

The State of Nature, Prehistory, and Mythmaking

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This is an early version of a paper that will come out as a book chapter. If you want to cite or quote please refer to the final version:

Karl Widerquist, “The State of Nature, Prehistory, and Mythmaking,” in Anne Peters and Mark Somos (editors), *The State of Nature: Histories of an Idea*, Brill Publishers, 2021

The state of nature, when it is conceived as the absence of the state and/or of a liberal property regime, refers to a real situation. Many peoples have lived outside of sovereign states and/or without liberal ownership rights that state-of-nature stories about property rights are usually used to justify.³

Yet, philosophers often treat these versions of the state of nature as if they were hypotheticals. They make hypothetical claims, use those claims as premises in their arguments, and support those claims (if at all) with a priori reasoning or cursory empirical observations. Nothing is wrong with hypothetical stories if they illustrate a greater truth, but something is wrong if they illustrate a greater lie and give it the air of plausibility while freeing the storyteller from the responsibility to provide supporting evidence. That’s destructive mythmaking.

Not all mythmaking is destructive. For example, one could use the Garden of Eden story to illustrate how people are born not knowing right from wrong, but when they learn the difference, they eventually choose to do wrong. That myth illustrates a truth people can verify in everyday experience. But one could also use a Garden of Eden story to illustrate the belief that women are temptresses with bad judgment and men should always make decision for them. That is a destructive myth, illustrating false empirical claims used to justify oppression.

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³ Karl Widerquist and Grant S. McCall, *Prehistoric Myths in Modern Political Philosophy* (Edinburgh: Edinburgh University Press, 2017), 16-21.

This chapter highlights the link between the two books in our larger research project⁴ and argues that Hobbesian and Lockean state-of-nature stories are destructive myths that illustrate the following four false empirical claims used heavily but seldom defined explicitly in contemporary philosophy.

1. *The Hobbesian hypothesis* (or the mutual-advantage hypothesis): sovereign states and/or the liberal private property rights system benefits everyone (or harms no one) relative to how well they could reasonably expect to live in a state of nature lacking one or both of these institutions.
2. *The appropriation hypothesis*: only private liberal ownership systems develop naturally; collective, communal, common, or government-held property rights systems do not.
3. *The natural-inequality hypothesis*: economic, social, and/or political equality cannot exist or, if they do, they are incompatible with negative freedom.
4. *The market-freedom hypothesis*: capitalism is more consistent with negative freedom than any other economic system.

These false claims persist because they play into conventional prejudices; because centuries of repetition give them plausibility; and because state-of-nature theorists are seldom clear about what empirical truths (if any) their stories illustrate. Obscurity has actually helped perpetuate these beliefs. Philosophers go back and forth between the implications that the empirical content of the story is necessary but obvious or unnecessary after all. The illustrative implication protects them from the need to provide evidence. The implication of obviousness protects them from specifying how a purely illustrative story can support their conclusions. And so, neither version gets questioned or defended at a deep level. The claims we accept without thinking get far less scrutiny than the ones we self-consciously choose to accept. Significant argumentation and evidence is required to show that these claims are (1) *empirical*, (2) *about prehistoric or stateless peoples*, (3) *premises in prominent arguments*, and (4) *false*.⁵ We hope that this article provides enough evidence to demonstrate all this. If not, our books provide additional evidence and argument.⁶

⁴ Widerquist and McCall, *Prehistoric Myths*; Karl Widerquist and Grant S. McCall, *The Prehistory of Private Property* (Edinburgh: Edinburgh University Press, 2021).

⁵ Widerquist and McCall, *Prehistoric Myths*; Widerquist and McCall, *Prehistory of Private Property*.

⁶ Widerquist and McCall, *Prehistoric Myths*; Widerquist and McCall, *Prehistory of Private Property*.

Hobbes's critics have questioned these claims. Their credibility-from-repetition comes more from ignoring critics than from unanimity of belief. But our research project is the most extensive effort we know of to refute these four claims with empirical evidence from fields as diverse as anthropology, archaeology, and history. We hope it contributes to the wealth of new literature debunking false beliefs about prehistoric and small-scale societies.⁷

Some of our critics are likely to resurrect John Crawford's allegation that any positive depiction of indigenous people amounts to romanticizing the "golden age" of the "noble savage." Crawford originated this allegation in the 1850s because he believed that Victorian anthropology was not racist enough. The term is an intentional oxymoron ("nobles" have the highest qualities of "civilization;" "savages" lack any such qualities). It creates a false dichotomy: either one affirms the miserable, warlike nature of indigenous peoples, or one romanticizes the noble savage. Crawford's main target was Jean-Jacques Rousseau, who didn't use the term "noble savage" and held largely negative views of indigenous peoples. Crawford's allegation has outlived his overtly racist school of ethnology. It continues to give people studying indigenous societies reason to err on the side of negativity.⁸

Our project is not the result of a philosopher who read some controversial anthropology book and took it at face-value. It's jointly authored project by a philosopher and an anthropologist, and it best of an extensive review of both fields. The empirical findings below reflect consensus opinions in contemporary anthropology. The consensus of empirical researches is not pure truth, but it's likely to be closer to the truth than philosophers' speculative extrapolations from the reports of racist settlers.

More powerful challenges to our empirical findings require arguing either that we inaccurately characterize the empirical literature or that the existing literature is wrong. The first strategy requires a literature review at least as thorough as ours; the second requires conducting better anthropological studies than currently exist.

⁷ Such as, James C. Scott, *The Art of Not Being Governed* (New Haven: Yale University Press, 2009); David Graeber, *Debt: The First 5,000 Years* (Brooklyn, NY: Melville House, 2011); Marlene Zuk, *Paleofantasy* (New York: WW Norton & Company, 2013); Ter Ellingson, *The Myth of the Noble Savage* (Berkeley, CA: University of California Press, 2001).

⁸ Ter Ellingson, *Noble Savage*.

