Social Anarchism and the Rejection of Private Property

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> Authority dresses itself in two principal forms: the political form, that is the State; and the economic form, that is private property. —Sébastien Faure[1]

I. Introduction

While anarchists stand uniformly opposed to the state, opinions diverge when it comes to what form the economy should take.[2] Within the world of contemporary analytic political philosophy, proponents of anarchism tend to be either *individualist anarchists* or *anarcho-capitalists*, with both varieties of anarchists maintaining that individuals can (a) unilaterally acquire full private property rights over natural resources (though some individualist anarchists exclude land from this category) and (b) exchange goods and services in a market. However, outside of academic philosophy, the majority of self-identified anarchists endorse some variety of *social anarchism* that rejects both markets and the private property rights on which they rest.[3]

This rejection of private property and markets cleanly demarcates social anarchism from its market-friendly counterparts. However, one might wonder whether the position is genuinely distinct from the socialist views to which social anarchism was supposed to serve as a libertarian alternative. After all, Marxists have been heavily influenced by Friedrich Engels' insistence that

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[1] As quoted by Peter Marshall, *Demanding the Impossible: A History of Anarchism* (Harper Perennial, 1992) 43.

[2] I am indebted to Jason Lee Byas for his numerous helpful comments on an earlier draft of this chapter.

[3] As Roderick Long notes, social anarchists often deny that anarcho-capitalists are genuine anarchists, and vice versa. However, Long rejects this view in favor of a unified conception of anarchism that includes both groups. Roderick Long, "Anarchism and Libertarianism," *Brill's Companion to Anarchism and Philosophy*, ed. Nathan Jun (Boston: Brill, 2018) 286. For a well-known example of the social anarchist rejection of anarcho-capitalism, see Iain McKay et al. "Section F—Is Anarcho-Capitalism a Type of Anarchism?'" *An Anarchist FAQ*, 11 November 2008, available at http://anarchism.pageabode.com/afaq/secFint.html.

a communist society would be a stateless one.[4] And, while most socialists do envision the state playing a prominent role in managing the economy, there are several influential exceptions who argue that socialism is best realized via the dissolution of top-down state control in favor of radically expanded, bottom-up democracy—a vision that many social anarchists similarly endorse.[5]

This chapter argues that even when socialists and social anarchists affirm the same conclusions, they arrive at those conclusions in a distinctively anarchist way. Specifically, the chapter presents an argument against private property that begins from premises that all varieties of anarchists should be tempted to embrace, namely, those advanced by Michael Huemer in his recent argument for anarchism (or, more precisely, anarcho-capitalism).[6] It then uses these premises—coupled with Huemer's intuition-driven approach to ethical reasoning—to demonstrate that the non-consensual appropriation of unowned property is theoretically unacceptable. In doing so, it provides a novel path to anti-capitalist conclusions that both expresses and defends the social anarchist philosophical position.

II. Huemer's Anarchism

Huemer's argument against the state begins with the premise that the use of coercion—which Huemer stipulatively defines as the use or threat of physical force—demands special justification.[7] Given that the laws imposed by the state are backed by the threat of force, it then

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[4] Friedrich Engels, "Socialism: Utopian and Scientific," *the Marx Engels Reader*, 2nd ed., ed, Robert C. Tucker (New York: Norton, 1978) 711-3. Paul Thomas similarly notes that abolishing the state "is a goal anarchists have shared with a good many Marxist and other nonanarchist revolutionaries." Paul Thomas, Review of *Anarchism: A Theoretical Analysis*, by Alan Ritter, *Political Theory* 10.1 (Feb. 1982): 141-4, at p. 141.

[5] See Erik Olin Wright, *Envisioning Real Utopias* (New York: Verso 2010). For an example of social anarchist endorsement of this sort of vision, see Murray Bookchin, "Anarchism: Past and Present," *Reinventing Anarchy, Again*, ed. H. J. Erhlich (AK Press, 1996) 19-30. For a contemporary example in analytic philosophy that suggests anarchism involves the bottom-up democratic management of most resources, see Nicholas Vrousalis, "Libertarian Socialism: A Better Reconciliation between Equality and Self-Ownership," *Social Theory and Practice* 37.2 (Apr. 2011): 211-26, at 221-3. (While Vrousalis refers to such management as "libertarian socialism" rather than "anarchism," his citation of Proudhon and Kropotkin as paradigmatic libertarian socialists suggests he considers the first term to be largely synonymous with the second.)

[6] Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (London: Palgrave 2013).

[7] Huemer 8.

follows that special justification must be given to legitimate these laws. To illustrate this point, Huemer considers the case of the private individual who takes it upon herself to start levying taxes on her neighbors, coercively regulating their behavior, and waging war against other neighborhoods.[8] He argues that the vigilante's behavior is intuitively impermissible, as there is no adequate justification for her coercive behavior. However, most people see there being no moral problem when these same actions are carried out by an agent of the state. Thus, Huemer suggests that most people tacitly assume that there is something special about *the state* (as opposed to its actions) that justifies its use of coercion.[9]

This special property is the state's presumed possession of *political authority*—a moral status that grants its possessor both a right to coercively rule and a right to be obeyed.[10] Specifically, Huemer suggests that these rights are governed by five principles: the rights are *general* in the sense that they apply to (almost) all citizens; the rights are *particular* to the citizens and residents of the governed territory; the rights obtain *independently* of the content of the laws enacted (excluding, perhaps, seriously unjust laws); the rights are *comprehensive* in the sense that the authority has the right to govern a wide array of activities; and the state is *supreme* such that no other agent has these same rights.[11] It is this pair of fairly unrestricted rights that the vigilante lacks and the state purportedly possesses, with this supposed difference explaining why only the state can permissibly use coercion to tax, regulate, and wage war.

