2018

Chapter 2: Is the Natural Rights Justification of Private Property a Purely Normative Argument, or Does it Require Empirical Claims? And if it Does, What Are Those Claims?

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A common defense of unequal private property is based on the belief that property is a *natural* right. We'll call this theory "propertarianism," although it is closely associated with the political theory sometimes called "libertarianism" or "right-libertarianism." Under propertarian theory, individuals have the natural right of "appropriation:" there is some method, by which individuals can create morally binding property rights over previously unowned resources, such as land and all the other inputs to all the things humans make. Free exercise of property rights inevitably leads to unequal property ownership. Government taxation, regulation, or redistribution is an infringement on existing property rights. Therefore, ethical limits exist on the use of such powers.

If a landholding corporation collects rent for the land you live on and imposes rules for what you can do on that land, the corporation is presumed to be justly exercising their property rights.

If a territory-holding government collects taxes from the corporation for the land it operates on and imposes rules about what the corporation can do on that land, the government is assumed not to be exercising its rights but infringing on the corporation's rights. Why is a corporation presumed to be *exercising* rights (and the interaction therefore labeled *voluntary*), while a government is presumed to be *infringing* rights (and the interaction therefore labeled *involuntary* or *aggressive*), when both do very much the same thing?[1]

The simplistic propertarian answer is that landlords own the land and governments do not. Robert Nozick, for example, mentions that a small community "can exist on land jointly owned by its members, whereas the land of a nation is not so held."[2] How do we know it is not so held? How do we rule out the possibility of a property-owning government—i.e. one that has full or partial ownership rights over its territory consistently with propertarian theory?

It's hard to find a good, clear, straightforward answer to that question in propertarian literature. Governments' lack of property rights is more often assumed than argued for. The

explanation is often presumed to be in a fictional story set in the Stone Age and has been going around at least since John Locke first told it in 1689. Before any government comes into existence, an individual goes into a virgin wilderness, clears a piece of land, and plants crops.[3] This story is not meant to be taken literally, but it is meant to illustrate the principle of appropriation and—somehow—to connect it with specifically *private* property rights.

One can imagine appropriated property being traded, gifted, and bequeathed in a way that leads to something very much like the current distribution of property, but as propertarians readily admit, that's not how we got here. Yet, they still use the presumed connection between appropriation and a private-property-based economy to draw conclusions about the world today.

Two can play the fictional-story game. Suppose a group of individuals goes into a virgin wilderness, clears land together, plants crops together, and thereby appropriates the land as a group. One can imagine the group expanding through strategic alliances, defensive wars, and so on in a way that leads to something very much like the current distribution of nation-states in the world today. Alternatively, suppose an individual appropriator appoints herself monarch of the land rather than owner. Her estate grows with primogeniture, strategic marriages, and defensive wars, also leading to something like the current distribution of nation-states in the world today.

Although the individual appropriation story has been retold for hundreds of years, we have been able to find no explanation why it is supposed to be more relevant than these alternative stories. Perhaps the proximate cause is that philosophers on both sides of the issue have been distracted by their own myths. The founding myth of the state is not one of appropriation, but of the signing of a social contract to bring peace where there would otherwise be chaos.

We don't *think* of these stories as myths. We think of them as illustrative examples. But the myths with real power are the ones we don't recognize as myths. The ones that affect our thinking in ways we seldom notice or challenge.

We don't *think* of a state as an institution whose powers stem from appropriation. That's the private property owners' story. We *think* of the state as something that either succeeds or fails to be a neutral rule keeper in accordance with an imaginary contract, policing property rights that people hold through other institutions, such as marriages, partnerships, and corporations. We do not *think* of it as an institution through which individuals might choose to hold property rights in territory.

If we limit our thinking in this way, it is natural to suppose that if appropriation is the valid principle for establishing property rights, only private property holdings are natural rights, and then we can have a purely ethical debate about whether appropriation or some other principle is the valid way to establish property rights.

Perhaps for this reason, philosophers debating property rights usually don't think about the question we're asking. And so, it remains unanswered: how do we know human-created institutions like corporations can have just ownership titles while human-created institutions like governments cannot—or simply do not—hold just ownership titles? How does a fictional story say anything about that question?

This chapter addresses the question of whether propertarian theory is capable of ruling out government ownership of territory on an a priori basis without reference to applied history, or does it require an empirical argument? In the process, this chapter argues that propertarian use of the appropriation principle and the accompanying story is sloppy. Propertarians seldom clearly state whether their arguments are purely normative, or whether they require empirical premises and what those premises are. Do they tell the appropriation story as a metaphor for

something all property owners do? If so, what does the metaphor stand for? Or do they tell the story because it indicates something about the history of property rights? If so, exactly what is it supposed to indicate?

The sloppiness itself is a major problem. But this chapter argues that it is possible to discern the answers to these questions with a careful examination of propertarian literature. As typically proposed, propertarianism cannot rule out government ownership of its territory on an a priori basis, forcing propertarians to stand on the empirical claim that such an event, though possible, is historically implausible. The appropriation story does not work as a metaphor for anything that modern appropriators do. It is so often repeated, neither as literal truth nor as metaphor, but as an indicator of what propertarians prefer to believe is likely and unlikely. In that way, the appropriation story works to indicate essential empirical premises in the natural rights defense of private property. Propertarianism has to stand on the premise that although it cannot rule out collective- or government-held property rights, they are empirically so improbable that they can be safely ignored.

At least one propertarian, Loren Lomasky, recognizes that most propertarian theory involves dubious factual premises about events that occurred in the Stone Age. He describes the theory and the claim as follows:

> A classically liberal theory of property rights holds that natural relations obtain between persons and objects in the world. These relations precede civil society and thereby establish claims to property that are prior to social determination.[4]

The first sentence of the quote describes the theory, which he names. The second sentence describes an empirical claim, which he does not name. With reference to Lomasky, we name this claim and a collection of related claims, "the classically liberal hypothesis." Lomasky's version of the hypothesis stresses *time*: private property develops first; collective or government territorial claims develop later. But time might not be the most important factor, the hypothesis might be better stated as: private property develops naturally; collective property does not. If people are free from aggressive interference, they will tend to create private property titles through individual acts of appropriation. Once established, property titles tend to remain or to become private unless subject to aggressive interference. Collective, communal, and government-held property rights tend not to develop naturally in ways consistent with propertarian theory. If people are free from interference, these kinds of property-holding institutions do not tend to come into existence or to remain in existence for very long. In a world free from violations of the normative principles of natural rights theory, private appropriation and/or accumulation of property rights is plausible; and collective, communal, or government accumulation of property rights is implausible.

Not all natural rights arguments make reference to Locke's appropriation story, but this chapter makes a broad survey of natural rights arguments to show that the most influential propertarians—even some who try to distance themselves from the classically liberal hypothesis—end up either restoring to special pleading or appealing to some version of the hypothesis.

This hypothesis involves sweeping empirical claims about what is likely and unlikely to happen across all cultures and across time from well back in prehistory to the present. If the argument below is correct, and this hypothesis is a necessary part of the natural rights justification of private property, its truth-value has important implications, not only for

propertarian extremists, but for anyone who presumes that taxation, regulation, and redistribution of property involves even a minor infringement on natural rights.

We use "propertarianism" in a very broad sense. It includes both people who believe property rights are overriding in importance making most or even all government taxation and regulation of property immoral and people who believe, although property rights have moral content, it is easily overridden by other concerns. This book focuses on propertarians who believe that private property has a very strong moral importance, because they give the most thorough arguments for private property rights. But it applies as well to the large body of philosophers and political actors who accept the existence of natural property rights even if they believe those rights are often overridden by other concerns.

This chapter does not challenge the normative principles involved in the natural rights justification of private property. It merely examines where they lead. It shows that without the classically liberal hypothesis, normative propertarian principles cannot do the work natural property rights theorists call on them to do. Without empirical premises, propertarian normative principles imply little or nothing about the moral value of collective territorial claims to land or about the legitimacy of governmental authority to tax, regulate, and redistribute private property.

Section 1 traces the history of the appropriation story, demonstrating how much it has affected people's thinking and made the classically liberal hypothesis seem like an obvious truth. Section 2 shows how much the classically liberal hypothesis is used in contemporary property theory. Section 3 considers and rejects possible ways propertarians might try to use existing propertarian theory to rule out a property-owning government on an a priori basis. Section 4 considers and rejects Lomasky's attempt to revise propertarian theory in a way that does so. Section 5 concludes with a discussion of the various empirical claims that make up the classically liberal hypothesis.

This chapter sets up the next two. Chapter 3 examines the evidence propertarians have put forward to support the classically liberal hypothesis, and shows that their evidence is extremely weak. Chapter 4 investigates the truth-value of the hypothesis. It not only gives a strong argument for the falsity of the hypothesis; it argues that strong evidence indicates quite the opposite is true. At least partially collective rights in property tend to develop; and private property usually develops only via aggressive interference with already established collective and communal rights over land, resources, and the things people make out of them. If so, natural property rights theory actually supports government or collective ownership of the powers to tax, regulate, and redistribute property as well or better than it supports existing private rights to property.

1. The story of the appropriation story

Although the dominance of the appropriation story on conventional thinking about property essentially begins with John Locke, the concept of appropriation (which implies the need for an appropriation story) goes back at least as far as Roman law.[5] Montesquieu traces the simple version of the classically liberal hypothesis (property originates first, polity second) to "Cicero [who] maintains that … the community was established with no other view than that every one might be able to preserve his property."[6] But most ancient and medieval philosophers tended to base justifications of property on virtue ethics. It was only in the early modern period

that the debate over property rights began to focus on the way in which property might have been instituted.[7]

Locke's theory was built partly on Thomas Hobbes's social contract theory, but their views of property and their hypothetical histories were extremely different. Both begin in the "state of nature," the absence of government. For Hobbes, the state of nature is a moral free-for-all, in which no one has any duty to respect anyone else's claims to anything. It was also a state of chaos, in which no one was capable of establishing a consistent claim to anything. Only once the state comes into existence is property possible, and Hobbes writes, "All private estates of land proceed originally from the arbitrary distribution of the sovereign."[8] He seemed to believe this claim was an obvious truth as much as Locke and so many of his successors would later assert the classically liberal hypothesis as an obvious truth. Both views of property are still used today in political theory, but few philosophers seem interested in settling the empirical disagreement by empirical investigation.