1. The Hobbesian hypothesis

The claim that contemporary states achieve mutual advantage became central to the mainstream justification of the state when Thomas Hobbes's (1588 – 1679) used it as the central premise of his social contract theory.⁹ A few decades later, John Locke (1632 – 1704) used the claim that the property rights system achieves mutual advantage in what has become the mainstream justification of private property.¹⁰ Both of these theories rely on an ethical premise that David Gauthier identifies as “the Lockean proviso,” although he uses this premise more widely than most previous authors. As we interpret it, the proviso is a principle of mutual advantage: an institution can be imposed on people providing that everyone is at least as well off under its authority than they could reasonably expect to be outside its authority.¹¹ It is a first-order, fact-independent ethical principle, not subject to empirical verification or refutation.¹²

Hobbes justifies the state by unanimous consent and argues that consent is obtained because mutual advantage is achieved relative to the state of nature.¹³ Contemporary contractarians usually retain mutual advantage but drop literal consent in favour of the imagined agreement of rational, reasonable, and fully informed.¹⁴

Locke applies a similar proviso to the property rights system: private property is justified if everyone is at least as well off as they could reasonably expect to be in a society without such private property—that is in a common property regime, in which land and other resources are available for nonexclusive use by everyone or at least by every member of a political community.¹⁵

It is uncontroversial to say that these theories rely on an ethical claim of mutual-advantage, but it is surprisingly controversial to say that these theories therefore require an empirical claim that any institution being justified actually achieves mutual advantage relative to absence of that institution. Although our books spend a great deal of time considering and rejecting possible ways

⁹ Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996 [1651]).

¹⁰ John Locke, *Two Treatises of Government: Second Treatise* (Cambridge: Cambridge University Press, 1960 [1689]), chapter 5.

¹¹ David P Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986., 205, 208.

¹² Widerquist and McCall, *Prehistoric Myths*, 2-3.

¹³ Widerquist and McCall, *Prehistoric Myths*, 24-33.

¹⁴ Widerquist and McCall, *Prehistoric Myths*, 40-43.

¹⁵ Widerquist and McCall, *Prehistoric Myths*, 70-73; Tom Sparks, “The Place of the Environment in State of Nature Discourses: Reassessing Nature, Property and Sovereignty in the Anthropocene.” In *The State of Nature: Histories of an Idea*, edited by Anne Peters and Mark Somos (Brill, 2021).

around the need for an empirical premise, it is a logical entailment of proviso-based theorizing: if someone wants to justify an institution on the principle of mutual advantage, they must show that the institution achieves mutual advantage as a matter of empirical fact. It's not enough to illustrate mutual advantage in a "thought experiment" unrelated to empirical reality.

This empirical premise that the Lockean proviso is fulfilled is what we call "the Hobbesian hypothesis." It is simply the claim of mutual advantage.

In social contract theory, the Hobbesian hypothesis is that everyone in state society is at least as well off in the relevant sense as everyone in stateless society. In property rights theory, the hypothesis is that everyone in a private property regime is at least as well off as everyone in societies with common property regimes. Societies with neither of these institutions do exist, and the relative wellbeing of people in such societies is therefore relevant to proviso-based justifications of the state and the private property system.¹⁶

Yet, in the 350 years since Hobbes and Locke, the role of the Hobbesian hypothesis has been largely ignored. Few theorists discuss its role and meaning. Fewer theorists state clearly that their conclusions rest on this empirical premise. Those who clearly assert this hypothesis rarely cite more than the most cursory evidence to support it.¹⁷

Hobbes asserts the premise as an empirical hypothesis writing, "Out of civil states, there is always war of every one against every one"—not *sometimes*; *always*. He supports this claim with a psychological argument that natural human inclinations inevitably lead to conflict whenever "men live without a common power to keep them in awe" and with empirical observations about civil war, and with claims about stateless peoples. Hobbes writes, "[T]he savage people in many places of America ... have no government at all; and live at this day in that brutish manner."¹⁸

Locke makes similar observations, "Americans ... who are rich in land ... have not one hundredth part of the conveniencies we enjoy: and a king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in England ... in the beginning all the world was America."¹⁹ The day-labourer comment supports his claim that propertyless people benefit from the property system. Hence, he claims the proviso is fulfilled; property rights are justified in part by the supposed truth of the Hobbesian hypothesis.

¹⁶ Widerquist and McCall, *Prehistoric Myths*, 54-56.

¹⁷ Widerquist and McCall, *Prehistoric Myths*, 24-111.

¹⁸ Hobbes, *Leviathan*, 100-101.

¹⁹ Locke, *Second Treatise*, §41.

Hobbes and Locke were empirically correct that some Native American peoples lived in stateless societies with common property regimes, but they were empirically wrong to claims that they were more miserable than lower-class English people.

If Hobbes's or Locke's argument can be formulated to make their empirical claims irrelevant, neither of them spell it out, nor does it seem possible. Attempts to create a fact-independent version of the proviso or to reduce its level to make comparisons irrelevant either involve other dubious premises or amount to discarding mutual advantage altogether.²⁰

Many contractarians equivocate between an incoherent a priori version of the argument (the Hobbesian hypothesis doesn't matter) and one based on a false premise (the hypothesis matters, but it's obviously true). The truth-value of the Hobbesian hypothesis cannot be obvious. It compares the welfare of two groups of people whose lives are very remote to privileged people in Western society: the least advantaged people in capitalist states and people in stateless societies. Few academics have significant first-hand experience with either group; fewer still have experience with both; and those who do are almost certainly specialists in more than one field.