But what could ground these supposed rights? In virtue of what fact would the state's use of coercion be permissible given the impermissibility of identical acts by private individuals? As

[8] Huemer 10-11.
[9] Huemer 11.
[10] Huemer 5.
[11] Huemer 12-3.

Huemer notes, it is not easy to answer these questions, as many stock justifications for coercion seem, upon reflection, to be insufficient:

> If you have a friend who eats too many potato chips, you may try to convince him to give them up. But if he won't listen, you may not *force* him to stop. If you admire your neighbor's car, you may offer to buy it from him. But if he won't sell, you may not threaten him with violence. If you disagree with your coworker's religious beliefs, you may try to convert him. But if he won't listen, you may not punch him in the nose. And so on. In common sense ethics, the overwhelming majority of reasons for coercion fail as justifications.[12]

However, while these quick justifications for the right to coerce fail, the history of political philosophy features many more sophisticated and elaborate defenses of the state's right to coerce. In the face of this array of purported grounds for political authority, Huemer's argumentative strategy involves identifying the most plausible and influential suggestions and arguing against each of them in turn, typically by presenting counterexamples where the purported ground of political authority obtains but the authority figure in question still seems to act impermissibly in employing coercion. Given the apparent failure of the posited accounts to ground political authority, Huemer concludes that the state thereby has no more right to be obeyed and/or enforce its edicts than a non-state actor has. Finally, he moves from this position of *philosophical anarchism* (i.e., the denial that the state has authority) to a defense of *political anarchism* wherein he argues for the abolition of the state.

Huemer political anarchism rests on the proposal that all the valuable functions of the state (e.g., the provision of security) can—and should—be taken over by private associations and firms funded by voluntary market exchange rather than taxes. He, thus, expounds a distinctly anarcho-capitalist version of anarchism wherein the rejection of the state's authority is accompanied by an affirmation of private property rights. However, this chapter will argue that the same considerations and argumentative approach that lead Huemer to reject state authority also militate against the conversion of natural resources into private property via purported acts of initial appropriation. Specifically, the following sections will mimic Huemer's argument,

[12] Huemer 10.

beginning with a discussion of the coerciveness of private property before considering—and rejecting—the most plausible posited grounds for the right to coercively enforce property claims. Given the apparent absence of an adequate ground for the right to property, the chapter concludes that those moved by Huemer's argument against political authority ought to be social anarchists, rejecting private property along with the state.

III. Private Property and Coercion

As noted above, Huemer's starting premise is that the activities of the state require special justification because they are coercive, with all laws resting on the threat that physical force will be employed against non-compliers. However, the same is also true of private property claims: to assert that one has the right to some object or land is to maintain that one has the right to exclude others, where that right implies the permissibility of coercive enforcement. Indeed, when the purported owner of some object says, "This is mine, you can't touch it," this expression includes a tacit "…or else," where what is threatened almost always includes physical force of the kind that makes her claim coercive in Huemer's sense.

Further, just as the state's use of coercion demands special justification, so, too, does the enforcement of property rights. Recall that Huemer illustrates his claim about the need for special justification by drawing attention to the intuitive unacceptability of coercive state activities when those activities are carried out by a non-state actor. However, one can appropriate this strategy to highlight the troubling aspects of coercive property rights enforcement. Indeed, just as the actions of the state seem impermissible when carried out by a non-authority figure, the enforcement of property rights claims by a non-owner seem similarly unacceptable.

To illustrate this point, consider the case of a cruise ship that docks at a previously undiscovered island. The passengers are excited to spend the day exploring the island, but, before they have a chance to disembark, one passenger runs to the end of the gangplank and declares, "Sorry, but I have decided that this island is for my personal use only! I forbid any of you from setting foot on it—unless, of course, you pay me $50 and take off your shoes before

getting off the boat." When the first passenger in line ignores this edict and walks onto the island, the declaration issuer's friends rush over and seize the "trespasser" and begin binding her wrists and ankles. She struggles a bit, but after they spray sunscreen in her eyes, she stops resisting and is carried back onto the ship and locked in one of the cabins until she agrees to stay off the island.

If someone behaved like the declaration-issuer, she would be widely viewed as a menace and kidnapper who wrongfully denies people the freedom to go where they wish. However, when a property owner does the same thing—that is, relies on violence and the infliction of harm to protect some sphere of influence—most people don't see any moral problem. Thus, just as people tolerate coercion when it is employed by purported authorities, they also seem willing to tolerate the coercive acts carried out by purported property owners.

Further, note that the rights popularly ascribed to property owners strongly resemble the rights of authority ascribed to the state: they are *general* in the sense that they apply to all other persons who come into contact with the owner's property (just as an authority claims to govern all those who enter its territory); they are *comprehensive* in the sense that the owner has the right to fully determine what happens with her property; they are *particular* in the sense that the property owner gets to regulate *only* those who come into contact with her property; and the owner is *supreme* in that no other agent has the same rights as she does with respect to her property. Finally, and most importantly for the purposes of this chapter, the rights are *content-independent*: whether or not a person holds a property right does not depend on what she does with the claimed resource (within the bounds of respecting others' rights) or what effect her possession of the resource has on others. This independence doesn't have to be absolute; for example, it may be the case that one has rights over a thing just in case no serious harm will befall others as a result of their exclusion. However, one cannot be said to genuinely own a thing

if, for example, one's rights over that thing are contingent on using it in a way that is maximally efficient or furthers some other moral end.[13]

For proponents of property rights, the fact that such rights share both the form and the coercive element of political authority represents something of a problem given that, as Huemer notes, it is difficult to find adequate justifications for coercion beyond consent and self-defense.[14] Indeed, Huemer goes through the prominent proposed justifications for state coercion and argues that each fails, thereby demonstrating just how hard it is to find an adequate ground for permissible coercion. Of course, proponents of property rights have provided their own set of arguments purporting to demonstrate that property owners have the right to coercively exclude others. However, as this chapter will now argue, even the most promising of these accounts fail to adequately justify the coercion associated with private property. Thus, just as Huemer judges the state to be lacking in authority, the chapter will conclude that no one has the right to coercively enforce property claims.[15]

IV. Transformation and Control

While it isn't possible to consider every proposed ground for property rights, there are several popular proposals that have received the endorsement of prominent defenders of private property. If it can be shown that these accounts do not succeed, that will at least be suggestive that no such grounds can be found (though, as with proposed bases for legitimate authority, it is possible that a successful justification might one day be found). Specifically, this chapter will consider three influential accounts of how persons acquire the right to exclude others from previously-unowned natural resources, beginning with a Lockean "labor-mixing" view

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[13] Note that one could attach a similar qualification to the content-independence of authority maintaining that authorities cannot oblige their subjects to inflict serious harm on others.