Hugo Grotius and Samuel Freiherr von Pufendorf both attribute the origin of property to a social agreement. Grotius briefly discusses appropriation as a way to attain property in the state of nature, but Karl Olivecrona argues, Grotius's appropriation does not give rise to any legal right. Pufendorf makes a related claim that is important to the property debate. That is, the good things on earth are useless until people acquire a property right in them.[9]

A. John Locke

Locke's story begins in his own version of the state of nature, which, importantly for him, is not only a place *without* government but also a time that *precedes* government.[10] Unlike Hobbes, Locke does not portray the state of nature as a moral-free-for all. Natural rights exist even if individuals have difficulty enforcing them. One of those rights is the appropriation principle, which as explained above, is some method by which a person or group can establish a morally binding right in a previously unowned resource. Any appropriation principle requires appropriation criteria: the thing(s) the appropriator has to do to establish a property right. Locke's central criterion is the transformation of a previously unowned resource by labor. He also includes at least one proviso,[11] which we discuss further below.

By natural right, without the permission of anyone else, the original appropriator justifies their ownership claim over land or any resources that can be extracted from it if they improve the land with their labor. In Locke's story the original appropriator who puts that principle into action, is an individual acting alone, going into a wilderness to become the first person to expend effort to convert that land into something more useful, usually by clearing and farming it.

The moral value of the transformation of land through labor is important to Locke, because he assumes—uncontroversially—that foragers proceeded farmers to most of Earth and that, at least in most places, they did not establish the institution of individual landownership. By Locke's criteria, farmers appropriate both the land and the crops produced on it while hunters appropriate the animal they kill but not the land on which they kill it, because supposedly, farmers significantly transform land while hunter-gatherers do not.[12] This principle means that no matter how many generations your family might have been hunting and gathering on the same land, they never obtain the right to *keep* doing so: they can justly be pushed off the land at any time by someone wanting to farm it. This principle and others have led a large number of scholars to believe that Locke self-consciously intended to justify British settler-farmers pushing Native American (at least part-time hunter-gatherers) off the land.[13]

The connection between labor and landownership is important in propertarian theory, because when combined with Pufendorf's claim that the resources of the Earth are useless (or nearly useless) before becoming property, it implies that most or all of the value of property comes from the owner or past owners themselves. Interference with a person's ownership of property is, therefore, in a way, interference with their ownership of their own bodies and efforts.

Locke's appropriator establishes full ownership, including the right to sell, give, or bequeath property to others. Thus, anyone who holds a property right connected by an unbroken chain of just transfers to appropriator assumes the rights over property the appropriator established. After individual farmers have established rights over the land, Lock's story goes on to discuss the creation of government, which people establish "by compact and agreement" after land becomes scarce. They do so partly to protect their estates, making one of the founding principles of government the protection of existing unequal holdings of property.[14] Scholars of Locke disagree about exactly what Locke meant to happen at this point, but he clearly meant for ownership to place at least some ethical limits on governments' authority to tax and regulate property,[15] even if those limits were much weaker than some of his later followers.

Clearly Locke does not intend for the entire story to be taken literally, but equally clearly Locke believes his theory is relevant for at least some existing property titles, even if no unbroken chain of just transfers exists connecting current titleholders to the original appropriators.[16] Locke does not explain exactly how this story justifies modern property rights without this chain of connection, or what other value the hypothetical claims have. Readers don't know whether the story is a metaphor for something modern owners do or whether it is supposed to be a fiction that tells a greater truth, and exactly which empirical claims in the story constitute that greater truth.

However, there are three reasons why aspects of the Lockean appropriation story call for empirical interpretation. First, Locke tells stories in which property precedes government throughout his property chapter, and he writes as if many of his claims are empirical. For example, he claims, "in the beginning all the world was America,"[17] by which he means a state without government where land was available to appropriators. It seems impossible to interpret this claim in any other way but literally, as Richard Ashcraft argues:

> Since Locke specifically cites from various descriptive accounts of Indians 'in many parts of America' (II, 102; 105) as part of his attempt to supply 'examples out of history, of people free and in the state of nature' (II, 103), it is rather disingenuous for some interpreters to claim that Locke has no historical conception of the state of nature. … it makes no sense at all to claim that Locke did not intend to provide the reader with historical examples of life in the state of nature, when he says explicitly in the text that this is precisely what he is doing, and when he refers throughout the *Second Treatise* to the Indians in America as 'a pattern' for what life is like in the state of nature he is describing, as it existed during 'the first ages of the world' (II, 108).[18]

Second, according to Locke public property can be created by compact.[19] Therefore, apparently, lands still unclaimed by private individuals after the establishment of the compact are available to become public property. He does not consider whether people might first establish public property and then parcel it out to individuals. Although he spends more than half of his chapter on political society making an empirical argument that governments (so far as they are

just) are established by compact,[20] stories in that chapter involve all people who establish government to preserve their already existing estates.[21]

Third, he makes no reference to any metaphorical interpretation of the appropriation story, and no metaphorical interpretation seems to work in his arguments. His appropriation principle is a principle of first come, first served. The limits of governments' control over resources, therefore, stem from prior existence of appropriation-based property rights. That is, the limits depend on the truth of one or another formulation of the classically liberal hypothesis. He states it as a fact and relies on its empirical truth in his arguments.

The two most important ethical premises in the story are appropriation and transfer, both of which are controversial. But the story also contains several hypothetical empirical claims: individuals appropriate property; government comes along later; and so on. What exactly are these claims? Do they have a role in the justification of property, or are they purely for illustration? With little discussion of these questions, Locke's story has been retold by many authors with increasing frequency to the present day. The normative claims vary slightly. The hypothetical historical claims vary even less.

He is not saying that all individual property owners can trace their property in an unbroken chain of transfers to original appropriation, but he seems to be saying that if there were an unbroken chain of transfers from original appropriation a system very much like the one we have would exist today. Therefore, any private property holders who have acted in good faith (i.e. cannot be convicted of theft, fraud, extortion, etc.) within that system should be respected as holders of a natural right of private property. If this interpretation is correct, the intent of the appropriation story is to illustrate the pattern of ownership that is supposedly likely to develop from original appropriation. If this is what he and his successors are trying to say, it is seldom if ever well explained. If it is not what they are trying to say, it's difficult to discern any meaning in this popular story.

B. Locke's successors

Locke's story has been retold in many versions.

Francis Hutcheson, Henry Home Kames, and Adam Smith, writing in 1745, 1758, and 1762, respectively, tell variations of the Lockean story. Occupation and labor establish property rights in the state of nature and the later agreement to create civil society is obliged to respect those rights,[22] although for Kames and Smith, the establishment of full property rights in land may not happen until after some form of government comes into existence.[23]

Hume argues that the history of property is the history of conflict and theft, but he also sees property rights arising as a solution to that conflict: a social convention arises spontaneously to establish peace by recognizing the claims people happen to have as if it were property. To the extent that that social convention comes first and its endorsement by a sovereign state comes later, Hume also uses the hypothetical claim that property appears before the state.[24]

Many 18th Century philosophers take a position similar to Grotius and Pufendorf. Although the ultimate source of property rights is a social agreement, people in a state of nature initiate a provisional possession of property, usually through Lockean appropriation, in expectation that it will be endorsed by a social agreement. Although this position rejects some of the normative claims in appropriation theory, it endorses most of the hypothetical historical claims in the appropriation story. Writers taking this position differ in the emphasis they put on original appropriation and on social agreement. To varying extents, this description fits

Immanuel Kant, Thomas Reid, and even Jean-Jacques Rousseau, who though famously critical of economic inequality, also writes, "the right of property is the most sacred of all the rights of citizenship, and even more important in some respects than liberty itself."[25]

Antoine Louis Claude Destutt de Tracy used a Lockean story in his justification of property in 1817.[26] Frédéric Bastiat in 1850 told a very Lockean story, in which natural resources are originally both unowned and worthless. They become valuable only when someone takes pains to improve them and thereby to take property rights in them.[27]

Hastings Rashdall, writing in 1913, accepted some and rejected other hypothetical claims in the Lockean story. He writes, "it was a simple matter of historical fact that one at least of the ways in which private property began was by some person or persons 'occupying' or appropriating to his or their own use something which previously was unappropriated." But asserts that some "primitive communities" recognized little in the way of private ownership by labor, and that "the more careful study of primitive history has taught us that as a rule the first appropriation and cultivation of land was the work of groups rather than of individuals." Despite his skepticism, he gives the Lockean story some historical credence, writing, "Still, on the whole, private ownership in things actually and obviously created by labour is a fairly primitive and fairly universal human institution."[28]

C. Variations of the appropriation criteria in recent political philosophy

In recent decades, many propertarians have retold the Lockean appropriation story or at least employed some variation of his appropriation principle. Daniel Attas, a critic of appropriation-based theory, observes its basic moral claim to be the appropriation principle, which requires at least one appropriation criterion. That is, the first person or group to do X with a resource appropriates it unilaterally.[29] The criterion, X, accounts for most of the variation in the retelling of the story. Theorists change the hypothetical history to fit their appropriation criterion. Some add other criteria, such as a proviso.

Murray Rothbard, David Boaz, and (somewhat tentatively) Nozick endorse Locke's first-labor criterion and stick closely to his story of original appropriation.[30] David Schmidtz portrays the act of appropriation as a spontaneous solution to the tragedy of the commons and other problems, and so he tells a story in which the appropriator solves some social coordination problem.[31] Israel Kirzner replaces first labor with discovery and/or a finders keepers ethic, and so he tells stories of people finding seashells on the beach or leading voyages of discovery.[32] Lomasky, Jan Narveson, and Richard Epstein endorse something like first use, claim, or first occupancy. Epstein's principle of relative title essentially changes first use, claim, or occupancy into prior use, claim, or occupancy.[33] And Edward Feser endorses any and all criteria in his article, "There Is No Such Thing As An Unjust Initial Acquisition."[34]

Locke's first-labor criterion is usually assumed to bestow landownership to farmers but not to foragers. Although discovery, first use, first claim, or first occupancy would all seem to bestow landownership to any foragers who preceded farmers few property rights advocates seem to embrace this possibility or explore its implications.