This claim might have seemed obvious to Hobbes and Locke, who lived in a place and time where nearly everyone shared the prejudice that the lowliest "civilized man" was far superior to any "naked savage."²¹ That prejudice should have been discarded long ago, but the idea continues to be repeated as it has been for thousands of years by people as diverse as the first emperor of China, Samuel Pufendorf (1632 – 1694), David Hume (1711 – 1776), Immanuel Kant (1724 – 1804), Robert Nozick (1938 – 2002), Murray Rothbard (1926 – 1995), David Gauthier, Jean Hampton (1954 – 1996), Gregory S. Kavka, Ian Hampsher-Monk, Christopher Heath Wellman, George Klosko, and others.²²

Not all contractarians rely on this faulty premise. John Rawls's theory is invulnerable because his discussion of disadvantaged people is aspirational, calling on society to improve their wellbeing not just relative to statelessness but relative to any other social arrangement.²³

Critics of the Hobbesian hypothesis include Lord Shaftesbury (1671 – 1713), Baron de Montesquieu (1689 – 1755), Thomas Paine (1737 – 1809), Henry David Thoreau (1817 – 1862), Herbert Spencer (1820 – 1903), Henry George (1839 – 1897), Karl Marx (1818 – 1883), Friedrich

²⁰ Widerquist and McCall, *Prehistoric Myths*, 54-64, 81-85, 99-105.

²¹ Widerquist and McCall, *Prehistoric Myths*, 37-38, 75-77.

²² Widerquist and McCall, *Prehistoric Myths*, 79-111.

²³ John Rawls, *A Theory of Justice, Revised Edition* (Cambridge, MA: Harvard University Press, 1999).

Engels (1820 – 1895), Henry Sumner Maine (1822 – 1888), John Robert Seeley (1834 – 1895), Henry Sidgwick (1838 – 1900), Carole Pateman, Alan Ryan, Charles Mills, Alasdair Macintyre, Thomas Pogge, and Peter Lindsay.²⁴

In 1902, Peter Kropotkin (1842 – 1921) published the most extensive empirical investigation into this issue that we know of prior to ours²⁵ but assertions of the Hobbesian hypothesis continued with little regard to his findings. Part of the reason might be that critics, including Kropotkin, rejected the normative and empirical claims in these theories, allowing philosophers to continue focusing on normative aspects of the discussion. Our project is not about the norms, just the facts.

We examine Hobbes’s claim that stateless societies are always violent. Evidence is limited, but it is enough to contradict Hobbes’s claim that violence levels are usually or always intolerable in stateless societies. Homicide rates in observed stateless societies vary enormously from more than 1,000/100,000 to less than 1/100,000—less than any in known state societies. Although the average is lower in contemporary state societies, state societies also have an enormous variation so that many stateless societies have lower levels of violence than the average state society, and some have levels comparable to the safest states.²⁶ Few if any stateless societies have homicide levels beyond a threshold of intolerability as Hobbesian theory requires to make the state universally preferable. None have the refugee crises that state societies often do.

Life expectancy in stateless societies is short relative to state societies today, but it is about the same as it was state societies in Europe at the time Hobbes made his claim, and it is not short for the reason Hobbes supposed. The longer life expectancy in state society is explained by better healthcare and lower infant mortality rather than differences in violence levels. Longer life expectancy did not spread to the lower classes in Europe and North America until perhaps the middle of the nineteenth century. It did not spread to the poorest countries until the last decades of the twentieth century, and it has still not reached the poorest populations in the poorest countries or, for that matter, the poorest populations in the United States.

²⁴ Widerquist and McCall, *Prehistoric Myths*, 79-111.

²⁵ Petr Kropotkin, *Mutual Aid: A Factor of Evolution* (Project Gutenberg, 2011).

²⁶ Robert L Kelly, *The Foraging Spectrum* (Washington DC: Smithsonian Institution Press, 1995), 203; Rafael et al Lozano, “Global and Regional Mortality from 235 Causes of Death for 20 Age Groups in 1990 and 2010: A Systematic Analysis for the Global Burden of Disease Study 2010,” *the Lancet* 380, no. 9859 (2012), 2109; Widerquist and McCall, *Prehistoric Myths*, 140-147.

Stateless peoples are in many ways healthier during their lifetimes than people in state societies. Stateless societies have eliminated many of the things that kill stateless peoples, but stateless peoples are virtually invulnerable to many of the things that kill people in stateless societies, such as cancer, epidemics, and diseases connected to toxins in our environment or diets.²⁷

State societies today produce far more luxuries than stateless societies, but their ability to meet the basic needs of the least advantaged is very often lower. Our high-luxury environments are often socially isolating and dedicated largely to the production of positional goods rather than goods that make everyone better off. State societies have no particular advantage in leisure or work effort for the average person. The least advantaged people in state societies work for more than people in any observed stateless society. Stateless peoples never have to obey the orders of a boss, and they are free from the alienation so common in the modern industrial workforce.²⁸

Disadvantaged people in state society tend to be less free than their stateless counterparts in terms of political freedom, negative freedom, status freedom, sexual freedom, and freedom from group-based oppression. Expressed preferences and observed choices of people who are familiar with both state and stateless societies do not show any solid trend in favour of state society. For most of human history, state societies tended to have stateless communities on their peripheries made up of people who intentionally tried to avoid incorporation into the state. Most of these peripheries are gone today not because their residents realized the benefits of state societies and liberal property rights systems, but because governments forcibly incorporated that territory.²⁹

The verdict is overwhelming: the Hobbesian hypothesis is false. Neither the state nor the property rights system achieves mutual advantage. Dozens of leading anthropologists have debunked Hobbes's description of life outside of the state in whole or in part.³⁰ Ernest Gellner sums up the anthropological consensus best, writing, "Hobbes [was] wrong: the life of pre-state man is not solitary, poor, nasty, brutish and short. Rather, it is gregarious and cohesive, relatively well-off, human and participatory, and with about as good a chance of longevity as that of his centrally governed contemporary."³¹

²⁷ Widerquist and McCall, *Prehistoric Myths*, 191-197.

²⁸ Widerquist and McCall, *Prehistoric Myths*, 180-191.

²⁹ Scott, *The Art of Not Being Governed*.

³⁰ See list, Widerquist and McCall, *Prehistoric Myths*, 215-216.

³¹ Ernest Gellner, *Anthropology and Politics* (Oxford: Blackwell, 1995), 209.