[14] Huemer 10.

[15] Kevin Vallier has also noted that Huemer's argument threatens to undermine private property. See Kevin Vallier, "On the Problematic Political Authority of Property Rights: How Huemer Proves Too Much" *Bleeding Heart Libertarians*, 12 August 2013, available at https://bleedingheartlibertarians.com/2013/08/on-the-problematic-political-authority-of-property-rights-how-huemer-proves-too-much/. However, Vallier takes this to be reason to reject Huemer's argument as part of a *modus tollens* inference; by contrast, this chapter affirms Huemer's argument and infers via *modus ponens* that property rights must be rejected.

championed by Edward Feser.[16] The chapter will then turn to discussing compensation-based accounts and an alternative labor-mixing account in sections V and VI.

According to Feser, a person gains rights over previously-unowned natural resources by either (a) gaining control of or (b) sufficiently modifying those resources.[17] Thus, a homesteader who tills the soil of some unowned patch of land or builds a sizeable fence around its perimeter would thereby come to own that land. However, consideration of other cases casts doubt on Feser's proposal. Consider, for example, the case of a person who deliberately starts a wildfire that scorches an entire forest, blackening thousands of acres of trees and earth. Suppose that a hiker then tries to enter the forest to survey the damage. May the fire-starter have the hiker imprisoned or threaten to shoot her if she does not leave the burned area? Surely not. Thus, the mere modification of land and objects seems insufficient to render coercive exclusion permissible.

Why does Feser think otherwise? To defend his thesis, he considers various cases of resource modification and argues that the more *significant* the modification of the resource, the more plausible an associated ownership claim becomes. For example, he suggests that whittling a piece of driftwood plausibly grants ownership in a way that blowing air on it does not. Similarly, while pouring a can of tomato juice into the sea does not plausibly generate ownership rights, Feser contends that, in the case where one pours a large quantity of nuclear waste into a

[16] Edward Feser, "There is No Such Thing as an Unjust Initial Acquisition," *Social Philosophy and Policy* 22.1 (2005): 56-80. Feser later moves away from this view and presents a new philosophical foundation for a more limited set of property rights. While many of the proposed grounds might be classified with those accounts discussed below, Feser's effort to ground his argument in the "classical realist" tradition (associated with Aristotle, Augustine, and Aquinas) makes such a grouping a bit tendentious. Unfortunately, addressing his updated view with all of its underpinning metaphysical assumptions goes beyond the scope of this chapter. Those interested in his revised view should see Edward Feser, "Classical Natural Law Theory, Property Rights, and Taxation," *Social Philosophy and Policy* 27.1 (2010): 21-52.

[17] An earlier version of this claim is advanced by Murray Rothbard, *The Ethics of Liberty* (NYU Press, 1998) 34. While Rothbard is more influential than Feser, the discussion here will focus on Feser's account, as he provides a more robust defense of his view relative to Rothbard, who seems primarily focused on explicating the position.

body of water such that it begins to glow bright green, "it would *not* be implausible in such cases to say that I have come to acquire the sea."[18]

It does not seem charitable to take Feser's contention to be that making the sea glow an irradiated green makes it plausible that one owns the sea, as this judgment would seem to run quite contrary to commonsense intuitive judgments. Rather, he is better understood as claiming that it is *more* plausible that one owns the sea in this case than in the tomato juice case. Indeed, the comparative nature of his claim is more clearly evinced in his description of a third case wherein he suggests that, while it would be "absurd" to think that the United States government owns Pluto (which no person has ever set foot on), it "would not be *absurd* for the United States government… to claim ownership of the area of the moon's surface on which Apollo 11 landed."[19]

The claim, then, seems to be that if modification and/or control increases the plausibility of ownership, then a suitably extensive amount of modification/control is sufficient for ownership. However, an additional problem with this argument—beyond the counterexample discussed above—is that if some fact obtaining enhances the plausibility of a proposition, that might merely show that the fact is a *necessary* condition of that proposition being true rather than a sufficient condition. For example, the claim that someone has memorized Tolstoy's *War and Peace* would be much more plausible if they had read the book at least once than if they had never heard of it. However, it does not follow that having read the book is a sufficient condition for having memorized it. Alternatively, judgments of plausibility might not track anything of moral relevance. For example, it seems much more plausible that the King of Thailand is the legitimate ruler of that country than a pediatrician from Texas. However, it does not follow that the rules of royal succession ground legitimate authority (they are neither a necessary nor sufficient condition of such authority).

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[18] Feser 65. The tomato juice example is a nod to Nozick's contention that a person who pours a can of owned tomato juice into the sea seems to have lost ownership of her juice rather than gained ownership of the sea. Robert Nozick, *Anarchy, State, and Utopia* (NY: Basic Books, 1974) 175.

[19] Feser 65.