D. Explicit use of the classically liberal hypothesis in recent political theory

Most propertarians recognize that their theories involve some empirical claims. Rothbard writes, "We can only find the answer [to who owns property] through investigating the concrete data of the particular case, i.e. through 'historical' inquiry." Nozick writes, "Justice in holdings is historical; it depends on what actually has happened."[35] And Lomasky puts it, "What is *in fact the case* carries moral weight."[36] The question is whether propertarian claims about the relative moral standing of private and collective landholdings rely on factual premises about the origin of property rights and pattern of exchange of property rights. Several contemporary propertarians make these claims explicit.

Epstein eschews strong normative arguments and attempts only to justify first possession, because in the absence of contrary moral claims, there is no need to overthrow established institutions:

> [W]eight should be attached to the rules under which a society in the past has organized its property institutions. … Within this viewpoint it is possible to show the unique place of first possession. It enjoyed in all past times the status of a legal rule … In essence the first possession rule has been the organizing principle of most social institutions.[37]

This passage includes no citation supporting its empirical assertion that private first possession was enjoyed in *all past times* (and places?). Empirical citations in other parts of the article are to law cases from the Anglo-American tradition and to textbooks on Roman law. Epstein cites no evidence showing that property claims precede community claims or that property rights free from taxation, regulation, and redistribution were more common at *all past times and places* than weaker rights.

Narveson self-consciously incorporates the classically liberal hypothesis into his appropriation theory. He bases the appropriation principle on the principle of noninterference: "The first-comer gets it. Why? Because second-comers would then be interfering with the courses of action initiated and being continued by those first-comers."[38] Narveson's first-comer is a "pioneer," who establishes strong individual property rights because that is "what the agent saw herself to be in the way of enabling herself to do."[39]

> When the first Asian crossed the land bridge to Alaska … did she then get title to the whole of North America? Certainly not … it cannot plausibly be argued that her activity, what she saw herself to be doing, was using a whole continent or anything like it.[40]

This theory involves assertions not only about who appropriated property but also about what they were thinking. First-comers could establish strongly individualistic, split, mixed, or collective rights. If any titleholder in between original appropriation and the current holder saw herself as passing on weaker rights (subject to government sovereignty) to the next comer, that particular title was forever weekend, regardless of the preferences of later-coming titleholders. Narveson refers to no evidence about the original appropriators' mindsets. It is unsafe to assume the prehistoric Olmecs (or whoever preceded them in bringing settled agriculture to Mesoamerica) saw themselves as propertarian pioneers. Strong empirical claims require strong empirical evidence, but Epstein offers no evidence at all.

Rothbard also unambiguously rests his conclusions on the classically liberal hypothesis. His original appropriator is a "homesteader" or "pioneer", who "clears and uses previously unused virgin land and brings it into this private ownership."[41] His examples of abusive government all begin with a state entity seizing land from private titleholder whose ownership rights trace back to homesteading.[42] His response to the possibility of a property-owning government is brief:

> If the State may be said to properly own its territory, then it is proper for it to make rules for anyone who presumes to live in that area. … But our homesteading theory, outlined above, suffices to demolish any such pretensions by the State apparatus.[43]

Rothbard doesn't explain how a hypothetical history can "demolish" anything, but he writes:

> There is really only one reason for libertarians to oppose the formation of governmental property or to call for its divestment: the realization that the rulers of government are unjust and criminal owners of such property.[44]

In his historical theory ownership is criminal only if it has a criminal *origin*. Rothbard justifies appropriation with the following statement:

> [T]he pioneer, the homesteader, the first user and transformer of this land, is the man who first brings this simple valueless thing into production and social use. … It's difficult to see the morality of depriving him in favor of people who have nothing to do with the land.[45]

This statement says nothing about private versus collective rights without the assumption that collectives had "nothing to do" with first use.

E. Tacit use of the classically liberal hypothesis (or simply ignoring the issue) in recent propertarian theory

More often, the use of the classically liberal hypothesis is tacit, or the questions that reveal the need for empirical claims are ignored altogether.

Few propertarians take the possibility of collective- or government-ownership of territory seriously, but Roderick Long and Hans-Hermann Hoppe come closer than most. Two works of Long's recognize the possibility that the public as a whole might jointly appropriate things like trails, roads, and perhaps parks, but those works do not consider that the public or any other collective entity might jointly own the whole of their territory.[46] The lack of recognition for other types of public property implies the belief that collectives simply do not make such appropriations—at least not before individuals acting as individuals performed the necessary appropriative acts first.

Hoppe presents what he calls "the endogenous origin of a monarchy" as more than a hypothetical history: apparently as what he believes to be factual history. A landowning aristocracy arises through appropriation and trade. This group of "natural elites" is voluntarily

acknowledged by their inferiors as judges. Monarchy's "original sin" is the act of one member of the aristocracy monopolizing the power to judge all disputes in a given territory. Apparently then, although monarchical power has some roots in appropriation and trade, it still involves violations of propertarian theory along the way. Nevertheless, Hoppe prefers it to democracy because he believes monarchs would act more like land owners, safeguarding its long-term value rather than displaying the shortsightedness he associates with democracy.[47] For Hoppe then, any argument in favor of the landownership rights of the aristocracy over monarchy (or democracy) rests on the literal truth of the history he recounts.

Most other propertarians entirely ignore the possibility of a property-owning government. The question is not whether propertarians explicitly address the issue or even whether they have thought much about it. The question is whether their theories are capable of ruling it out on an a priori basis or whether they have to rely on empirical historical claims to justify the kind of property rights structure they favor.

Tibor Machan endorses "the natural right to private property," but in several works on the issue, he does not spell out how a natural resource becomes private property, and thus, his theory does not indicate whether private titleholders or governments have better ownership claims.[48] The closest he comes seems to be an endorsement of Kirzner's appropriation theory.[49]

Kirzner tries to avoid reference to the distant past by stressing *present* rather than *past* discovery. An entrepreneur discovers a market opportunity, and in a sense, creates something new, reviving Pufendorf's and Bastiat's claim that resources are useless until appropriated. This argument appears to be what a metaphorical interpretation of the appropriation story might stand for. Perhaps we could get rid of the classically liberal hypothesis if we could say that all property owners do something like the things Locke's original appropriator did.

Unfortunately for propertarianism, the hope that entrepreneurial discovery is capable of replacing the classically liberal hypothesis is lost because, as Kirzner recognizes, a discoverer-creator is entitled to the creation "only insofar as he was entitled to deploy the inputs." And he admits that the issue of how inputs originally became property is of "primordial importance."[50]

Kirzner's entrepreneur takes appropriation-like actions in markets where strong private property rights over resources are for sale.[51] If discovery occurs on land where the first discoverer chose to set up a property-owning government, the entrepreneur's late-coming discovery is no reason to dispossess government any more than a tenant's discovery that she can sell cookies from her apartment is a reason to dispossess her landlord. To show that government power infringes private property rights, Kirzner would need to follow the title in a regression back to that "primordial" discovery. Therefore, either Kirzner assumes what his story is supposed to show—that resource ownership *ought* to be free from taxation and regulation—or it tacitly endorses the classically liberal hypothesis that primordial discovery is always or nearly always made by private individuals acting as private individuals.

In David Schmidtz's appropriation theory property rights appear spontaneously in response to scarcity and conflict, making it a new version of an argument with roots in Hayek, Hume, and even as far back as Grotius and Pufendorf. In this theory, the justification of appropriation is not in the appropriative act. It matters little how the original owner established their claims, only that it happened spontaneously and that, once established, property solves problems.[52] This theory provides a less involved theory than the Lockean version, but the classically liberal hypothesis remains in his story: individuals acting as individuals create property to solve problems; government gets involved only later. Collectives never get together to create limited private titles to solve the problems in his stories. The spontaneous private title

makers are not encroaching on land where a collective has already well-established right to be the final decision maker. Titleholders solved the problem before any collective entity arrived to officially recognize the titles their solution created.

2. The role of the classically liberal hypothesis in contemporary propertarian theory

Again and again, we read a story of original appropriation and a set of moral principles that would justify the titles of anyone with an unbroken chain of just transfers connecting their title to the original appropriator. Then we're told that no such chain exists, but that at least some titles are justified anyway. Why are they justified anyway? If property rights are justified anyway, why are we so often being told this story? Is it purely for illustration? If so, what does it illustrate? If not, which of the hypothetical claims in the story function as premises in the argument, and are those premises true? This section investigates these questions, starting with Nozick's version because it is quite possibly the most thorough exposition of the principles involved in appropriation-based property theories. Not everyone who supports the natural right of private property is a Nozickian, but his discussion makes an excellent reference point to discuss variations of the idea.

Nozick explains three normative principles of justice in the distribution of property or as he calls it, "justice in holdings." These are original acquisition (which we call appropriation), voluntary transfer, and rectification.[53] We will argue that he is logically committed to a fourth principle we call "statute of limitations,"[54] which some propertarians make explicit but he does not. Nozick argues that his "entitlement theory" of justice in holdings is historical and "unpatterned," meaning that a society has to follow these principles wherever they lead—whether they lead to extreme inequality or pure equality. Justice has nothing to do with the pattern of the distribution of property rights; justice is entirely in the history of how the current distribution came to be. These principles of justice, "exhaustively cover the subject of justice in holdings."[55]

Some propertarians discuss another principle of justice, called the nonaggression principle, but all it means is that there are no exceptions to the rights people have under the theory. It adds little or nothing except a description of rights violations. And so we'll focus on the four that actually determine justice in holdings.

If Nozick's theory is truly unpatterned, it does not conceptually rule out the possibility that one large collective entity calling itself a government could own territory the size of a nation. If it is truly historical, one would expect any effort to rule out government ownership rights would involve an empirical, historical investigation. But Nozick's effort includes nothing of the kind. He deals with that question, mostly by ignoring it or not taking it seriously. He focuses instead on justifying extensive and unequal private holdings with an exposition that is almost entirely theoretical. Most of his empirical premises are hypothetical. The real history drops out of his effort to justify holdings using a "historical" theory which supposedly "depends on what actually has happened."[56]

Nozick does not commit himself to exact specifications of his principles. He simply argues that there must be some principle of each. The voluntary transfer principle is simple: any transfer of any kind is allowable as long as the old and new owners consent to it without force or

fraud. Nozick does not specify the rectification principle at all. He merely notes that there must be some process by which violations of the first two principles are corrected.

For original acquisition, he tentatively endorses Locke's appropriation theory including the labor criterion, in which the first person to transform a resource through labor acquires it as property. Locke never specifies exactly what rights a person obtains in an asset when appropriating it as property, and at times does not seem to endorse property rights as strong or overriding as later propertarians. Nozick does not fully specify it either, but he implies that property rights are very strong.