To deny that everyone is better off in state society is *not* to say that *everyone* is better off in stateless society, nor is it even to say that the *average* person is better off. The falsity of the Hobbesian hypothesis says only that as difficult as stateless life is, states today make life worse for a significant number of people. The tragedy of capitalist states today is that for all their wealth, they have consistently failed to surpass very low bar they have set for self-justification. For proviso-based theories to justify the state and/or the property rights system in their own terms, state societies have to treat disadvantaged people better. Until then, the proviso remains unfulfilled. Mutual advantage remains unachieved.

2. The appropriation hypothesis

Literature on the “propertarian” (natural rights-based) justification of the liberal property rights system focuses almost exclusively on the ethical principles of the theory. But we argue that the justification of the property system also requires an empirical claim we call the “appropriation hypothesis,” which is contradicted by evidence.

In Robert Nozick’s characterization, propertarian theory involves the moral principles of appropriation, voluntary transfer, and rectification of past wrongs. The appropriation principle allows individuals to transform unowned external objects into private property. The transfer principle means that it remains theirs until they voluntarily transfer it to others. The rectification principle is some method by which wrongful transfers can be rectified.³² Although propertarians differ substantially on many issues, these principles are at the heart of most rights-based justifications of private property.

What is the connection between these principles and a specifically *private* property rights system rather than communal, collective, or government property? Propertarians almost invariably employ one of two strategies to make that connection: treat it as obvious or tell a version of John Locke’s appropriation story, in which, during the state of nature before any government comes into existence, individuals appropriate virgin wilderness.³³ In these stories, appropriators invariably set themselves up as private holders, and subsequently transfer their property to other private entities. Propertarians usually ignore the possibilities that groups might appropriate

³² Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 150-153.

³³ Locke, *Second Treatise*, § 24-51.

collective landholders or that individuals might set themselves up as monarchs of their land. In the story, collectives and governments simply don't appropriate. They come along later, and their powers are limited by pre-existing rights of private property.³⁴

This fictional story supposedly explains why property rights must be private, but the work is being done more by the mindset the story encourages than by the principles it supposedly illustrates. Private individuals appropriate and trade; collectives do not. Propertarians do not claim that contemporary property holders have a direct connection with original appropriation, though they do portray appropriation as something only private entities do.³⁵

That is an empirical proposition that we call “the appropriation hypothesis.” We argue that it is essential to the natural rights justification for private property and that it is false. Propertarians would like to believe their normative argument rules out collective or government ownership of property and all (plausible) circumstances. We, however, go through a great deal of propertarian literature showing that no such argument is available. Propertarian normative principles—without an empirical claim about what kinds of rights appropriators choose to establish—have no direct connection to exclusively *private* property.³⁶

Most propertarians seem to believe either that the appropriation hypothesis is obviously true or unnecessary. Critics seldom challenge them on the empirical issue. The few propertarian who do cite evidence don't cite very much of it.³⁷ If a more thorough historical-empirical investigation supporting the appropriation hypothesis exists, it has escaped the notice of the prominent propertarian theorists cited throughout our book. In many cases, the anthropological sources propertarians cite undercut rather than support the appropriation hypothesis, showing that flexible, exception-laden, overlapping, and partly collectivist property rights regimes are far more common than the institutional structure propertarians present as natural.

We review the relevant anthropological and historical information to conduct a more thorough investigation than we are able to find in the relevant literature. It demonstrates not only

³⁴ Karl Widerquist, “A Dilemma for Libertarianism,” *Politics, Philosophy, and Economics* 8, no. 1 (2009).

³⁵ Karl Widerquist, “Dilemma.”

³⁶ Widerquist and McCall, *Prehistory of Private Property*, 258-268.

³⁷ F. A. Hayek, *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1973), 108; Bruce L. Benson, “Enforcement of Private Property Rights in Primitive Societies: Law without Government,” *The Journal of Libertarian Studies* IX, no. 1 (1989), 8; John Hasnas, “Toward a Theory of Empirical Natural Rights,” *Social Philosophy and Policy* 22, no. 1 (2005); Jeffrey Evans Stake, “The Property ‘Instinct’,” *Philosophical Transactions of the Royal Society B: Biological Sciences* 359, no. 1451 (2004); David Schmidtz, “The Institution of Property,” *Social Philosophy & Policy* 11 (1994).

that the appropriation hypothesis is unproven, but also that it is clearly false and that nearly the opposite is true. Property rights were not originally private, and in the absence of aggressive interference, they have not tended to become or remain fully private. Complex, flexible, overlapping, common, and at least partly collective resource rights have tended to develop and remain in place in the absence of significant violations of the appropriation and transfer principles.³⁸

Nomadic hunter-gatherers—who meet many of the stated criteria for first appropriators—populated the vast majority of the world’s habitable territory long before anyone using other economic strategies. If the social and political organizations of early, small-scale, nomadic hunter-gatherers most likely met propertarian requirements to be considered voluntary associations. All observed societies living in similar circumstance treat land as a commons—open for the shared use of all but the property of none. Ownership rights in tools and food were never fully private but generally had to be shared whenever there was enough to go around. That is, property systems of the original inhabitants on most of the world’s land had little resemblance to those proprietarians portray as “natural.”³⁹

Long before states appeared, many peoples settled into agricultural villages of usually less than 600 people, with diets usually supported by hunting in commons surrounding the village. Many such societies have been observed living at this scale, and their property institutions are nearly as communal as nomadic foragers. Agricultural land is treated as a commons. Everyone has a right to some space where they can farm, but not necessarily on the same plot every year.⁴⁰ Crops tend to be private but need can override the farmer’s claim. No landless people work for wages. Many villages pick up and move every few years to avoid depleting the land, and individuals could easily leave the village at that time, but no known individual appropriators in indigenous societies

³⁸ Widerquist and McCall, *Prehistory of Private Property*, 194-268.