The suggestion that control might ground the permissibility of coercive exclusion—where "control" denotes the physical ability to determine what happens to a thing (e.g., via the building of a fence or the deployment of guard dogs)—also seems to run contrary to commonsense morality.[20] Suppose that the pushy passenger in the island case was able to quickly get ashore and repeatedly knock back the gangplank, thereby preventing other passengers from accessing the island. It does not seem that this success entitles her to then deploy violence against anyone who does manage to make it ashore. Indeed, the conclusion that she is so entitled seems to rest on an unacceptable inference from *de facto* to *de jure* control of resources. Alternatively, one might note that the right to coercively exclude is a right to use force to control a space, with this method of establishing control being what demands justification. Given this, it is unclear how appealing to the fact that control has been established via force—as Feser does when he cites the deployment of guard dogs as one means of establishing control—can ground its own permissibility.[21]

In response to this objection, the defender of Feser might suggest that it is the *non-coercive* control of some resource that grounds the permissibility of coercive control of that resource. In this way, his claim about control could be largely sustained without the problematic assertion that states of affairs can be self-justifying. However, first, the gangplank case casts doubt on the inference from non-coercive control to rightful ownership. And, second, note that the use of force to control some resource is only necessary if non-coercive forms of control prove inadequate—i.e., one *has not established control* of the resource through non-coercive means alone. In other words, even if one grants that the non-coercive control of resources entails the permissibility of coercive control of those resources, any use of coercion entails the absence of such non-coercive control. Thus, there can be no instance of coercive exclusion that is permissible in virtue of there being prior non-coercive control of the resource.

[20] Feser 69.
[21] Feser 69.

Why think that control—either coercive or non-coercive—grounds property rights? Feser provides two arguments to support this contention. First, he makes the comparative plausibility argument discussed above, citing the moon lander case as evidence that establishing control is a plausible form of initial appropriation. However, as discussed above, such comparative assessments do not establish the desired conclusion. Second, Feser argues that control is what grounds people's *self-ownership*, i.e., the rights they have to use their bodies, exclude others from using their bodies, transfer these rights to their bodies, etc. He posits that what grounds these intuitively plausible rights is that we exercise *control* over our bodies; indeed, a person gains the rights over her body by "just 'showing up' and being the first to 'take possession'" of it, with coercive enforcement of those rights then becoming permissible.[22] However, if establishing control is how one gains ownership rights of one's body, why wouldn't establishing control of a natural resource also give one rights over that object?[23]

There are three quick responses that can be made to this argument. First, the argument rests on equivocation between the kind of control one has of one's body and the kind of control Feser associates with initial appropriation. In the case of the body, the agent exercises direct control over the body in the sense that she can manipulate the body simply by willing it to do certain things; by contrast, the control over resources Feser describes involves physically keeping others from being able to manipulate those resources, e.g., by building a fence or placing armed guards around a patch of land.[24] However, if agential control is what makes the thesis of self-ownership plausible, it is unclear why physical control would make resource ownership plausible.[25]

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[22] Feser 66.

[23] There is another species of argument that argues that the right to self-ownership supports a right to private property because external objects are actually a *part* of the body one owns, even if those objects are both detached from one's "main" body and cannot be manipulated simply via the will. While addressing these arguments is beyond the scope of this chapter, interested readers should see Samuel C. Wheeler, "Natural Property Rights as Body Rights," *Noûs* 14.2 (May 1980): 171-93; Daniel Russell, "Embodiment and Self-Ownership," *Social Philosophy and Policy* 27.1 (2010): 135-67.

[24] Feser 65.

[25] That agential control is what does the work is reflected in the intuition that it is wrong to act on even unowned objects that an agent is wielding as a direct extension of her body (e.g., an object she is holding or an artificial leg).

Second, even if one grants that both forms of control are equally relevant to establishing ownership, Brian McElwee persuasively argues that the plausibility of the self-ownership thesis stems *not only* from the fact that one controls one's own body, *but also* from the facts that one feels pain and pleasure through one's body, one needs one's body, and one's body is irreplaceable when it comes to satisfying this need.[26] If these conditions are individually necessary and jointly sufficient for having ownership of an object, then mere control of a natural resource will not suffice to establish ownership of that resource.

Finally, if one takes seriously Feser's control thesis, then it would seemingly follow that parents own their children. After all, assuming that agency emerges in children sometime after birth, the parents of a child are the first people to "show up and take possession" of its body. Thus, they would seemingly have the right to that body, with the agent who comes to inhabit that body being analogous to the latecomer who arrives at a patch of land that has already been fenced in.[27] This implausible conclusion would seem to be a *reductio* of Feser's argument.[28]

V. Compensation

Rather than ground property rights in modification or control, many defenders of private property contend that some resource can be converted into private property if the exclusion is to the benefit of the excluded—or, at the very least, leaves them no worse off than they would have been in some relevant baseline scenario. Most famously, John Locke suggests that appropriation of natural resources could occur if "enough and as good" is left for others (and certain other

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[26] Brian McElwee, "The Appeal of Self-Ownership," *Social Theory and Practice* 36.2 (Apr. 2010): 213-32.

[27] Susan Moller Okin defends this claim at greater length and detail in the context of arguing against Nozick's entitlement theory of justice. See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989) 79-85.

[28] Feser might reply that when agency emerges within the child, this emergence strips the parents of any property rights they might have over her body. However, it is unclear why this should be so. Is the child's relation to her body not analogous to a latecomer's relation to already-appropriated natural resources? Granted, the child might *need* her body in order to pursue her projects or even survive, but the same might equally be true of the latecomer vis-à-vis appropriated resources. Further, Feser's argument from self-ownership rests upon the claim that self-ownership is established by being the first to show up and take possession of something, with this serving to explain why it is that a person gains ownership of external resources the same way. However, given that it is a person's parents who are actually the first to show up and take possession of the body, Feser faces a dilemma: he must either grant parents continuing ownership of their child's body or admit that there is some basis for latecomers arriving and stripping owners of the property rights they had gained via being the first to transform and control some resource.