The standard philosophical view of property today is that ownership is not *one* right but *a bundle of rights and duties* (or incidents) that can be held over a piece of property. In Tony Honoré's analysis, "full liberal ownership," is a bundle of 11 incidents, which are the right to possess, 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.[57] Weaker forms of ownership are possible, as is mixed ownership, in which different parties own different incidents. But under the theory, an original appropriator acting alone, establishes the strongest set of rights, presumably, full liberal ownership, and it is up to her or subsequent holders to decide whether to divide ownership in any way. The principle of voluntary transfer follows directly from Honoré's complex definition of ownership. The right to manage and transmissibility imply the right to give, lend, or sell the property. Combining these two rights with the absence of term and the residuary character imply a right to bequeath property.

These three principles, alone, are not capable of telling us very much about who has a justified claim to property today, because would justify property rights only for someone who could show an unbroken chain of voluntary transfers and/or justified rectifications connecting their ownership to original appropriation. Little or no property in the world today can be traced back in such a way. The history of most property involves theft, fraud, and extortion, and in most cases, these violations are not rectifiable because—with the information available today—no one can know who the heirs of the victims are. If there were literally only three principles by which one could obtain property, most of the land of the world would be off limits to all living human beings. It would have to sit and wait for the appearance of the rightful heir to the past wrongs, who will probably never be found.

Therefore, propertarians are logically committed to some kind of statute of limitations: some principle by which the legal system can choose *not* to rectify past wrongs. Nozick does not explicitly mention it, but some of his statements imply tacit endorsement.[58] He might have thought this issue was covered by rectification, but the two ideas are different. One principle says how to repair past wrongs; the other says when to ignore them.

Many propertarians (tacitly or explicitly) invoke a statute-of-limitations principle, which can take several forms including a time limit on rectification of past wrongs, adverse possession, or abandonment and re-appropriation.[59] Rothbard endorses an idea similar to abandonment and re-appropriation, writing, "where the victims are lost in antiquity, the land properly belongs to any non-criminals who are in current possession."[60]

Richard Epstein, in a consequentialist argument for propertarian rights, gives a thorough description of several possible statute-of-limitations principles, arguing that society needs some such principle for its property system to work.[61] He also offers an important specification of the principle of relative title,[62] which essentially means that A cannot claim property against B

because B (or B's ancestors) 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 has extremely important implications for a property-owning government. Suppose it can be shown that the United States stole its land from Native Americans. Under relative title, only the ancestors of those dispossessed groups have a claim against the United States.

The statute of limitations (however specified) plays an extremely important role in propertarian theory, it is the reason this "historical" theory can ignore the actual facts of history. It is the reason the theory can jump from a story set in the Stone Age to an endorsement of the existing property rights system minus government or collective "interference." If we presume that appropriation happened in the individualistic manner supposed, and if we presume that in the absence of all unrectifiable rights violations, we would have a system much like the one we have now (minus government "interference"), then the people who have worked under the system and obtained property in good faith are not to be faulted. If no one can prove a direct connection with someone whose rights were violated, they have no claim against existing owners. Nozick tentatively endorses such an idea in his Henry Ford example.[63]

What do these four normative principles of justice in holdings say about the justness of property rights in the empirical world in which we live? If a corporation justly owns a resource, and if government does not own any rights in that resource, then taxation, regulation, or redistribution of that resource would violate propertarian justice in holdings. To apply this observation, we need to confirm the truth of the two if-statements. We need to know two empirical facts regarding the two institutions in question. We are left with the question we've been dealing with from the outset of the chapter: does the corporation and/or does the government justly hold rights in that resource? Normative principles specify the conditions for ownership, but only an empirical investigation can determine whether one human-created institution or another owns any particular resource, as many propertarians readily admit.[64]

Although few propertarians take the property-owning government seriously, many recognize it as a conceptual possibility. Murray Rothbard writes, "If the State may be said to properly own its territory, then it is proper for it to make rules for anyone who presumes to live in that area."[65] Loren Lomasky writes, "[S]uppose that title to all property was conferred to one person, the king, … It would follow that should anyone make use of any item except with the sufferance of the king that person would be guilty of interference."[66] And as mentioned at the outset, Nozick asserts that a small utopian community "can exist on land jointly owned by its members, whereas the land of a nation is not so held."[67]

As even propertarians agree, no chain of connection to original appropriation exists. Titleholders have to appeal to the statute of limitations to justify their ownership, but then, so can the government. The citizens of a nation have the same right to profit from taxation as landed heirs have to profit from rent: *they inherited the right to do so from their ancestors.*

How can a theory with only these four normative principles *rule out* collective (full or partial) ownership of its territory? Propertarians usually ignore the great conceptual difficulty their theory has on this issue. Once we recognize the conceptual possibility of a property-owning government, it becomes apparent that propertarians are trying to use an unpatterned theory of justice to justify a pattern of ownership. They want to justify a pattern in which certain human-created institutions—such as corporations, partnerships, marriages—can and do own property but other human-created institutions—such as governments, polities, nations, collectives, and

ethnic groups—cannot or simply do not own property. How do they do this with only three or four normative premises to draw on?

The answer is by adding empirical premises—usually with little or no empirical support for these claims. Robert Nozick does is with a methodology he calls "hypothetical histories." He explains:

> How should hypothetical histories affect our current judgment of the institutional structure of a society? … If the actual history of an existing society is unjust, and *no* hypothetical just history could lead to the structure of that society, then that structure is unjust. More complicated are the cases where the actual history of a society is unjust yet some hypothetical just history could have led to its current structure. If the hypothetical just history is 'close' to the actual history, whose injustices played no significant role in bringing about or maintaining the institutional structure, the actual structure will be as just as one can expect to get.[68]

So, Nozick's hypothetical histories have strong empirical content; they are supposed to show what could and could not have happened—to separate plausible and implausible counterfactual histories. The Lockean hypothetical history provides a plausible-sounding account of how injustices might not have had to play a significant role in bringing about or maintaining a private-property-based economy. Hypothetical histories justifying government ownership of the rights to tax, regulate, or redistribute property supposedly involve either implausible assumptions or clear rights violations. The only institutional structure that could plausibly have developed from original appropriation without rights violations is a propertarian structure. Therefore, propertarianism is the only just structure, and therefore, one could draw the inference that the statute of limitations should be applied only to property claims that do not disrupt this structure—i.e. to private property claims but not to collective, communal, or governmental property claims.

Of course, whether one hypothetical historical is more plausible than another is an empirical question, but Nozick does not follow with an empirical argument. He relies instead on the apparently obvious plausibility or implausibility of four hypothetical histories. He tells Locke's appropriation story, in which private property rights arise justly, pronouncing it plausible.[69] He tells another in which a minimal state arises justly out of a private protective association, pronouncing it plausible. He tells two in which a more-than-minimal state arises unjustly or with implausible assumptions.[70] He rests his case for the minimal state on these hypothetical histories without reference to any historical facts that could provide evidence for their plausibility.

Nozick, therefore, quietly rests his argument on the empirical premise that the Lockean appropriate story is "'close' to the actual history."[71] The three hypothetical histories involving government all begin with private property rights (in the form of full liberal ownership) in place. With this starting point, the government's assertion of territorial ownership rights unsurprisingly infringes existing property rights.[72] Therefore, all four stories rely on the empirical claim to the plausibility of the most simplistic formulation of the classically liberal hypothesis (private landownership comes first; collective territorial claims come later) to connect Nozick's three principles with his limits on government.

That's a far-reaching empirical claim, involving suppositions about the establishment and transfer of property across times and across cultures for thousands of years. Yet, propertarians seldom call attention to this essential premise in their argument. With a few exceptions, they

provide little or no empirical support for it. They usually just tell their hypothetical history and ask the reader to agree that only the Lockean appropriation story is plausible.

Is it?

Let's go back to the Lockean story and examine just what claims it involves.

1. **Before private property titles were established, most land was used by foragers who did not observe the institution of private property.** The rest of the land was not occupied by humans.
2. **Farmers (and some commercial landowners) are the first to significantly transform land.** We could restate this claim more simply as two: farmers appropriate; foragers do not. We could also state it more broadly: people in agricultural and industrial societies do whatever is required to appropriate land while people in foraging societies seldom or never do.
3. **Individual appropriation of private property happens in the state of nature, before the establishment of any government.** Appropriation happens before the appearance of a social contract, a commonwealth, or any collective appears capable of establishing control over the land.
4. **The original appropriators are individuals acting as individuals establishing individual private property rights**. That is, they are not groups acting as collectives or commonwealths to establish publicly or jointly held property rights, and they are not individuals acting as chiefs or kings establishing themselves as both owner and government of their territory.
5. **As property is voluntarily transferred over time, it remains in (or is eventually transferred into) private ownership.** Landowners (whether individual or collective) do not establish themselves as governments of their estates; they do not trade, bequest, or give their land to collectives, commonwealths, or governments.
6. **Governments or collectives establish their powers over territory after appropriation and/or by some means other than proper appropriation criteria.** Locke has government arising by a social contract. Nozick finds that hypothetical claim implausible and has government growing out of protective associations. Rothbard finds both of those implausible and has government appearing only by violently interfering with people who have appropriation-based property claims.[73]
7. **Justified current property titles derive from original appropriation.** *Something* about the appropriation story helps explain why some people today have better claims of ownership to land and resources than other people. There are several possible ways current property titles could derive from original appropriation: (A) Current titleholders (who have just titles) might be the recipients of an unbroken chain of just transfers connecting them to original appropriation. (B) The somehow illustrates that the only plausible just way for property to develop is into a propertarian regime.

That's a lot of hypotheticals. The first claim is uncontroversial (as Chapter 4 shows), but it isn't used to support the conclusion. It's used to create an obstacle for the theory to overcome. It would be easier to make a moral case for appropriation rights if all land was completely unused before owners established their claims.

The second claim might not be essential, if one could show that hunter-gatherer appropriation would lead to the same kind of property rights regime that agricultural and

industrial appropriation would lead to. But if all or most hunter-gatherer land holding institutions were collectivist, this claim might become important.

The third, fourth, fifth, and sixth claims together constitute what we are calling the classically liberal hypothesis. They receive most of our attention.