³⁹ Richard Borshay Lee and Richard Daly, “Foragers and Others,” in *The Cambridge Encyclopedia of Hunters and Gatherers*, ed. Richard Borshay Lee and Richard Daly (Cambridge: Cambridge University Press, 1999), 4; Nurit Bird-David, “The Giving Environment: Another Perspective on the Economic System of Gatherer-Hunters,” *Current Anthropology* 31, no. 2 (1990), 190-192; Tim Ingold, *The Appropriation of Nature: Essays on Human Ecology and Social Relations* (Manchester: Manchester University Press, 1986), 148-150; Allen Johnson and Timothy Earle, *The Evolution of Human Societies: From Foraging Group to Agrarian State*, Second Edition ed. (Stanford: Stanford University Press, 2000), 63; Elizabeth Cashdan, “Hunters and Gatherers: Economic Behavior in Bands,” in *Economic Anthropology*, ed. Stuart Platter (Stanford: Stanford University Press, 1989), 40-42.

⁴⁰ Martin J. Bailey, “Approximate Optimality of Aboriginal Property Rights,” *Journal of Law and Economics* 35 (1992).

at this scale set out on their own to set up private Lockean homesteads.⁴¹ If the original farmers are taken to be the original appropriators, and if autonomous villages all over the world today can give any indication of how people practicing similar techniques lived thousands of years ago, the original appropriators exercised their free will to create common or communal property systems.

The earliest states probably dispossessed earlier landholders, but they seldom if ever dispossessed people holding private, individualistic property rights, as proprietarians suppose. We use extensive historical investigation to argue that the now-global private property system was established almost everywhere, not by appropriation and voluntary transfer, but by aggressive and violent private and government force—disappropriating people practicing much more collectivist property institutions.⁴²

Early states and chiefdoms have sometimes established more centralized property systems, such as large-scale irrigation agriculture. Institutions resembling private property rights developed earlier in cities, usually by privileged people carving out private rights over things that had been centrally controlled by government or communally held by villages.⁴³

But partially communal villages (with chief- or state-sanctioned lords with varying levels of actual control at the head) persisted in rural areas throughout the world until the Enclosure Movement in Europe and the colonial movement elsewhere forced the adoption of private land rights—usually by converting government-appointed lords into “private landlords.”⁴⁴

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

This evidence raises doubts about the proprietarian accounts of who owns property and what *kind* of property rights structure is justifiable. Most proprietarians are open to the possibility that at least some non-titleholders have a legitimate claim to redistribution and rectification for

⁴¹ Matthew S. Bandy, “Fissioning, Scalar Stress, and Social Evolution in Early Village Societies,” *American Anthropologist* 106, no. 2 (2004); Christopher Boehm, *Hierarchy in the Forest: The Evolution of Egalitarian Behavior* (Cambridge, MA: Harvard University Press, 2001), 93.

⁴² Widerquist and McCall, *Prehistory of Private Property*, 227-257

⁴³ Hudson, Michael, and Baruch A. Levine, eds. *Privatization in the Ancient Near East and Classical World*. (Cambridge, MA: Harvard, 1996).

⁴⁴ J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge: Cambridge University Press, 1993), 11-14, 319-330; James Alfred Yelling, *Common Field and Enclosure in England, 1450-1850* (Hamden, CT: Archon Books, 1977), 232; Carson, Kevin. *Communal Property: A Libertarian Analysis* (The Center for a Stateless Society, 2011); for further review of the literature, see, Widerquist and McCall, *Prehistory of Private Property*, 240-257.

past rights violations. But they assume any such redistribution will be private titles to private titles.⁴⁵ Without the appropriation hypothesis, the private nature of property no longer has sole claim to legitimacy or perhaps any claim to legitimacy.

The propertarian story in which private ownership develops naturally via appropriation and collective ownership through violent interference is exactly backwards. The original appropriators established common rights. The original private property holders got their “rights” by violent interference and disappropriation. Therefore, propertarian principles applied to our world’s actual history provide little or no support for the supposedly natural individualistic, liberal property rights structure and little or no reason to rule out governments, ethnic groups, or other collective entities as potentially justifiable landholders. Governments—if genuinely owned by the people—might have as much or more right to tax their land as landlords have to charge rent for theirs. To the extent that private holders have any rights to land, it is derivative from and dependent on the legitimacy of government-held property rights in land.

3. The natural inequality hypothesis

The natural inequality hypothesis (that inequality is natural and inevitable, or that equality is naturally in conflict with freedom) is also used to justify highly unequal property rights. This claim is not obviously about prehistory but it is a universal claim that must hold at all times to be true. We argue that it is widely believed only because its adherents make such a narrow search for evidence. A look at small-scale stateless societies shows that this claim is unsustainable. Inequality is neither natural nor inevitable nor is equality inevitably in conflict with freedom. Many indigenous communities known to anthropology have maintained high political, social, and economic equality, probably for thousands, perhaps tens or hundreds of thousands of years. If this evidence is correct, many policies dismissed as reducing freedom to promote equality, opportunity, or welfare, might in fact promote freedom by compensating people who are the least free under the prevailing system of unequal property rights. Additionally, contemporary egalitarian theory can benefit from the experience of small-scale egalitarian societies.⁴⁶

⁴⁵ Widerquist and McCall, *Prehistory of Private Property*, 258-268.

⁴⁶ Widerquist and McCall, *Prehistory of Private Property*, 55-77.

Thousands of years of attempts to justify hierarchy with one or another version of the claim that inequality is natural and inevitable reveals strong disagreement about how, why, and in what ways people will inevitably be unequal. Dominant ideologies tend to assert that the level and type of inequality in society is close to that which is natural and inevitable. These arguments for the naturalness of inequality are usually used in arguments justifying a coercive power structure to enforce the rules to enforce that inequality that is supposed to be inevitable anyway.⁴⁷

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

Most states known to recorded history are hierarchical, as are the social groups of our closest primate relatives.⁴⁸ To go from this evidence to a claim of inevitability would be a hasty generalization based solely on the most readily available evidence. Nordic welfare states in the late twentieth and early twenty-first centuries have achieved greater economic equality than proponents of natural inequality usually admit are achievable. There is some evidence of the existence for substantial equality in early historic or late prehistoric state societies. And state societies are not the only form of socio-political organization.