conditions are met).[29] Similarly, Robert Nozick argues that an act of appropriation can occur if it leaves others no worse off than they would have been in a world without private property rights.[30] And, David Schmidtz argues that appropriation of resources can occur when it prevents the destruction of the commons, as such appropriation leaves the excluded (and, latecomers in particular) better off than they would have otherwise been in terms of access to those resources.[31]

Alternatively, many defenders of property rights appeal to the benefits that all persons derive from a *system* of private property, with initial appropriation then sanctioned because it is necessary for bringing about such a system. For example, Loren Lomasky argues that, given that human beings are inclined toward the pursuit of projects—and the pursuit of projects requires *de facto* control rights over land and resources—the possession of private property rights is a necessary condition of living a rich and meaningful life.[32] He maintains that it is only through sustained control of claimed property that a person can effectively develop her talents, realize her plans, and express herself and her vision. Similarly, Eric Mack argues that the sustained discretionary control of natural resources plays a key role in "individuals' living their own lives in their own chosen ways" via purposive activity.[33] Bas van der Vossen argues that the control of resources is necessary for both "securing the necessities of life" and pursuing projects that are "central to a full and meaningful life."[34] And, Jason Brennan, in addition to endorsing Lomasky's proposal, argues that owning property is crucial to feeling "at home" in the world and protecting the owner's sentimental attachments to the particular resources that she has incorporated into her life.[35]

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[29] John Locke, *Second Treatise of Government* (Urbana, IL: Project Gutenberg, 2005) § 27. Retrieved June 18, 2019 from https://www.gutenberg.org/files/7370/7370-h/7370-h.htm.

[30] Nozick 177-81

[31] David Schmidtz, "When is Original Appropriation *Required*?" *The Monist* 73.4 (Oct. 1990): 504-18.

[32] Loren Lomasky, *Persons, Rights, and the Moral Community* (New York: OUP, 1987).

[33] Eric Mack, "The Natural Right of Property," *Social Philosophy and Policy* 27.1 (2010): 53-78, at 62. See also Eric Mack, "Self-Ownership and the Right Of Property," *The Monist* 73.4 (1990): 519-43.

[34] Bas van der Vossen, "Imposing Duties and Original Appropriation," *The Journal of Political Philosophy* 23.1 (2015): 64-85 at 77-8.

[35] Jason Brennan, *Why Not Capitalism?* (New York: Routledge, 2014) 75-82.

However, the fact that coercion ultimately benefits some other person would not seem to be an adequate justification for that act. As an illustration of this point, consider the case of two castaways stranded on an island with minimal resources. After a few months of bare subsistence, something fortunate happens: a small motorboat washes up onto the beach. However, when the castaways attempt to climb into the boat, they quickly discover that the boat can only carry one of them, as the weight of both causes the bow to submerge. Thinking quickly, one castaway says to the other, "You have to get out of the boat. There is only room for one of us, and I'm taking it. I can't live my life here; I have goals to achieve and a family back home. I'm sorry, but you need to get back on the beach."

Unwilling to be cowed by her pushy companion, the second castaway refuses to move, crossing her arms defiantly. In response to this refusal to comply, the first castaway declares that the second "has left her no choice" and punches her in the face, physically knocking her off the boat and leaving her bloodied on the beach. Stubbornly, the beaten castaway staggers back to the boat and again tries to climb aboard, but the first pushes her back down and quickly binds her arms and legs, as it is clear this is the only way to keep her from the boat.[36] "I'm sorry it had to come to this," the pushy castaway says, "But, ultimately, this is for your benefit! If I were to stay on the island, there would be many fewer resources to go around; indeed, my departure effectively doubles your wealth! So, you really have no basis for complaint here." She then fires up the engine and motors off toward civilization.

Does the fact that the pushy castaway leaves her companion (significantly) better off in the long run render her use of coercion permissible? Seemingly not. Repeatedly punching and temporarily confining another remains impermissible, even if those actions leave her better off all things considered. It seems clear in this case that the pushy castaway acted impermissibly. However, this assessment would apply equally to the coercion deployed by those property rights

[36] The goal here is to describe the various cases in such a way that the force used is the minimum necessary to prevent a stubborn party from using the claimed resource. Thus, if the use of force in a case is judged to exceed this threshold, it should be re-imagined with less force used. However, the suggestion here is that such modification will do little to diminish the intuition that the use of coercion in the case is impermissible.

claimants: the fact that one person exercising control over some resource would make another's life much better does not make it permissible for the former to threaten, attack, or imprison the latter as a means of controlling that resource.

Note that this conclusion holds even when coercion generates significant benefits for *both* the coercer and the coerced. Indeed, in the island case, both parties benefit significantly from the pushy castaway's employment of coercion, yet the described use of force still seems impermissible. Additionally, consider what Huemer says about mutually-beneficial coercion:

> Normally, it is wrong to threaten a person with violence to force compliance with some plan of yours. This is generally true even if your plan is mutually beneficial and otherwise morally acceptable. Thus, suppose you are at a board meeting at which you and the other members are discussing how to improve your company's sales. You know that the best way to do this is to hire the Sneaku Ad Agency. Your plan will be morally unobjectionable and highly beneficial to the company. Nevertheless, the other members are not convinced. So you pull out your handgun and *order* them to vote for your proposal. This behavior would be unacceptable, even though you are acting for everyone's benefit and even though your plan is the right one.[37]

While Huemer intends this case to call into question a purported justification for state authority, it seems to apply equally to the coercive enforcement of property rights: it is wrong to use the threat of violence to force people to act in a certain way with respect to natural resources, even if that plan is otherwise unobjectionable and to everyone's significant benefit.