The seventh claim—or something like it—is necessary to explain what the appropriation story and the appropriation principle have to do with current property rights. In the three centuries that this story has been retold, only this seventh claim (and only version A) has received any serious empirical scrutiny. The attention to this version of the claim is surprising because no one, neither supporters nor opponents believes it is true. Nozick makes it clear that his argument rests on version B, which makes 7A irrelevant and makes the plausibility of claims 2-6 important. But little effort has been expended to investigate these claims.

Claims 2-6 are usually ignored entirely, assumed true, or assumed irrelevant (usually without explaining why they're irrelevant), despite the implications of Hobbes's contradictory hypothetical history in which secure property rights cannot develop before government.[74]

As argued in the introduction to this chapter, the discussion might be distracted by the social contract as a myth. Philosophers know it's just an illustrative example not meant to be an empirical statement about the origin of the state, but yet it's the only state origin story people tend to think of (other than conquest), and it *is* full of implausible assumptions and/or violations of propertarian rights. The two myths (individual appropriator and social contract) take up our thinking of the two possible alternatives, although they're both just fictions. Nozick (reasonably) doesn't bother considering the signing of a social contract as potentially plausible hypothetical history, but his discussion of three hypotheticals is no exhaustive search for a plausible alternative.

Nozick challenges people who support any other form of property to "provide a theory of how such property rights arise."[75] With that long list of empirical claims involved in the Lockean story, it's easy to come up with alternative histories by relaxing some of them. Consider two alternatives mentioned briefly in the introduction to this chapter:[76]

Alternative appropriation story 1: An individual appropriator chooses not to transfer any of the rights over herself or her land to any polity or protective association, setting herself up as both owner and governor of her estate. In the absence of any higher government, the power of a landowner to set herself up as both owner and governor follows from the 11 incidents of full liberal ownership—most especially the rights to possess, use, manage, income, and capital. She might begin with a small estate as a family farmer, but she might start with a large estate by contracting with voluntary paid laborers to build dykes around a low-lying area, to irrigate arid land, or to sail unexplored seas to discover new land. She attracts tenants to her land. She bestows on them a form of limited, quasi-ownership she calls "title" with the understanding that their ownership titles are held at her pleasure and are subject to her fees and rules. She gradually enlarges her estate through strategic marriage alliance, primogeniture, and rectification after defensive wars until one day her estate is the size of England. By then, she has decided to call herself "the Queen" rather than "owner" and to call everyone else "subjects" rather than "tenants," but the natures of her ownership and her tenants' quasi-ownership have not changed.[77] She is essentially a landholding monarch—that is, a monarch whose power is justified by divine right or social contract but by her appropriation-based property rights over her country, which is really just a very large private estate. She might eventually give or bequeath her estate to a democratic assembly representing her subjects. She might aggress against her subjects' self-ownership[78] causing a group of subjects to fight a defensive war and jointly gain control of her

state in rectification for that crime. Or, she and her heirs might remain property-owning monarchs with a just title to the land forever.

Alternative appropriation story 2: A group of willing people gets together and jointly discovers, uses, occupies, mixes their labor with, or does whatever else is necessary under propertarian theory to appropriate a piece of land, with the intention to hold it collectively. People who do not want to participate in the act of appropriation have as much and as good left in the wilderness as people who do not appropriate property in the more familiar Lockean story. In accordance with the common understanding of joint-ownership, anyone (including individual heirs of the original appropriation group) who later wishes to use this group's land must accept the groups' terms just as any tenant must agree to any landlord's terms. The group chooses not to join any protective association and constitutes itself as a polity. It is a corporate landownership association, which calls itself a "government" and calls its shareholders "citizens." The citizens are essentially a landowning polity—that is, a government whose powers stem not from social contract but from appropriation-based property rights over their land, which is really just a large jointly owned estate. The polity might grow by merging with similar polities or by gaining territory through rectification after defensive wars. Eventually, the group parcels out land to individuals, creating a quasi-ownership called "title," with the understanding that these "titles" confer limited ownership, subject to the groups' ultimate ownership and the taxation, regulation, and redistribution that go with group ownership, under the polity's contract they call a "constitution."

These hypothetical histories show a government developing as a landholding institution, similar to a corporation. In neither case does the government violate the three stated principles of (propertarian) justice in holdings—appropriation, voluntary transfer, and rectification—and as in the Lockean story, there is no need for a statute of limitations because these owners have an unbroken chain of connections to original appropriation.

Of course, this story isn't literally true. Contemporary governments can't trace their territorial claims in an unbroken chain of applications of these three principles to original appropriation. But neither can private titleholders. *Both* must appeal to a statute of limitations. Indeed, these hypothetical histories should be taken as literally (and conversely as figuratively) as propertarians' hypothetical histories. What reason does a theory based entirely on these four normative principles have to rule out the statute of limitations for property-owning government but rule it in for "private" property-owning institutions and individuals?

If your answer is that the Lockean story is plausible while these other two stories are implausible, then you accept the classically liberal hypothesis. You can skip to the discussion of evidence in chapters 3 and 4. The rest of this chapter considers whether the natural rights argument contains some means—or can be reconstructed to provide some means—of ruling out government or collective ownership of its territory in purely a priori terms without the classically liberal hypothesis or any other empirical claims.

3. Possible strategies to rule out or limit a property-owning government on an a priori basis within existing propertarian theory

This section discusses whether arguments in existing propertarian theory are capable of ruling out a property-owning government without reference to empirical claims. It shows that

arguments based on negative freedom, opportunity, inequality, market power, self-ownership, the Lockean proviso fail to do so without either sinking into special pleading or falling back on the classically liberal hypothesis.[79]

A. Interference

Perhaps, the foremost propertarian argument against government taxation and regulation is that it supposedly constitutes interference or coercive aggression against individual property rights. Nozick declares, "Taxation of earnings from labor is on par with forced labor."[80] Rothbard puts it more forcefully, "Taxation is robbery."[81] But this line of reasoning has no force at all against a government that holds the moral right to tax and regulate property.[82] Titleholders have the same freedom from interference as the low-wealth people under capitalism: whatever property rights they own are free from interference; but they do not happen to own the right to hold property free of payments and conditions set by another rights-holding body.

Narveson unknowingly defends the property-owning government very well, writing, "coercion is a matter of bringing it about that the coerced person's alternatives are considerably worse than in the status quo ante."[83] In the status quo ante, people who now hold titles were born without property; they acquired titles knowing that all titles were subject to taxation and regulation. The property-owning government prevents titleholders 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."[84]

The central propertarian idea that government interferes with property owners depends entirely on the strength of the two institutions' ownership claims. Quoting Rothbard again, "We can only find the answer through investigating the concrete data of the particular case, i.e. through 'historical' inquiry." This centrally important propertarian claim relies on the presumed truth of the classically liberal hypothesis.

B. The opportunity, inequality, and market power: why leave the state of nature?

Propertarians sometimes argue that people leave the state of nature to secure property rights. This argument is not consistent with other propertarian arguments, which accept that the following conditions may occur when society leaves the state of nature. Some people have property; some people do not; justice has nothing to do with the size of each group or the level of inequality between them. People who hold titles have the security of an individual who holds a short-term lease to an apartment. If we do not allow people in a libertarian state who can only afford short-term leases to complain, we also cannot allow the titleholders to complain about the limited incidence of ownership they are able to afford.[85]

Libertarians might respond to this conclusion by recasting their argument in terms of opportunity, claiming that only a libertarian state provides the opportunity for individuals to become full property owners.[86] Yet, propertarians already defend a system in which many people will never own their own home or business. That forces them to define opportunity extremely broadly: people have the opportunity to buy something even if they can never afford it. In that sense people have the opportunity to trade their human capital for a piece of the government's territory. The government might name a price they cannot afford, but they have the opportunity

in the broad sense propertarianism requires. In a monarchy, for example, 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 level of inequality that happens to exist, but the pattern of inequality is not a propertarian concern.

The acceptance of unlimited inequality also rules out any concern with the market power the property-owning government acquires from its monopolization of national resources. Erik Mack response to market-power-based criticisms of private property with a rhetorical question, "why should this (allegedly) negative externality be thought to render the resulting situation *unjust*?"[87] There is a significant difference in market power between a unified property-owning government, and a group of private property owners, but propertarians have not responded to egalitarian complaints about inequality of opportunity or unequal market power or any other form of inequality by saying that the capitalist pattern of distributional inequality is within acceptable limits, but by declaring *categorically* that *any* argument based on a pattern of distributional inequality is unacceptable.

One of propertarianism central ideas is the denial that any form of economic equality is a matter of justice. Nozick writes, "The principle of entitlement we have sketched is *not* patterned" (emphasis original).[88] He writes, "Holdings to which [property owners] are entitled may not be seized, even to provide equality of opportunity for others. In the absence of magic wands, the remaining means toward equality of opportunity is convincing persons each to choose to devote some of their holdings to achieving it."[89] That is, under Nozick's theory, titleholders can ask the property-owning government to allow them to buy stronger titles, and it can say no. Narveson expresses the same sentiment, "Acquisition limits opportunity, to be sure. But nobody had a duty to provide you with that opportunity, nor even to maintain it for you."[90]

If Propertarians don't want to accept the property-owning government's power to tax as just, they either have to drop their prohibition on judging a situation by the end-state pattern of property relations, or they have to demonstrate the private titleholders have a better historical claim to ownership than public titleholders.

C. Self-ownership

Propertarians often portray certain government policies, such as income taxes, not as violations of property rights but as violations of the widely appealing principle of self-ownership.[91] This section refutes this portrayal based on previous work by one of the authors of this book and on work by Michael Otsuka.

Nozick argues that redistributive taxation is "a notion of (partial) property rights in *other* people."[92] Samual Wheeler goes further, "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."[93]

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.[94]

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. An income tax is not levied on an individual's time, effort, or human capital, but on an individual's attainment of property. If the property-owning government has a partial or full property right in all assets, it can set the conditions of access to them. Therefore, the propertarian objection to income taxation is not a dispute over self-ownership; it is a dispute over the ownership of external assets.[95]

Formal self-ownership is simply too weak a concept to offer individuals much protection from a property-owning government. Such a government may not commit arbitrary executions, but self-ownership in combination with the four principles of distribution in holding do not provide the tools to block it from depriving individuals of food and shelter until they agree to do work that directly or indirectly serve the government, just as they do not block a market system depriving individuals of food and shelter until they agree to accept a job that involves serving the interests of someone who owns property. Greater protection for individuals requires the endorsement of *effective* self-ownership, which might or might not be protected by the proviso.

