to earn the right to gain access to natural resources that can be transformed into consumption goods.

Leveling mechanisms exist in autonomous villages as in bands, but some of them, such as the ability to leave the group, are a little harder to exercise. A hunter can pick up and go at a moment’s notice. A farmer might have to wait until just before spring planting, but they commonly do split.

Larger-scale societies, sometimes called “chiefdoms,” can have anywhere from a few thousand to tens of thousands of people. In some circumstances, chiefs can become despotic rulers. But some chiefdoms, such as the Iroquois Confederation, were observed to be significantly egalitarian.

Many if not most people during the Pleistocene had a very similar foraging strategy to modern bands: they lived in small, nomadic foraging groups that often hunted cooperatively, brought food to a central location, consumed it that day, and so on. To the extent that prehistoric peoples living in similar-size groups with similar subsistence strategies can be expected to have had similar socio-political organization, we can speculate that egalitarian societies have existed as long as humans have existed and perhaps into our evolutionary past. Similarity in scale and subsistence strategy is not proof of other similarities, but neither is there any evidence to the contrary. The evidence is inconclusive, and some anthropologists are leery about drawing any analogies at all between present and past nomadic foragers, but what evidence we have suggests human foragers for the deep past were egalitarian. I doubt that foragers of the
distant past had any less desire or less ability to overthrow or abandon dominating a person just as contemporary band societies have in so many far-flung places. The first clear signs of persistent inequality appear in the last 10,000-15,000 years.

The claim that inequality is natural and inevitable is clearly false. Inequality is the product of our social institutions.

Adherents of the natural-inequality hypothesis might be tempted to change their claim to inequality is inevitable within the context of a state society. This change would be an enormous comedown, reducing a genuinely universal claim about naturalness and inevitability to a context specific idea: inequality is inevitable if and when social institutions make it inevitable. Social institutions are subject to change. Even if inequality was an inevitable product of all state societies, the comedown would be problematic given that, as argued above, the level of inequality is state societies is so great that the least advantaged do not benefit from being a part of state society.

It is by no means proven that inequality is inevitable in the context of state society. To falsify this hypothesis by observation, one would have to conduct a large study of various historically recorded state societies and evaluate the extent of their equality or inequality. Although we’re unlikely to see state societies practicing egalitarianism as strong as that practiced in band and autonomous village societies, many states have maintained greater socioeconomic equality than adherents of the natural-inequality hypothesis usually like to see. Just has bands have leveling mechanisms, state societies have many coercive stratification-enforcing mechanisms. We do not yet know how much we could change the level of inequality within the context of state society. The leveling mechanisms of band societies—chief among them the amount of power they concede to the least advantage members (see the following section)—might provide a guide for what to try.
4. The market freedom hypothesis

The market freedom hypothesis is the belief that the market economy (and/or capitalism) is more consistent with negative freedom than any other economic system. This claim is the central argument for a private property system. In F.A. Hayek’s words, “We are concerned … with that condition of men in which coercion of some by others is reduced as much as possible in society.” The sentiment that negative freedom—the absence of coercion or interference—is an overriding social value and that it is more consistent with a market economy than with any other system runs through many if not most of the rights-based literature attempting to justify liberal private property rights and the market system.

Freedom from coercion or from interference by other people is not the only meaningful conception of freedom, but it is a coherent conception that people have reason to be concerned about. The question of what socio-political arrangements reduce coercion as much as possible is empirical. The answer cannot be established definitively by a priori reasoning or definitional fiat. It is inherently hard to measure, because protecting people from one form of coercion often involves imposing another form. However, I argue below it is possible to make some empirical assessment whether one situation is freer than another.

The negative freedom argument is usually proposed as a claim that the freest imaginable socio-economic system is an idealized version of propertarian capitalism, in which everything is privately owned; the government, if any, does nothing but protect private property rights; and there are few if any taxes. Any deviation from that ideal supposedly involves a loss of negative freedom that must be justified against either the impossibility of fully realizing that ideal or by appeal to some value other than freedom. Their usual method is to use that starting point, and then consider how
the imposition of redistributive taxation, welfare capitalism or socialism imposing some new restriction that wasn’t there before. This method ignores the coercive measures involved in establishing the property rights system to begin with. (Section 2 above discussed these measures briefly. Our book discusses them more extensively.79)