In addition to the Sneaku case, Huemer's arguments against paternalistic coercion also bear directly on this proposed ground for property rights. Specifically, Huemer considers the case of a person who threatens another with a gun in order to get the latter to stop eating potato chips that were contributing to premature death due to heart disease. In this case, Huemer contends that the use of coercion is "indefensible" despite the fact that it would prevent significant harm from befalling the chip-eater.[38] In other words, he takes coercion to be impermissible even if it provides a very large benefit to the coerced party. Given that the benefits

[37] Huemer 94.
[38] Huemer 97.

of private property are almost always smaller than those accrued by the chip-eater (namely, being saved from a painful premature death), the fact that the latter cannot justify coercion implies that the former cannot either.

Granted, Huemer also presents a case that seems to elicit the opposite intuition from his paternalism case, namely a case where coercion is used to keep a lifeboat from sinking. In this case, he suggests that the benefit of everyone not drowning justifies a person using coercion to force everyone else to bail water.[39] However, first, one might think that there is an important disanalogy between lifeboat-style cases and the case of private property: while the absence of coercion in the lifeboat case results in everyone suffering severe harm, the absence of private property merely results in foregone material benefit (albeit, potentially significant benefit). Second, even if one thinks there is an analogy between the disaster that comes from not bailing water and the disaster of not having property rights, note that the general principle most plausibly derived from the lifeboat case is that coercion is permissible if (a) it is necessary to avoid severe harm and (b) that harm is much worse than the coercion and its effects. However, very few private property claims meet these jointly sufficient conditions. Thus, the most that the defender of property rights could derive from the lifeboat case is the conclusion that one could use coercion to exclude others from the bare quantity of resources necessary to ensure their survival—and only when such exclusion did not similarly imperil those excluded.

Further, one might reasonably deny that the permissibility of coercion in such cases implies that the coercer has a genuine property right over the resources in question. Recall from section II that one of the defining features of a property right is that it is *content independent* — i.e., the right obtains largely irrespective of one's use of the owned resource or others' relations to it. However, if this is a defining feature of a property right, then permissible exclusion grounded in necessity will not qualify as such, as the right to coerce would immediately vanish if either (a) the coercion was no longer necessary to avoid severe harm or (b) the coerced party

[39] Huemer 94.

would suffer comparable harm from being coerced. Given that the principle of severe harm avoidance makes the permissibility of coercive exclusion contingent on a fairly narrow set of circumstances obtaining, it cannot ground any sort of genuine property right.

VI. Expropriation of Labor

The final proposal to be considered here is another neo-Lockean labor-mixing view wherein it is held that coercive exclusion is permitted when persons have labored on some natural resource. Specifically, a popular suggestion is that once a person labors on a resource, any unpermitted use or appropriation of that resource amounts to the expropriation of that person's labor. It is then maintained that the laborer has a prior right against such expropriation, with this right grounding the permissibility of her coercively excluding others from the resource. For example, Mack argues that taking—and, presumably, using without permission—something in which a person has invested her labor is an expropriation of that labor and thereby a violation of her right to self-ownership.[40] Indeed, he argues that taking a created thing is the same kind of expropriation of labor as forcing another to make something for one's own benefit.[41] Similarly, John Simmons argues that when a person works on a resource, she incorporates it into her plans such that any unpermitted use of that resource would be "a violation of [her] right to govern [herself]."[42]

There are two problems with this account. First, some of the same counterexamples that plague the transformation account can be repurposed to raise doubts about invested labor as a grounds for permissible coercion. Consider the forest fire case, but add in the stipulation that the fire-starter expends significant effort to start that fire, e.g., by gathering a large pile of shredded

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[40] Mack, "Natural Right," 72. Mack does not think that laboring on a thing is the only way to establish a property right; however, the expropriation justification for gaining a property right is particular to labor. Mack's other methods of claiming property appeal to property's ability to facilitate a person living her life, as discussed in section V.

[41] Mack, "Natural Right," 72.

[42] A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge, 2001) 262.

bark and kindling that she finally ignites after hours of intense labor rubbing sticks together. Now, suppose that someone seeks to hike through the scorched territory, only to be stopped by the fire-starter who, with gun drawn, says, "If you walk through this land, that's equivalent to you having forced me to go through all that effort for your benefit! I refuse to let you enslave me in this way, so I'll shoot you if you set foot on the product of my labor." In this case, the appeal to invested labor seems inadequate to render exclusionary coercion permissible.

It might be suggested that the fire-starter's demand is unreasonable because the hiker moving through the forest does not preclude the fire-starter from enjoying the fruits of her own labor. Indeed, it seems more like the hiker is freeriding on the efforts of the fire-starter rather than forcing the latter to labor for her benefit. By contrast, if the hiker were to somehow take the forest away from the fire-starter, the latter would have a better claim to having been wronged in a way that warrants the use of coercion to prevent that outcome from obtaining. However, even if one were to affirm this suggestion that the fire-starter *is* wronged by expropriation—though not by mere freeriding—it would still be the case that an appeal to expropriation could ground only a very limited set of property rights, where those rights included a right against expropriation but *not* a full exclusion right (as there would be no right to exclude when others' use of the owned thing does not preclude use by the owner).

Further, it is unclear that invested labor makes it permissible to use coercion to prevent expropriation. Suppose, for example, that the hiker attempted to carry away some of the charcoaled byproducts of the fire. Would the fire-starter's efforts make it permissible for her to threaten the hiker with imprisonment if the latter did not immediately returned the blackened wood? Again, the answer seems to be "no."

In addition to this apparent counterexample, there is a circularity problem for any account of property rights that appeals to labor investment to ground the permissibility of coercive exclusion. To see this, consider the case of a vandal who receives permission from a car owner to repaint the latter's rightfully-owned car. However, suppose that, upon completing the paint job, the vandal tries to forcibly prevent the owner from driving away in the car, arguing that the

owner is taking her labor, where such expropriation amounts to her having been forced to paint the car for the owner's sole benefit. In this case, it seems clear that the vandal's claim lacks merit and her use of coercion is impermissible.