D. The Lockean Proviso

The Lockean proviso is meant to protect non-owners from excesses by property owners, and might therefore provide an avenue to rule out or limit the powers of a property-owning government. But as this section shows, it has little power to do so, partly because propertarians have consciously defined it in ways that provide very few limits on titleholders and fewer justifications for the redistribution of property toward non-owners. It would be difficult to define a proviso strong enough to justify redistribution from a property-owning government without also justifying redistribution from property-owning private individuals and institutions.[96]

More radical propertarians, such as Boaz, Kirzner, and Narveson, rule out any concern for the proviso or for effective self-ownership,[97] and so they offer no protection to titleholders from a property-owning government to deny food and water to anyone who refuses to serve it—or apparently, just to be cruel.

Nozick's discussion of the proviso is one of the most influential.[98] He tentatively endorses what he calls a weak version of the proviso, under which individuals must have some opportunity to reach at least the living standard they could expect in technologically primitive society in which all assets are held in common.[99] Nozick's proviso is not a guarantee, but the right to "strive" to achieve the baseline,[100] apparently by taking jobs for people who own the Earth's resources. He seems unconcerned that the propertyless are effectively forced to work for people with property as long as, once they do, the entire effect of the economic system raises their level of wellbeing over that of a Stone Age hunter-gatherer.

Nozick mentions a few benefits of a market economy and declares dubiously, "I believe that the free operation of a market system will not actually run afoul of the Lockean proviso."[101] Nozick's proviso, therefore, allows for no concerned for people have no other choice but to serve the property-owning government as long as by doing so they can reach the baseline living standard.

Nozick's position implies that when libertarians complain that titleholders 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 the opportunity to strive for baseline living standards, this proviso implies no reason to

strengthen their position at the expense of the rights of people who have chosen to hold their property rights in resources through the institution of a property-owning government.

Mack offers a "new and improved" version called "the self-ownership proviso" (SOP),[102] which sounds like it might limit the power of a property-owning government. But one important feature of it is immediately favorable to any property owner including a government: it is a constraint not on the ownership of property but how it is used.[103] Therefore, the SOP cannot challenge the property-owning government's rights over its territory; it can only limit how the government uses those rights.

In one description, the SOP is violated if an individual's ability to exercise "her world-interactive powers is damagingly diminished" relative to a pre-property situation.[104] In another Mack states, "if the whole process of privatization leaves Sally with 'enough and as good' to use as she would have enjoyed (at a comparable cost) had all extra-personal resources remained in common, Sally will have no complaint under the SOP."[105] As under Nozick's proviso, the property-owning government can deny access to food and water to individuals who refuse to work for it as long as those who do work for it receive baseline wages.

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,[106] 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 work for people they don't like working for. Property owners may provide charity to people in this position, but they are not obliged to.[107]

Mack seems to believe that effectively forced work is unproblematic at least as long as the forced individual has a choice of what work to do.[108] The main reason he gives is that competition among employers is good for workers,[109] but he also shows sympathy with the idea that effectively forced labor is *inherently* unproblematic,[110] even if someone is effectively forced to work for one person in particular. His focus on *cost* rejects any such concern. Mack admits, "Sally would have a just complaint if Harry were to preclude all access to the only waterhole in the desert … even if she were to pay some non-monopoly price for the water."[111] But he says, "The claim is not, of course, that when Sally encounters competing waterhole owners she will receive water costlessly or that when Z confronts competing capitalists he will get costless access to their means of production. But costless access is never a reasonable baseline."[112]

That is, a waterhole owner or a property-owning government has the responsibility of offering people *some* choice means of accessing the resources to reach the baseline, but it does it can make them for work it as has no responsibility to provide them access to "costless access means of production." Titleholders pay your taxes.

Mack admits that the SOP is easily satisfied, such that "All sorts of regimes, even well-administered social-democrat regimes, will not run afoul of this constraint."[113] Nozick and Machan agree that modern industrialized economies meet whatever standard is necessary to protect the poor.[114] They use this empirical claim[115] to argue that a propertarian economy can meet the necessary standard. However, because these governments assert the power to tax and regulate property, these claims, if true, also demonstrate that a property-owning government can meet the standard. Therefore, although the Lockean proviso requires a baseline living standard and might require the property-owning government to use some market mechanism to make choices of occupation available to people near the baseline, it does not significantly limit government's ability to have full or partial ownership of all property or to impose taxes and regulations on everyone above the baseline.

4. Lomasky's attempt to reformulate propertarianism on a purely a priori basis

The most thorough attempt to rid propertarian theory of dubious empirical claims is probably Lomasky's. As mentioned above, we base the term, "the classically liberal hypothesis" loosely on his phrase "classically liberal theory."

Lomasky discusses several observations that conflict with classically liberal theory,[116] most of which conflict with normative aspects of it rather than with the empirical hypothesis he finds in it: "These relations [private property] precede civil society."[117] He contends that any claims about the origin of property rights are irrelevant and attempts to reconstruct natural property rights theory without them, promising a purely normative argument based only on respect for contemporary individuals as project pursuers. He lays out a theory of contemporary appropriation without specific reference to the distant past:

> If A comes to possess *I*, to use *I* in the service of his projects, and thereby values the having of *I*, then A has *appropriated I*. … A has reason to acknowledge and respect B's having *I** conditional upon B recognizing and respecting A's special interest in *I*. … A has reason to reject the imposition of a system of collective control over all goods that will determine whether A is entitled to have *I*.[118]

This argument isn't obviously empirical, but look closely at the order of events. The first appropriator is A. When she comes along there is no system of collective control over goods. And the *reason* that A's rights limit the rights of this system of collective control (i.e. government or collective property rights) to determine whether A is entitled to *I* is that A *already* came to possess *I* before this system was "imposed." Why is it that the first comer creates private rather than public ownership? Consider how Lomasky would have to revise his story to allow private and public ownership to appear the other way around (square brackets denote revisions):

> If A comes to possess *I* [a share in a system of collective control over all goods], to use *I* in the service of his projects, and thereby values the having of it, then A has *appropriated I.* … A only has a reason to acknowledge and respect B's having *I** [a private title] conditional upon B recognizing and respecting A's special interest in *I* [the taxation, regulation, and redistribution of property titles]. Therefore, A has reason to reject the imposition of a system of [privatized] control over all goods that will determine whether A is entitled to have *I* [a share in a system of collective control over all goods].

Certain projects one might pursue are best aided by private individual ownership, others by private institutional ownership, and others by collective or government ownership. Lomasky claims to be neutral in his respect for even the most unusual preferences.[119] He, therefore, needs to explain why "*I*" can be a share in land held by a marriage, a partnership, or a corporation but not a share in land held by a corporate entity called a government. If his answer relies purely on individuals standing as project pursuers, he might have a fully a priori argument capable of supporting his conclusions

Unfortunately, Lomasky's only statement capable of explaining the privileged place of private property begins with an empirical claim:

> [P]ersons come to civil society with things that are theirs. A socially defined system of property rights must be responsive to what persons have. In no respect does a civil order entail the collectivization of property.[120]

On an a priori basis, natural rights theory can say people come to civil society with only one thing that is theirs—self-ownership. Whether an individual comes into civil society owning anything else is an empirical question. Consider how Lomasky would have to revise this statement to remove its empirical content:

> [P]ersons [might] come to civil society with things that are theirs [other than self-ownership]. A socially defined system of property rights must be responsive to what persons [might or might not] have. In no respect does a civil order entail [either] the collectivization of private property [or the privatization of public property].

In other words, without his empirical claim, Lomasky's argument says *nothing* about whether governments should have the power of taxation, regulation, and redistribution. To justify that limit he would have to assume that many different individuals held property rights over all resources when civil society was created. In other words, he would have to endorse the same classically liberal hypothesis he is trying to distance himself from and voices skepticism about.

Compare head-to-head:

- Lomasky's account of the classically liberal hypothesis he admits is dubious, voices skepticism about, and claims is irrelevant: "natural relations obtain between persons and objects in the world. These relations precede civil society and thereby establish claims to property that are prior to social determination."[121]
- His reason why the civil order must respect private property: "persons come to civil society with things that are theirs."[122]

These are very much the same empirical claim in different words. Therefore, his argument explicitly falls back on the classically liberal hypothesis.

Lomasky has three alternative arguments based on the characteristics of government.

First, Lomasky writes, "individuals are project pursuers who incorporate the utilization of objects into their pursuits, thereby manifesting a recognizable interest in the *having* of things; social entities as such pursue no projects and have no interests."[123] It is true that social entities have no interest, but marriages, partnerships, and corporations are also social entities, and as such have no interests. Many project pursuers have interests in creating social entities and owning property through them, whether the entities they create are marriages, partnerships, corporations, or governments. If governments should be dispossessed merely because they are social entities, the institutions through which most people hold most of their wealth should also be dispossessed. This argument against government ownership of property is mere special pleading.

Second, Lomasky attempts to draw a distinction between governments and other landholding entities, but his attempts are disappointing. For monarchy he writes:

> [S]uppose that title to all property was conferred to one person, the king, and no one else owned anything. It would follow that should anyone make use of any item except with the sufferance of the king that person would be guilty of interference. By way of contrast, the king would enjoy rightful use of whatsoever he pleased, no matter how inimical that use should prove to be to the interests of anyone else. It would not be interference because the king would only be using that which is *his*. True, this one-sided distribution of property has little to recommend it and needs not be given serious consideration as a potentially *just* arrangement.

This is a patterned argument of the same sort propertarians usually rule out. For example, many people believe a distribution in which the wealthiest 10 percent of the population owns 75 percent of the wealth has little to recommend it. Both arguments indicate that some *pattern* of holdings meets an ideal of distributive justice. Lomasky supposedly gives such arguments no political standing because "any sets of property holdings that emerge from rightful activity are, by definition, distributively just."[124] Categorically dismissing pattern-based objections to the distribution he wishes to defend while relying on a pattern-based argument to attack another distribution of property is simple special pleading. Without either special pleading or the classically liberal hypothesis, Lomasky would have to admit that the property-owning monarch's holdings are "by definition, distributively just."