Although the negative freedom argument has been controversial as long as it has existed,80 even many opponents of propertarian capitalism have (explicitly or tacitly) accepted it by employing some other definition of freedom or denying that the protection of freedom is the primary responsibility of government.81 But in recent decades many opponents of propertarian capitalism have refused to concede the point, arguing that the imposition and maintenance of the private property rights system involves a great deal of coercion with those who own no property.82

Propertarians would concede this point theoretically and still maintain empirically that the restrictions propertarian capitalism places on people allow it to deliver greater negative freedom for everyone than any other system. But proving that is another matter. If this claim is true, we should expect to see that people—even propertyless people—who are coerced into accepting that the entire planet is the property of other people actually wind up freer overall than in any other system. They would be coerced less often or in less important ways, less constrained over all, less likely to have labor extracted from them unwillingly, less often subject to non-contractual obligations, less often sacrificed to achieve the ends of others, and so on.

A realistic assessment of whether propertarian capitalism has claim to being more consistent with negative freedom than other systems would have to take a broad perspective without giving any system a privileged starting point. We make a pairwise comprise between the market economy and the hunter-gatherer band economy. This
comparison will be sufficient to prove that propertarian capitalism does not deserve the presumption that it is particularly consistent with liberty.

Nomadic hunter-gatherers might provide a low bar for welfare comparisons, but they provide an extremely high bar for freedom comparisons. This is so because band societies subject people to hardly any coercion at all. This statement is well-documented and not in dispute among anthropologists, and importantly for the discussion here, the freedom hunter-gatherer band societies is also uncontroversial among propertarians. When they discuss hunter-gatherer bands, they often remark on their freedom. Thomas Mayor, for example, gives title, “Hunter-Gatherers” the title, “The Original Libertarians.”

The anthropologist, Marvin Harris, writes,

[T]he average human being enjoyed economic and political freedoms which only a privileged minority enjoy today. Men decided for themselves how long they would work on a particular day, what they would work at—or if they would work at all. … Every man and woman held title to an equal share of nature. Neither rent, taxes, nor tribute kept people from doing what they wanted to do.

Like all other societies, bands have social norms that restrain behavior, but these restraints are voluntary in the idiosyncratic sense relevant to the negative freedom theory. That is, they are contractual obligations. Every norm, folkway, and social convention in band society comes into effect with the tacitly understood qualifier, if you want to camp with us. An individual, a family, or a group of families who do not like the way their band does things, are free to go off on their own and do things another way. Therefore, even the limited extent to which band members have explicit duties to each other is the result of an informal agreement that can be dissolved at a moment’s notice by breaking camp. They are free from almost all noncontractual obligations. This
freedom is secured by common access to the land. If land were not available individuals or groups would not be free to leave political, social, and economic power structures they find oppressive.

The power of noncooperation and the ability to pick up and go is perhaps the most striking institutional difference between hunter-gatherer band society and industrial capitalist, socialist, or welfare capitalist societies. Individuals in contemporary states might have a legal right to quit their job or exit a nation, but only the wealthy have they legal right to live by their own efforts without satisfying a boss or a client who has the money to pay them. Propertyless who would reject cooperation have very few and very unattractive options, such as foraging in other people’s garbage.

In band society, there are no similarly propertyless people. No one owns land, but everyone has access. Any individual can access the resources of the Earth free from interference. The market economy’s property rights system coercively forces nonowners to respect the holdings of owners. That in itself is a substantial noncontractual obligation that does not exist in band society. As Section 2 mentioned, the ubiquity of that noncontractual obligation owes its existing to a long series of government aggression, and it is maintained by continued government coercion.

Much more interference follows from that central obligation of propertarian capitalism. Power over the resources other people need to survive entails power over people. Most people who aren’t independently wealthy are coerced into a position where they must find a boss or a client and follow their orders to earn the privilege of meeting their basic needs. While people in band society can go for years or a lifetime without hearing an order, most people in propertarian capitalism have little choice but to take orders most days of the week, most weeks of the year, until they are too old to work.
Those who are unwilling or unable to get jobs become homeless, and are therefore unfree to do some of the most basic human functions. They are unfree to urinate or have sex in a private place, unfree to sleep unmolested, unfree to sleep or urinate in any place they can legally be, and so on. The homeless are not unable to do these things. They are unfree to do them in the most negative sense of the term.87

The ownership of property does secure liberties that are unavailable when land is a commons. But it confers those freedoms only to the owners of property, not to nonowners. One might be tempted to argue that capitalism secures everyone the opportunity to become owners. Even if that were true, opportunity is not freedom from coercion. As Jeremy Waldron argues, “an opportunity to become free is not freedom. … So long as the opportunity remains unconsummated, the person … remains in a negative sense unfree.”88

Robert Nozick admits that the establishment of a property rights system involves interference, but attempts to make up for it by changing the focus from freedom to opportunity, writing, “the things I do with the grain of sand I appropriate might improve the position of others, counterbalancing their loss of the liberty to use that grain.”89 Section 1 argued that those opportunities have not made the least advantage better off than they could be living under a common property regime. But even if it were true, like opportunity, welfare is not liberty.