Why does her claim lack merit? The obvious answer is that claims about expropriation are made against a background of property rights, where those rights constrain what counts as expropriation. In this case, the car owner has both the right to exclude the vandal from laboring on her car and the independent right to use her car. Thus, while the owner waives her exclusion right, her use right persists, meaning that she acts fully within her rights when she drives away in the painted car. Given that the action that precludes the vandal from enjoying the fruits of her labor is an action to which the owner has a right, the vandal has no legitimate basis for a complaint of expropriation.[43]

However, if rights-protected action cannot be expropriative (as the vandal case suggests), then the expropriation justification for property rights becomes circular. Note that the proposed account maintains that some person has a right to exclude others from a labored-on resource—i.e., owns the resource in virtue of the fact she has labored on it—(if and) only if their use of that resource would expropriate the labor she has invested in that resource. But, given that property rights constrain what counts as expropriation, the other parties would be expropriating the person's labor only if they have no right to use the resource. Further, presuming that, in the absence of property rights the world is unowned and all are at liberty to use the available natural resources, those others would lack a right to use that resource only if the original person owned the labored-on resource. Thus, on the expropriation account, it follows that some person owns a

[43] Herbert Spencer makes a similar argument against the appropriation of land via appeal to the case where a trespasser makes improvements to someone else's owned house. However, his argument differs in two important respects from the argument here. First, he assumes full ownership of the house while, in the vandal case, the ownership of the car is only partial (more on this point at the end of this section). Second, he takes the home-improver to have a claim to the added value to the house, though not the house itself. However, the vandal case casts some doubt upon this conclusion. Does the car owner really owe the vandal compensation for her unsolicited efforts? Perhaps, but much more would need to be said on this point. See Herbert Spencer, *Social Statistics: Or, the Conditions Essential to Human Happiness Specified, and the First of Them Developed* (London: George Woodfall and Son, 1851) 118-9.

labored-on resource only if they own that labored-on resource. Given this vicious circularity, the expropriation account ought to be rejected.

To this point, it might be objected that the vandal case involves labor on an *owned* object (the car) while the purported acts of initial appropriation involve labor on *unowned* land and resources. However, note that ownership is not a single unitary right but, rather, a *bundle* of rights including the rights to use, exclude, transfer, etc. Further, note that when some resource is said to be "unowned," this means that all persons may permissibly use that resource—i.e., they have a *right to use* that resource. Thus, the term "unowned" is somewhat misleading, as it implies that all persons have (very) *partial* ownership of the resource, where such ownership involves possessing a use right but none of the other rights that come in the "full ownership" bundle. However, this means that an unowned resource is relevantly analogous to the car in the vandal case, as there the car owner has waived her exclusion right, leaving her with the same kind of partial ownership that all persons have over unowned resources. Granted, the car owner still retains some additional rights beyond the right to use (e.g., a transfer right). However, the intuitive judgment stays the same even if one modifies the case by stipulating that all such rights had been previously waived: the vandal still has no basis for complaint when the (partial) owner of the car drives off with her labor. Given this, the person who labors on some "unowned" natural resource would equally seem to have no basis for complaint when one of its many partial owners walks off with it.

VII. The Anarchist Society

The previous sections of this chapter have attempted to extend Huemer's argument against political authority to indict private property as well, adopting his argumentative strategy and core premises to show that the coercive exclusion associated with private property is impermissible. Specifically, it has considered three of the most influential defenses of private property and argued that none succeeds in grounding the permissibility of its associated coercion. However, if this conclusion is correct, one might wonder about the specific political implications

of this normative result. After all, Huemer concludes his book with a lengthy discussion of how a society might function in the absence of a state; thus, one might reasonably ask how a society might function without private property.

In order to answer to this question, one must, first, determine whether *all* coercive control of resources is impermissible or whether certain instances of coercion are permissible, just not the kind associated with the *content-independent* control posited by defenders of property rights. Some egalitarian-minded social anarchists might be inclined to think that coercive exclusion from resources *is* permissible *if* it is the only way to ensure that all persons live equally good lives (barring, perhaps, inequalities that result from certain sorts of negligent choices). To see what is appealing about this position, consider the case of two castaways stranded on an island lush with peanut plants. One castaway is allergic to peanuts but good at catching fish, whereas the other lacks the arm strength and coordination needed to catch fish. The net result of these differences is that the two are able to live equally good lives, one fishing and sleeping on the beach while the other forages for food inland. However, suppose that one day the allergic castaway begins clearcutting the densest area of peanut plants so that she has a place to play soccer. Further, suppose that the destruction of these plants would impose a great hardship on the uncoordinated castaway, as she would then have to spend many more tedious and difficult hours each day foraging for the scarce peanuts that remain.

Given these stipulations, would it be permissible for the uncoordinated castaway to use coercion to prevent the allergic castaway from destroying the plants on which her quality of life depends? Some egalitarian anarchists might answer in the affirmative, contending that the permissibility of the coercion is grounded in the fact that it is necessary to ensure that the uncoordinated castaway doesn't live a worse life than her companion (due to no fault of her

own). In other words, they would endorse a limited and *content-dependent* right to coercively exclude others, where the permissibility of any act of coercion is determined by some egalitarian principle of distributive justice.

If one adopts this view, then the social anarchist political prescription is fairly straightforward: each person should limit her holdings to just the resources assigned to her by the relevant egalitarian principle of distributive justice (e.g., the resources that will allow her to live as good of a life as everyone else). If others are hoarding more than their fair share, she may take the appropriate portion of those resources.[44] And, if others try to take her portion, she may fend them off so long as she operates within the constraints of proportionality. Further, people may band together to form whatever organizations help them to obtain and protect their just shares.[45]

Of course, many empirical questions remain regarding what holdings realize the egalitarian ideal and how those holdings can best be brought about. However, the defender of the normative position can remain agnostic about what kinds of actions and institutional

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[44] This suggestion echoes Peter Kropotkin's claim that people have a "right to possess the wealth of the community — to take the houses to dwell in, according to the needs of each family; to seize the stores of food and learn the meaning of plenty, after having known famine too well," as well as his assertion that the core principle of social anarchism is "take what you need." Peter Kropotkin, *The Conquest of Bread* (Mineola, NY: Dover, 2011) 28, 33.