Third, Lomasky runs into similar problems attempting to rule out community ownership of property:

> If there were only one collective entity and if each person had volunteered antecedent consent to be enrolled in whatever enterprise the collectivity undertook and to adhere to whatever standard of value the collectivity should erect for itself, and if such consent were continually renewed, *then* there would be some basis for judging that rights inhere primarily in the group and not in individuals.[125]

The power of the social contract as a myth seems to have affected Lomasky's argument. He's not thinking of government as a large, landholding corporation. He's thinking of it as described in social contract theory, which does involve dubious claims about everyone continually renewing their consent. But this argument has no force at all against a property-owning democracy as in hypothetical history 2. The argument expects a property-owning government to meet standards that no one expects private landholding institutions to meet.

Under natural property rights theory, appropriators do not need anyone else's antecedent consent; such an idea is anathema to propertarian appropriation theory. At no point does an institution holding appropriation-based territorial rights need the consent of "everyone." Nor do institutional owners need the continually renewed consent of all their owners. And all that is needed is a group of people who agree to perform an act of joint appropriation. Once ownership is established, everyone (shareholders and non-shareholders alike) is ethically obliged to recognize and respect that ownership. If non-shareholders don't consent to a landowner's rules, they must keep off the land, just as they need to keep off any other landowner's property. If some of the individual shareholders don't like the corporation's decisions or don't want the shares they inherit, they can sell or renounce their shares (i.e. their citizenship), but they still have to obey the corporation's (i.e. the property-owning government's) rules, or keep of its land.

Consider citizenship as a form of inherited corporate property.[126] Corporations could not exist if they had to be prepared, at any moment, to give a minority shareholder the power to dissolve the corporation or withdraw their share's worth of the corporation's hard assets. It does not matter whether the shareholder was born on corporate property and inherited share of corporate ownership at birth. Corporate property rights adhere to corporate entities against individual shareholders as much as against non-shareholders. Individual shareholders have to respect corporate property rights until shareholders agree as a group—under whatever procedure the corporation has established—to change the corporation's policy.

With Lomasky's a priori arguments falling into special pleading, his argument cannot do without the classically liberal hypothesis. Thus, the most thorough attempt we know of to build a purely a priori justification for a propertarian economy ends up relying on the same empirical premises that have been passed down since 1689.

5. Conclusion

This chapter has examined the work of some of the most influential propertarian theorists to show that none provides a workable, purely normative argument that property must necessarily be private. All of them explicitly or tacitly rely on the classically liberal hypothesis, even some who have tried to distance themselves from it. We are ready to conclude that if there were a way to construct a purely a priori argument against government-ownership of property, someone would have invented it by now. We cannot rule out the possibility that some propertarian theorist somewhere has formulated one, but we have surveyed a substantial portion of the most influential propertarian literature, and if there is a purely a priori version out there, it has escape the notice of all the propertarians we've surveyed.[127]

One should not be surprised that *historical* theories can be shown to require *historical* premises. One might be surprised at the absence of scrutiny those claims have received. Propertarians have not been held to account either to clarify their use of historical claims or to provide support for them. The use of hypothetical historical claims is so sloppy that we suspect many propertarians are not clear in their own minds about the extent to which their arguments rest on factual premises, exactly what those premises are, and whether those premises have been verified.

This chapter has also attempted to identify what those empirical claims are. The only job remaining for this concluding section is to specify the claim(s), so that the next two chapters can examine their truth value. The theory requires some testable empirical claim(s) capable of supporting the broad empirical claim in the following argument:

Premise 1:	(Ethical claim): the only just property rights structure is that which would result from repeated applications of the principles of appropriation and voluntary transfer.
Premise 2:	(Empirical claim): repeated application of these two principles of justice is only likely to produce a market economy with strongly individualistic private property rights.
Conclusion:	The only just property rights structure is a market economy with strongly individualistic private property rights.

The other two principles, rectification and statute of limitations, are unneeded in this argument, because they only come into play when the first two principles have been violated. The conclusion here implies that any application of the third and fourth principles must maintain the same individualistic property rights structure.

The simple, time-based version of the classically liberal hypothesis would support the second premise:

- Before governments or any other collective institutions appear, all or most resources are appropriated by individuals acting as individuals to established private property rights.

This claim is very much the same as other specifications of the classically liberal hypothesis discussed above: property rights precede civil society; people come to civil society with things that are theirs.

The empirical premise could instead be filled in by two claims, one about appropriation and one about transfer:

- Only individuals acting as individuals perform appropriative acts (i.e. neither individuals acting as monarchs nor groups intending to establish collective, public, or government property rights perform appropriative acts).
- Subsequent transfers of titles are likely to maintain the private character of property rights or return it to a private character. (E.g. no private trader ever obtains enough land to appoint herself monarch of a viable territory.)

These two premises could be replaced by just one premise about transfer:

- Even if collectives perform appropriative acts, subsequent transfers of titles (in the absence of rights violations) are only likely to produce privatized property rights.

Another way to specify the claim would be to put it in the naturalistic terms of Hasnas (see Chapter 3), Schmidtz, and others:

- Individualistic private property rights are the kind of property rights people almost always establish when they are free from aggression.

If by "natural" one means "without violations of the principles of appropriation and voluntary transfer," this statement is equivalent to claiming that private property develops naturally and collective, public, or government property does not.

These different specifications have similar properties. If any of them is correct, empirical investigation into the origin of property rights will show a pattern in which property tends to begin privately or to become private, and it tends to remain private unless force is asserted over it. Of course, historical investigation will show rampant rights violations (under this and most other theories of rights). But we would find a pattern of continually thwarted attempts to establish and maintain private property and few if any attempts to establish collective rights except as a means to assert control over existing private rights.

How governments are established might not be as important as what existed before. At some point, historical investigation would have to show monarchs, governments, or collectives

asserting control over resources that are held *privately* not just over resources held by other collective institutions. Investigation would be likely to find the relevant appropriative acts being performed by individuals, acting as individuals. It would be unlikely to find those acts performed by individuals acting as petty monarchs or by groups acting collectively as bands, tribes, villages, clans, collectives, or governments. Or it would find that such collective appropriators begin to see themselves as business owners rather than as collective polities. They would then begin to treat their land as a commodity and get it into market circulation.

If this historical pattern exists, it would indicate that private property is a universal value and that collective property comes only at its expense. If such evidence exists, it successfully connects propertarians' ethical premises with their conclusions about the just pattern of ownership.

But there are two other possibilities. If such evidence is absent, their case should be rejected as unproven. In that case, the normative principles would say nothing very useful about existing rights in the world. If evidence indicates that groups performing appropriative acts tend to establish collective property rights, and/or that individuals acting as monarchs tend to perform appropriative acts, and/or that private property rights tend to originate in acts of force rather than acts of appropriation, propertarian ethical principles imply something very different than they are supposed to. In this case, the principles would actually support collective, public, or even government ownership of significant territorial rights. Private property rights might not put any ethical limits on government powers to tax, regulate, and redistribute private property.

These patterns are the main things to look for in the investigation in the following chapter, but while we're at it, we can also look for evidence for some of the related claims that have come up in the discussion above. These include:

- Before private property titles were established, most land was used by foragers who did not observe the institution of private property at least in land.
- Farmers (and some commercial landowners) are the first to significantly transform land. (I.e. foragers do not).
- Unappropriated resources are useless or nearly useless.
- Private property rights tend to arise spontaneously (i.e. without a centralized decision or hierarchical enforcement).
- Private property rights tend to arise spontaneously in response to collective action problems, such as the tragedy of the commons. That is, they tend not to be created and distributed intentionally by polities making a centralized decision to solve collective action problems.
- Private property rights do not tend to arise as a method to take power and wealth from groups holding land collectively.
- First possession has held a unique position in all past times as the organizing principle of most social institutions.

Many of these claims are important only to certain specifications of appropriation theory, and some of them are not essential to any version, but they will inform the debate. So, we look at them as we go.

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Notes

[1] Our effort to answer this question is closely related to an earlier work by one of this book's coauthors. Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
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[23] Smith, A. (1982), *Lectures on Jurisprudence. Glasgow edition of the Works and Correspondence of Adam Smith*. Indianapolis, IN: Liberty Fund., 14-16, 459-160; Horne, T. A. (1990), *Property rights and poverty: political argument in Britain, 1605-1834.* . Chapel Hill: University of North Carolina Press., 105-106, 115-116.

[24] Waldron, J. (2005). "Property and Ownership", in E. N. Zalta, (Ed. *Stanford Encyclopedia of Philosophy*. Stanford: Stanfor Univeristy.

[25] Rauscher, F. (2012). "Kant's Social and Political Philosophy", in E. N. Zalta, (Ed. *The Stanford Encyclopedia of Philosophy*. Stanford: Stanford University.; Waldron, J. (2005). "Property and Ownership", in E. N. Zalta, (Ed. *Stanford Encyclopedia of Philosophy*. Stanford: Stanfor Univeristy.; Horne, T. A. (1990), *Property rights and poverty: political argument in Britain, 1605-1834.* . Chapel Hill: University of North Carolina Press., 99-100; Rousseau, J.-J. (1984), *A Discourse on Inequality*. New York: Penguin Classics., 25. Some interpretations of Locke put him in this camp as well—with property ultimately becoming subject to social agreement. But by the majority opinion among Locke scholars is that he believed prior rights put at least some limits on society's authority over property. Widerquist, K. (2010), "Lockean Theories of Property: Justifications for Unilateral Appropriation." *Public Reason*, 2: 3, 3-26..

[26] de Tracy, A. L. C. D. (1970), *A Treatise On Political Economy To Which Is Prefixed A Supplement To A Preceding Work On The Understanding Or, Elements Of Ideology 1970 [1817*. New York: Augustus M. Kelley., vi, xxxv-xxxvi.

[27] Bastiat, F. (1996), *Economic Harmonies*. Irvington-on-Hudson: The Foundation for Economic Education., 204-208.

[28] Rashdall, H. (1915), *Proptery, its Duties and Rights*. London: Macmillan., 39.

[29] Attas, D. (2005), *Liberty, Property and Markets*. Aldershot: Ashgate., 81. Most versions add provisos, but provisos don't affect the argument here.

[30] Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 34, 49, 56-58, 172, 183; Boaz, D. (1997), *Libertarianism: A Primer*. New York: Free Press., 65-74; Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 174-178.

[31] Schmidtz, D. (1990), "When is Original Appropriation *Required*?" *The Monist*: October, 504-518.

[32] Kirzner, I. M. (1989), *Discovery, Capitalism, and Distributive Justice*. Oxford: B. Blackwell., 16-18, 152, 154-155.