For capitalist society to be more consistent with negative freedom than band society, it would have to relieve everyone from forms of coercion that exist in band society. This is difficult to achieve when band societies have so few noncontractual obligations. The market economy does confer new negative liberties for the independently wealth, but everyone else, and for the least free people in capitalist society, it establishes only more obligations, more coercion.
Therefore, although freedom is difficult to measure, this comparison can be made definitively because the freedom of the least free people in band societies dominates the freedom of the least free people in capitalist societies. That is, people in band societies have all the liberties that the least free people in capitalist societies do and more. They are free from many or more important forms of coercion that people in capitalist societies are subject to and not subject to any forms of coercion that people in capitalist society are free from. If one society has all the liberties of another and more, no measurement scale is necessary to say that society is freer than the other. There is no tradeoff to weigh.

If freedom is an overriding value, everyone must become a nomadic hunter-gatherer. This finding obviously implies that the justification of any other system must rely at least partially on some other value such as opportunity or welfare. Less obviously but perhaps more importantly, this finding implies that deviations from the propertarian ideal cannot be condemned as freedom-reducing because they create opportunity for the propertyless at by interfering with the property owners. Redistributive policies can often counteract freedom-reducing aspects of establishment of a private property system and the transition to a market economy, create greater equal freedom overall.

5. Conclusion

This article has previewed two books that make more extensive empirical arguments for four points. 1. The Lockean proviso is unfulfilled: neither the state nor the property rights system achieves mutual advantage. The least well-off people in contemporary capitalist states are worse off than they could reasonably expect to be in a stateless society with a common property rights regime. 2. The natural rights
argument does not support a liberal property rights structure as usually supposed. A more complex and partly collectivist structure is much more likely to develop from appropriation and voluntary transfer. The liberal property regimes now ubiquitous around the world were established over a long series of government-led coercion. 3. The belief that political, social, or economic inequality is inevitable and/or that equality is inevitably in conflict with freedom is false. For most of human prehistory—most of the time humans have existed—they have lived in communities that were both very free and very equal. 4. The negative freedom argument for the market economy does not hold. Given the restrictions the property rights system imposes on propertyless people, the hunter-gatherer band economy is more consistent with negative freedom than the market economy.

The central implication of all of these findings is simple: our societies need to treat less advantaged people better. Perhaps the most tragic aspect of the mistreatment of the disadvantaged is that it is so unnecessary. Contemporary societies have tremendous wealth. They don’t need to create a class of people so poorly off, so unfree, with so many reasons to feel disinherited, with so few reasons to feel they truly benefit from our political and social arrangements. A society that benefits some at the expense of others is not a mutually advantageous society; it is a parasitic society. Mutual advantage is within our reach, but the myths we tell ourselves about our past make it easier for is to ignore our failure to achieve the goals of mutual advantage and respect for freedom that we have set for ourselves.

**Bibliography**


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1 Karl Widerquist, Associate Professor, Georgetown University-Qatar, Karl@widerquist.com.
2 This article is heavily based on the forthcoming book, the Prehistory of Private Property and partly based on the earlier book, Prehistoric Myths in Modern Political Philosophy, both of which are coauthored by Grant S. McCall. His influence over this work is, therefore, enormous, and I owe him great thanks. But the wording, and any errors contained here are my fault and not his.
4 This article uses political theory and political philosophy synonymously.
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24 Ibid., 24-111.
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[30] For quotes and references to each, see ibid., 79-111.


[32] For quotes and references to each, see Widerquist and McCall, *Prehistoric Myths in Modern Political Philosophy*, 79-111.


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[38] See list, ibid., 215-216.


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72 Ibid., 129-132, 177.


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76 Boehm., 31.


79 Wediqust and McCall, *The Prehistory of Private Property*.


84 Mayor.

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