[45] One might wonder about how the production of new goods would occur in the egalitarian anarchist society. Wouldn't it be irrational to produce goods if others have the right to immediately make off with them? Not if one adopts overall quality of life as the "currency" of egalitarian justice as posited immediately above. To see this, suppose a producer is able to make a set of goods that can improve people's lives by a total quantity of Q; however, to produce these goods, she must incur cost C (where C is a reduction in her quality of life). Suppose, then, that the goods—or, more precisely, the benefits generated by these goods—are split up equally between her and all other persons, where the total number of persons is n. Given these stipulations, all other persons would see their lives improve by a quantity of Q/n. However, the producer's life would improve by a quantity of $Q/n - C$, where this "improvement" may actually leave her worse off depending on the size of C. Assuming a baseline of equality, it would then follow equal distribution of benefits without any compensation for incurred costs would result in an unequal outcome. Indeed, to reach an equal outcome, the producer would have to be fully compensated for the costs of production with the *remaining* benefits then being distributed equally between everyone—i.e., the producer receives whatever share of her produced goods give her a benefit of $C + ((Q - C)/n)$ while everyone else receives a share yielding a benefit of $(Q - C)/n$. Thus, in a world where people adhere to an egalitarian principle of justice, it will always be rational to produce goods, as one will be receive full compensation for one's efforts plus some additional benefit, albeit not the full benefit produced.

arrangements will best advance this end. While it will eventually be necessary to answer these questions, she can insist that her view simply articulates the moral boundaries that constrain all proposed institutions, namely that such institutions may only make use non-consensual coercion if that coercion is necessary for bringing about or sustaining an egalitarian arrangement.

Alternatively, some social anarchists might reject the intuition that coercion is permissible in the peanut case. Given this rejection, they would insist that the coercive control of resources is *always* impermissible, except when it has been consented to by the victim or, perhaps, when such control is necessary to avoid some sort of moral catastrophe. This position imposes stricter limits on what forms society can permissibly take. Specifically, it would sanction only two forms of resource management, each with its own drawbacks, but both of which avoid the coercion that is omnipresent in regimes of private property (and that persists in a more limited form in the egalitarian anarchist society).

The first form of resource management would be an arrangement of free resource use: all persons could do what they wanted with resources so long as they didn't act on one another's bodies in the process. Of course, absent the right to control these resources, there would be limited incentive for self-interested producers to improve those resources, as others would be free to come and carry off the fruits of their labor. Thus, one might expect the radical anarchist society to be much poorer than its capitalist or egalitarian counterpart (though the ratio of production done for the sake of self-interest vs. community benefit would also be much lower—a result that many social anarchists would find favorable).[46]

[46] That said, if normative views have shifted to the point where social anarchist principles are being widely implemented, it is unclear either of the following assumptions would still be true: (a) self-interest remains a primary—or even significant—motivation for production and (b) that other people will seize a person's products for self-interested reasons. Thus, the worry that an absence of property rights entails stifled production may be unfounded.

To mitigate this incentives problem, a producer in a social anarchist society might opt for an alternative form of resource management wherein she acquires the right to coercively exclude others from her products by obtaining their consent. A low-cost version of this approach would involve getting the consent of just those individuals who are geographically and epistemically positioned to take her products. While this would not give her the right to coercively exclude the people who she did not consult, she might be willing to gamble that these people will not attempt to take her product. For example, she has little need to worry about people living hundreds of miles away coming to take her product, particularly if those people do not know that such production is occurring. Thus, she may reasonably decide the cost of obtaining their consent is greater than the risk of them learning about her product and traveling a long distance to take it.

Alternatively, producers seeking greater security could pursue universal consent via a federated decision-making structure where local councils reach decisions about how society ought to be arranged via consensus—i.e., by getting each of their members to consent to the proposed decision. Each council would then send a representative to a central council to advocate for the arrangement approved by her local council. This central council would then use a consensus procedure to settle on some negotiated position, with representatives then returning to their local councils to get final approval (again, via consensus). Once such approval has been given, the arrangement in question will have received universal consent. Thus, a federated decision-making system would allow coercively-enforceable holdings to arise through the granting of consent by all potentially-affected parties.[47]

This is only a quick sketch of how universal consent could be achieved, with the subject deserving a more thorough critical discussion than can be given here. However, even absent a

[47] For a discussion of what pattern of holdings might arise via a process of universal consent, see Alan Gibbard, "Natural Property Rights," *Noûs* 10.1 (1976): 77-86 at 80-2.

careful examination of institutional design, it seems reasonable to conclude that any procedure capable of generating universal consent will be unwieldy and significantly less efficient than a system of non-consensual private property enforcement. This may simply be the price of living in a society that does not tolerate the casual use of coercion to coordinate human affairs. After all, one of the advantages of coercion is that it allows people to carry out their projects without having to go through the trouble of consulting others, as their resistance can be suppressed with violence. However, as section V has argued, this convenience and efficiency is not sufficient for rendering that coercion permissible.

This conclusion about the form society ought to take is admittedly a radical one. Further, even absent society-wide acceptance of the anarchist normative position, the view still has a radical implication when it comes to one's everyday behavior, namely that it is wrong to use coercion to sustain control of one's holdings (with a possible exception being made if those holdings represent one's "fair share" of the available natural resources). What this chapter has attempted to show is that while these conclusions are radical, they follow from eminently plausible premises about what does and does not justify the use of coercion. Thus, absent an equally radical reconsideration of when coercion is permissible, there is little choice but to follow the argument where it leads, namely to the social anarchist rejection of state and private property.