[33] Narveson, J. (1988), *The Libertarian Idea*. Philadelphia: Temple University Press., 11; Epstein, R. A. (1995), *Simple Rules for a Complex World*. Cambridge, MA: Harvard University Press., 60-62; Lomasky, L. (1987), *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press., 130. Lomasky's appropriation criteria is close to relative title.

[34] Feser, E. (2005), "There is no Such Thing as an Unjust Initial Acquisition." *Social Philosophy and Policy*, 22: 1, 56-80.

[35] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 152.
[36] Lomasky, L. (1987), *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press. 130, emphasis original.
[37] Epstein, R. A. (1978-1979), "Possession as the Root of Title." *Georgia Law Review*, 13, 1221-1244., 1241.
[38] Narveson, J. (1988), *The Libertarian Idea*. Philadelphia: Temple University Press., 83-92.
[39] Ibid., 83-84.
[40] Ibid., 85.
[41] Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 49, 56-58, 172, 183.
[42] For example, "Let us say that Ruritania is ruled by a king who has grievously invaded the rights of persons and the legitimate property of individuals," 54; "All that 'feudalism,' in our sense, requires is the seizure by violence of landed property from its true owners," 66-67.
[43] Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 172.
[44] Ibid., 56.
[45] Rothbard, M. (1978), *For a New Liberty, The Libertarian Manifesto*. New York: Libertarian Review Foundation., 35.
[46] Long, R. (1996), "In Defense of Public Space." *Formulations*, 3: 3.; Long, R. (1998), "A Plea for Public Property." *Formulations*, 5: 3.
[47] Hoppe, H.-H. (1995), "The Political Economy of Monarchy and Democracy, and The Idea of a Natural Order." *Journal of Libertarian Studies*, 11: 2, 94-121., 94-95, 100, 117-121; Hoppe, H.-H. (2001), *Democracy, the god that failed: the economics and politics of monarchy, democracy, and natural order*. New Brunswick, N.J.: Transaction Publishers.
[48] Machan, T. R. (1989), *The Moral Case for the Free Market Economy: A Philosophical Argument*. Lewiston, NY: The Edwin Mellen Press, Machan, T. R. (1990), *Capitalism and Individualism*. Hemel Hempstead, UK: Harvestor Wheatsheaf, Machan, T. R. (1997), "Does Libertarianism Imply the Welfare State?" *Res Publica*, 3: 2, 131-149, Machan, T. R. (2006), *Libertarianism Defended*. Aldershot, UK: Ashgate.
[49] Machan, T. R. (2006), *Libertarianism Defended*. Aldershot, UK: Ashgate., 91-93.
[50] Kirzner, I. M. (1989), *Discovery, Capitalism, and Distributive Justice*. Oxford: B. Blackwell., 154-155.
[51] Ibid., 16-19.
[52] Schmidtz, D. (1990), "When is Original Appropriation *Required*?" *The Monist*: October, 504-518.; Schmidtz, D. (1994), "The Institution of Property." *Social Philosophy & Policy*, 11, 42-62.
[53] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 150-153.
[54] Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
[55] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 151
[56] Ibid., 152.
[57] Honoré, T. (1987), *Making Law Bind*. Oxford: Oxford University Press., 161-175.
[58] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books. 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, 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," 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, 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.
[59] Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.; Epstein, R. A. (1995), *Simple Rules for a Complex World*. Cambridge, MA: Harvard University Press., 64-67; Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 63. Lomasky, L. (1987), *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press., 145-146. Feser, E. (2005), "There is no Such Thing as an Unjust Initial Acquisition." *Social Philosophy and Policy*, 22: 1, 56-80. argues that most past injustices simply aren't rectifiable, 79; Kirzner, I. M. (1989), *Discovery, Capitalism, and Distributive Justice*. Oxford: B. Blackwell. at one point, seems to rule out the legitimacy of the statute of limitations principle (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 (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.
[60] Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 63.
[61] Epstein, R. A. (1995), *Simple Rules for a Complex World*. Cambridge, MA: Harvard University Press., 64-67.
[62] Ibid., 66-67.
[63] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 158.
[64] Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 51.
[65] Ibid., 172.
[66] Lomasky, L. (1987), *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press., 113-114.
[67] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 322.
[68] Ibid., 293.
[69] Ibid., 174-178
[70] Ibid., 293-294.
[71] Ibid., 293.
[72] Ibid., 10-25, 276-294.
[73] Ibid., 10-25; Rothbard, M. (1982), *The Ethics of Liberty*. Atlantic Highlands, NJ: Humanities Press., 54-56.
[74] Hobbes, T. (1962 [1651]), *Leviathan: or the Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil*. New York: Collier Macmillan., 186.
[75] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 178.
[76] The argument here is derived from an earlier work by one of the authors of this book: Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
[77] Ibid.
[78] They have no property in external assets for her to aggress against, and so the only aggression she could be guilty of within her estate would be toward her subjects' persons.
[79] This section draws heavily on Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
[80] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 169.
[81] Rothbard, M. (1978), *For a New Liberty, The Libertarian Manifesto*. New York: Libertarian Review Foundation., 25.
[82] Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
[83] Narveson, J. (1988), *The Libertarian Idea*. Philadelphia: Temple University Press., 34.
[84] Ibid., 76-78, emphasis original.
[85] Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
[86] Machan, Machan, T. R. (1990), *Capitalism and Individualism*. Hemel Hempstead, UK: Harvestor Wheatsheaf., 80 makes an opportunity-based argument for a libertarian state, although some libertarians argue that opportunities are not an important consideration, Kershnar, S. (2004), "Why Equal Opportunity is not a Valuable Goal." *Journal of Applied Philosophy*, 21: 2, 159–172., 159–172 makes a libertarian argument against the value of opportunity.
[87] Mack, E. (2002a), "Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement." *Politics, Philosophy & Economics*, 1: 1, 75-108., 93.
[88] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 157.
[89] Ibid., 235.
[90] Narveson, J. (1988), *The Libertarian Idea*. Philadelphia: Temple University Press., 85.
[91] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books, Rothbard, M. (1978), *For a New Liberty, The Libertarian Manifesto*. New York: Libertarian Review Foundation, Feser, E. (2000), "Taxation, Forced Labor, and Theft." *The Independent Review*, 5: 2, 219-235..
[92] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 169-172, quote, 172.
[93] Wheeler, S. C. (2000). "Natural Property Rights as Body Rights", in P. Vallentyne and H. Steiner, Eds.). *Left-Libertarianism and its Critics: The Contemporary Debate*. New York: Palgrave, 171–193..
[94] Otsuka, M. (2003), *Libertarianism Without Inequality*. Oxford: Oxford University Press., 21.
[95] Ibid., 19.
[96] This section draws heavily on Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72.
[97] Boaz, D. (1997), *Libertarianism: A Primer*. New York: Free Press., 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, J. (1998), "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*." *The Journal of Ethics*, 2: 1., 10, 23. Narveson, J. (1988), *The Libertarian Idea*. Philadelphia: Temple University Press., 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, I. M. (1981). "Entrepreneurship, Entitlement, and Economic Justice", in J. Paul, (Ed. *Reading Nozick: Essays on Anarchy, State, and Utopia*. Oxford: Basil Blackwell, 380-411., 405-406 and Kirzner, I. M. (1989), *Discovery, Capitalism, and Distributive Justice*. Oxford: B. Blackwell., 155-160.

[98] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books., 55n, 178-182.

[99] Ibid., 178.

[100] Ibid., 178-179n.

[101] Ibid., 182. Our earlier book argued that this claim is dubious. Widerquist, K. and G. McCall (2017), *Prehistoric Myths in Modern Political Philosophy*. Edinburgh: Edinburgh University Press.

[102] Mack, E. (1995), "The Self-Ownership Proviso: A New and Improved Lockean Proviso." *Social Philosophy and Policy*, 12, 186-218, Mack, E. (2002a), "Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement." *Politics, Philosophy & Economics*, 1: 1, 75-108, Mack, E. (2002b), "Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis." *Politics, Philosophy & Economics*, 1: 2, 237-276..

[103] Mack, E. (1995), "The Self-Ownership Proviso: A New and Improved Lockean Proviso." *Social Philosophy and Policy*, 12, 186-218., 190-191.

[104] Ibid., 216.

[105] Mack, E. (2002b), "Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis." *Politics, Philosophy & Economics*, 1: 2, 237-276., 248

[106] For example, Machan, T. R. (2006), *Libertarianism Defended*. Aldershot, UK: Ashgate., 296.

[107] Machan, T. R. (1997), "Does Libertarianism Imply the Welfare State?" *Res Publica*, 3: 2, 131-149., especially 146. Machan' argument about a standard of decency is not given with reference to the Lockean proviso.

[108] Mack, E. (2002b), "Self-ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-ownership Thesis." *Politics, Philosophy & Economics*, 1: 2, 237-276., 243, 271 n13.

[109] Ibid., 249-251.

[110] Ibid., 271, n13.

[111] Ibid., 244, 249

[112] Ibid., 273, n25.

[113] Ibid., 245.

[114] Nozick, R. (1974), *Anarchy, State, and Utopia*. New York: Basic Books. 182; Machan, T. R. (1997), "Does Libertarianism Imply the Welfare State?" *Res Publica*, 3: 2, 131-149.

[115] Which we reject in our earlier book, Widerquist, K. and G. McCall (2017), *Prehistoric Myths in Modern Political Philosophy*. Edinburgh: Edinburgh University Press.

[116] Lomasky, L. (1987), *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press., 113-120.

[117] Ibid., 119-120.

[118] Ibid., 130-131.

[119] Ibid., 151 for example.

[120] Ibid., 131.

[121] Ibid., 131.

[122] Ibid., 119-120.

[123] Ibid., 134.

[124] Ibid., 125.

[125] Ibid., 134-135.

[126] Shachar, A. and R. Hirschl (2007), "Citizenship as Inherited Property." *Political Theory*, 35: 3, 253-287..

[127] Widerquist, K. (2009a), "A Dilemma for Libertarianism." *Politics, Philosophy, and Economics*, 8: 1, 43-72, Widerquist, K. (2009b). "Libertarianism", in P. O'Hara, (Ed. *The International Encyclopedia of Public Policy: Governance in a Global Age, Volume 3*. Perth: GPERU, Widerquist, K. and G. McCall (2017), *Prehistoric Myths in Modern Political Philosophy*. Edinburgh: Edinburgh University Press.