“Hunter-gatherer bands” (nomadic foraging groups of less than 60 people who do not store food) have been the most common form of human social organization since humans appeared on this planet. Their subsistence model usually involves people leaving camp alone or in small groups to hunt and gather, and returning later to share what they have found. Camps are mobile, moving whenever hunting and gathering resources decline in an area. Individuals come and go temporarily or permanently at will.⁴⁹

All observed band societies are leaderless and have tremendous social, political, and economic equality. In an environment where people need to split up to forage, it's virtually

⁴⁷ Widerquist and McCall, *Prehistory of Private Property*, 15-41

⁴⁸ Herbert Gintis, Carel van Schaik, and Christopher Boehm, “Zoon Politikon: The Evolutionary Origins of Human Political Systems,” *Current Anthropology* 56, no. 3 (2015), 337.

⁴⁹ Johnson and Earle, *Evolution of Human Societies*, 32-33, 58, 62, 80, 112.

impossible for one person to dominate others, who would simply walk away. No one could accumulate much in the way of goods, because they are limited to what they can carry from camp to camp. Band members consume the same varieties of food, live in the same types of shelters, use the same types of tools, and have the same types of ornaments or consumption goods.⁵⁰ Food is shared to the point that no one in the band goes hungry unless everyone is going hungry. People are also obliged to share tools or any other goods if they have more than they need at any given time.⁵¹ Leaders exist only in the sense that some people have greater influence over group decisions than others.

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

Although the circumstances of band societies are favourable to egalitarianism, it doesn't just happen. Sharing is clearly an obligation for everyone who camps with the band whether they prefer to or not,⁵² as is the obligation to avoid obvious displays of superior wealth or ability. Bands maintain a reverse-dominance hierarchy with "leveling mechanisms." These include sanctions, such as ridicule, criticism, disobedience, expulsion, desertion (noncooperation), and in the most extreme cases execution. Leveling mechanisms other than sanctions include demand sharing, tolerated theft, and appeals to religious beliefs that ascribe equal status to all living people.⁵³

Slightly larger-scale societies, called "autonomous villages," maintain significant levels of equality in settled communities of up to about 600 people. Many autonomous villages practice swidden agriculture, which involves moving every few years to avoid soil depletion and virtually no trade or specialization. Autonomous villages tend to have a nominal head or a group of "big

⁵⁰ Boehm, *Hierarchy in the Forest*, 72-87.

⁵¹ Richard Borshay Lee, "Reflections on Primitive Communism," in *Hunters and Gatherers 1: History, Evolution and Social Change*, ed. Tim Ingold, David Riches, and James Woodburn (Oxford: Berg Publishing, 1988), 267; Alan Barnard and James Woodburn, "Property, Power, and Ideology in Hunter-Gathering Societies: An Introduction," in *Hunters and Gatherers 2: Property, Power and Ideology*, ed. Tim Ingold, David Riches, and James Woodburn (Oxford: Berg Publishing, 1988), 16.

⁵² Kelly, *The Foraging Spectrum*, 21, 164-166, 172.

⁵³ Boehm, *Hierarchy in the Forest*, 84; Bird-David, "The Giving Environment"; Barnard and Woodburn, "Property, Power, and Ideology," 12, 21; Elizabeth Cashdan, "Egalitarianism among Hunters and Gatherers," *American Anthropologist* 82, no. 1 (1980), 117, 120; Kelly, *The Foraging Spectrum*, 21-22, 164-166; Nicolas Peterson, "Demand Sharing: Reciprocity and the Pressure for Generosity among Foragers," *American Anthropologist* 95, no. 4 (1993), 860-874; Kent V. Flannery and Joyce Marcus, *The Creation of Inequality* (Cambridge, MA: Harvard University Press, 2012), 59-60.

men” with greater recognition and respect but without higher living standards or much if any power of command. All people, including headmen and religious leaders, produce their immediate family’s consumption. There are usually no fixed property rights in land; all members of the village are entitled to access to land for farming but not necessarily to a particular plot. As in band societies, no one in the village starves unless everyone is starving.⁵⁴ No one has to get a job taking orders from a boss to earn the right to gain access to natural resources that can be transformed into consumption goods.

Leveling mechanisms exist in autonomous villages as in bands, but some of them, such as the ability to leave the group, are a little harder to exercise. A forager can pick up and go at a moment’s notice. A farmer might have to wait until just before spring planting, although they do commonly split.⁵⁵

Larger-scale societies, sometimes called “chiefdoms,” can have anywhere from a few thousand to tens of thousands of people. In some circumstances, chiefs can become despotic rulers. But some chiefdoms, such as the Iroquois Confederation, were observed to be significantly egalitarian.⁵⁶

During the Pleistocene, many, if not most, people lived in societies comparable to modern bands in scale and strategy: small, nomadic foraging groups that often hunted cooperatively, brought food to a central location, consumed it that day, and so on. If they also had similar socio-political organization, we can speculate that egalitarian societies have existed as long as humans have existed and perhaps into our evolutionary past. Similarity in scale and subsistence strategy is not proof of other similarities; the evidence is inconclusive and some anthropologists are leery about drawing any analogies between present and past foragers; but the available evidence suggests human foragers in the deep past were egalitarian.⁵⁷ We doubt that foragers of the distant past had any less desire to overthrow or abandon dominating a person than modern foragers have and their foraging strategy would have given them similar ability.

⁵⁴ Colin Renfrew, *Prehistory: The Making of the Human Mind* (London: Phoenix, 2007), 142; Boehm, *Hierarchy in the Forest*, 3-4; Richard Borshay Lee, “Primitive Communism and the Origin of Social Inequality,” in *The Evolution of Political Systems: Sociopolitics in Small-Scale Sedentary Societies*, ed. S. Upham (Cambridge: Cambridge University Press, 1990).

⁵⁵ Bandy, “Fissioning,” 322-333.

⁵⁶ Peter Bellwood, *The Polynesians*, Revised ed. (London: Thames and Hudson, 1987), 31-33; Lee, “Primitive Communism;” Boehm, *Hierarchy in the Forest*, 98.

⁵⁷ Boehm, *Hierarchy in the Forest*, 31.

The claim that inequality is natural and inevitable is clearly false. Inequality is produced by social institutions.

Adherents of the natural-inequality hypothesis might be tempted to change their claim to inequality is inevitable *within the context of a state society*. This change would diminish a genuinely universal claim to a context specific idea: inequality is inevitable if and when social institutions make it inevitable. Social institutions are subject to change. Even if inequality were an inevitable product of all state societies, the comedown would be problematic given that, as argued above, state societies are so unequal that they are harmful to their least advantaged members.

It is by no means proven that inequality is inevitable in the context of state society. To falsify this hypothesis by observation, one would have to conduct a large study of various historically recorded state societies and evaluate the extent of their equality or inequality. Although we're unlikely to see state societies practicing egalitarianism as strong as that practiced in band and autonomous village societies, many states have maintained greater socioeconomic equality than adherents of the natural-inequality hypothesis usually like to see.

Just as bands have leveling mechanisms, state societies have many coercive stratification-enforcing mechanisms. We do not yet know how much we could change the level of inequality within the context of state society. The leveling mechanisms of band societies—chief among them the amount of power they concede to the least advantaged members discussed in Section 4—might provide a guide for what to try.

4. The market freedom hypothesis

Probably the most common and forceful justification for the market economy is what we call the market freedom hypothesis: the belief that capitalism is the “condition of men in which coercion of some by others is reduced as much as possible in society”⁵⁸) is. Most the rights-based attempts to justify liberal private property rights use it in one way or another.⁵⁹

Freedom from coercion and interference is not the only meaningful conception of freedom, but it is a coherent ethical concern for reasonable people. The empirical question of what socio-political arrangements reduce coercion as much as possible cannot be established definitively by

⁵⁸ F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), 11.

⁵⁹ For review of that literature, see, Widerquist and McCall, *Prehistory of Private Property*, 79-99.

a priori reasoning. Freedom is inherently hard to measure because protecting people from one form of coercion often involves imposing another form. However, we argue below that an empirical comparison of levels of freedom is possible in relevant circumstances.

The negative freedom argument usually involves the claim that the freest imaginable socio-economic system is idealized propertarian capitalism in which everything is privately owned; the government, if any, does nothing but protect private property rights; and there are few if any taxes. Any deviation from that ideal supposedly involves a loss of negative freedom that must be justified against either the impossibility of fully realizing that ideal or by appeal to some value other than freedom. Propertarians usually use idealized propertarian capitalism as a starting point and argue that the introduction of taxation or regulation imposes new restrictions. This method ignores the coercive measures involved in establishing capitalism to begin with. Section 2 (above) briefly discusses the violent history that created the private property system.⁶⁰ In recent decades, many critics of propertarianism have argued that the imposition and maintenance of the private property rights system involves a great deal of coercion with the propertyless.⁶¹

Propertarians could concede this point theoretically and maintain the market freedom hypothesis empirically by conceding that the coercions propertarian capitalism requires delivers greater overall negative freedom for everyone. If true, everyone—even those who are coerced into accepting that the entire planet is the property of other people—actually wind up freer overall than in any other system. Everyone would be coerced less often or in less important ways; they would be less constrained over all, less likely to have labour extracted from them unwillingly, less often subject to non-contractual obligations, less often sacrificed to achieve the ends of others, and so on.

We make a pairwise comparison between the market economy and the hunter-gatherer band economy. This comparison is sufficient to show that propertarian capitalism is not particularly consistent with liberty.

⁶⁰ See also, Widerquist and McCall, *Prehistory of Private Property*, 79-99.

⁶¹ Daniel Attas, *Liberty, Property and Markets* (Aldershot: Ashgate, 2005), 7; Cohen, *History, Labour, and Freedom: Themes from Marx*, 301-302; Michael Otsuka, *Libertarianism without Inequality* (Oxford: Oxford University Press, 2003), 19; Jeremy Waldron, *Liberal Rights* (Cambridge: Cambridge University Press, 1993), 20-21, 309-338; Karl Widerquist *Independence, Propertylessness, and Basic Income: A Theory of Freedom as the Power to Say No* (New York: Palgrave Macmillan, 2013).

Nomadic foragers might provide a low bar for *welfare* comparisons, but they provide an extremely high bar for *freedom* comparisons. Bands hardly subject their members to any coercion at all. This statement is well-documented and widely accepted by anthropologists,⁶² and, importantly, by propertarians as well. Thomas Mayor, for example, calls them “The Original Libertarians.”⁶³

The anthropologist, Marvin Harris (1927 – 2001), writes,

[T]he average human being enjoyed economic and political freedoms which only a privileged minority enjoy today. Men decided for themselves how long they would work on a particular day, what they would work at—or if they would work at all. ... Every man and woman held title to an equal share of nature. Neither rent, taxes, nor tribute kept people from doing what they wanted to do.⁶⁴

Like all societies, bands have norms that restrain behaviour, but these restraints are voluntary in the idiosyncratic sense relevant to propertarian theory. All norms, folkways, and social conventions in band society are a “contractual obligations” in propertarian terms because they come with the tacitly understood qualifier, *if you want to camp with us*. Individual or groups are free to go do things their own way if they don’t like their band’s way. Therefore, even the limited extent to which band members have explicit duties to each other is the result of an informal agreement that can be dissolved at a moment’s notice by breaking camp, making band members free from almost all “noncontractual obligations.” This freedom is secured by common access to the land that they can use without interference.

The power of non-cooperation and the ability to pick up and go is perhaps the most striking institutional difference between hunter-gatherer band society and industrial capitalist, socialist, or welfare capitalist societies. Individuals in contemporary states might have a legal right to quit their job or exit a nation, but only the wealthy have they legal right to live by their own efforts without satisfying a boss or a client who has the money to pay them. The market economy’s property rights system is a noncontractual obligation forcing nonowners to respect the holdings of owners. As

⁶² For example, Marvin Harris, *Cannibals and Kings: The Origins of Culture* (New York: Random House, 1977), 69; James Woodburn, “An Introduction to Hadza Ecology,” in *Man the Hunter*, ed. Richard Borshay Lee and Irven DeVore (New York: Aldine, 1968), 52; for longer list see Widerquist and McCall, *Prehistory of Private Property*, 101-105.

⁶³ Thomas Mayor, “Hunter-Gatherers: The Original Libertarians,” *The Independent Review* 16, no. 4 (2012).

⁶⁴ Harris, *Cannibals and Kings*, 69.

Section 2 mentions, that obligation owes its existing to a long series of government aggressions and it is maintained by continued government coercion.

Propertylessness does not exist in band society. Because band economies don't impose the duty to respect landownership on anyone, everyone has access to land *without interference*.

Perhaps a more important loss of freedom follows from that central obligation of proprietarian capitalism. Power over the resources other people need to survive entails power over people. Most people who aren't independently wealthy are coerced into a position where they must find a boss or a client and follow their orders. While people in band society can go for years or even a lifetime without hearing an order,⁶⁵ most people in proprietarian capitalism have little choice but to take orders most days of the week, most weeks of the year, until they are too old to work.

Would-be non-cooperators are left with very few and very unattractive options, such as foraging in garbage cans. Homelessness, which does not exist in band society, makes people unfree to do some of their most basic human functions. Homeless people are unfree—in the most negative sense of the term—to urinate or have sex in a private place, unfree to sleep unmolested, unfree to sleep or urinate in any place they can legally be, and so on.⁶⁶

The ownership of property does secure liberties that are unavailable when land is a commons. But it confers those freedoms only to the owners of property, not to nonowners. Robert Nozick admits that the establishment of a property rights system involves interference, but attempts to make up for it by changing the focus from freedom to opportunity, writing, “the things I do with the grain of sand I appropriate might improve the position of others, counterbalancing their loss of the liberty to use that grain.”⁶⁷ Section 1 has argued that those opportunities have not made the least advantage better off than they could be living under a common property regime. But even if it were true, “an opportunity to become free is not freedom. ... So long as the opportunity remains unconsummated, the person ... remains in a negative sense unfree.”⁶⁸

For capitalist society to be more consistent with negative freedom than band society, it would have to *relieve* everyone from forms of coercion that exist in band society. This is difficult to achieve because band societies have so few noncontractual obligations. For all but the

⁶⁵ Fried, Morton H. *The Evolution of Political Society* (New York: Random House, 1967), 8.

⁶⁶ Waldron, *Liberal Rights*, 309-38.

⁶⁷ Nozick, *Anarchy*, 175.

⁶⁸ Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), 411.

independently wealthy, even if the market economy provides opportunities, it provides them only by establishing obligations, not by relieving coercion.

Although freedom is difficult to measure, this comparison can be made definitively because the freedom of the least free people in band societies *dominates* the freedom of the least free people in capitalist societies. That is, people in band societies have all the liberties that the least free people in capitalist societies do and more. They are free from many or more important forms of coercion that people in capitalist societies are subject to and not subject to any forms of coercion that people in capitalist society are free from.

If freedom is an overriding value, as some proprietarians assert, everyone must become a nomadic hunter-gatherer. This finding obviously implies that the justification of any other system must rely at least partially on some other value, such as opportunity or welfare. Less obviously but perhaps more importantly, this finding implies that deviations from the proprietorian ideal cannot be condemned as freedom-reducing because they create opportunity for the propertyless by interfering with the property owners. Redistributive policies can be structured to counteract freedom-reducing aspects of the market economy, creating greater equal freedom overall.⁶⁹

5. Conclusion

This article has briefly argued four points. 1. The Lockean proviso is unfulfilled: neither the state nor the property rights system achieves mutual advantage. The least well-off people in contemporary capitalist states are worse off than they could reasonably expect to be in a stateless society with a common property rights regime. 2. The natural rights argument does not support a liberal property rights structure as usually supposed. The principles of original appropriation and voluntary transfer applied to actual history lead to complex and partly collectivist structure. The liberal property regime now ubiquitous around the world was established by a long series of government-led coercion and seems unlikely to develop without coercion. 3. The belief that political, social, or economic inequality is inevitable and/or that equality is inevitably in conflict with freedom is false. For most of human prehistory—most of the time humans have existed—they have lived in communities that were both very free and very equal. 4. The negative freedom argument for the market economy does not hold. Given the restrictions the property rights system

⁶⁹ See also Karl Widerquist *Independence*.

imposes on propertyless people, the hunter-gatherer band economy is more consistent with negative freedom than capitalism.

This chapter has summarized the findings of our two books and shown the parallels between them. It has argued that (1) these four claims are empirical; (2) they are claims about prehistoric or stateless peoples; (3) they are used as premises in influential contemporary theories; (4) and they are false. This chapter's arguments are brief but, we hope, convincing. If not, our books offer more evidence and argumentation.⁷⁰

The central implication of the falsity of these four claims is simple: our societies need to treat less advantaged people better. Perhaps the most tragic aspect of the mistreatment of the disadvantaged is that it is so unnecessary. Contemporary societies have tremendous wealth. They don't need to create a class of people so poorly off, so unfree, with so many reasons to feel disinherited, with so few reasons to feel they truly benefit from our political and social arrangements. A nation that benefits some at the expense of others is a parasitic society. Mutual advantage is within our reach, but myths we tell ourselves about the state of nature make it easier for us to ignore our failure to secure mutual advantage, equality before the law, and freedom for all.

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⁷⁰ Widerquist and McCall, *Prehistoric Myths; Prehistory of Private Property*.

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