2-2020

Libertarianism without self-ownership

Chandran KUKATHAS
Singapore Management University, kukathas@smu.edu.sg

LIBERTARIANISM WITHOUT SELF-OWNERSHIP

By Chandran Kukathas

Abstract: *Libertarianism is a political philosophy whose defenders have set its foundations in the principle of self-ownership. But self-ownership supplies an uncertain basis for such a theory as it is prone to a number of serious difficulties, some of which have been addressed by libertarians but none of which can ultimately be overcome. For libertarianism to be a plausible way of looking at the world, it must look elsewhere for its basic principles. In particular, it needs to rethink the way it understands property and its foundations.*

KEY WORDS: self-ownership, libertarianism, nonaggression, property, anarchism, Mabo, Nozick, Rothbard, state, redistribution

I. Approaching Libertarianism

Libertarianism, understood as a *political doctrine*, casts a critical eye on the idea of state or governmental authority; indeed, some versions of libertarianism are critical to the point that they reject the idea of political rule altogether. Understood as a *philosophical position*, libertarianism has generally rested on two main ideas: that individuals are rights-bearers who *own themselves*, and that it is wrong for any individual or group of individuals to *initiate force* or to *aggress* against others or their property. These twin principles of *self-ownership* and *nonaggression* lie at the heart of libertarianism, both the political doctrine that is held by libertarians who are critical of the state, and the variant espoused by so-called *left-libertarians*, who offer a theory that is much less hostile to the redistributive state.

In asserting that these two principles are at the heart of libertarianism I am adopting what many would regard as a very narrow understanding of the political theory in question. Those who take a broader view would wish to consider a thinker like F. A. Hayek as a libertarian, yet his works make no mention either of self-ownership or of the nonaggression principle. There is good reason to place Hayek in the libertarian camp, since his critique of socialism and central planning as well as his robust defense of individual liberty make his ideas highly congenial to libertarians—many of whom claim him as one of their own. Nonetheless, while Hayek is a political fellow-traveler, his approach to the defense of the ideal of a free society differs significantly from that of libertarians. My purpose here is to address certain problems inherent in the narrower understanding of libertarianism that I have

doi:10.1017/S0265052519000505

assumed—problems that do not beset varieties such as Hayek's, if he is regarded as a libertarian.[1]

My contention in this essay is that libertarianism as a political theory does not need the self-ownership assumption. The purpose of the essay, then, is not so much to offer a new critique of the self-ownership principle, which has been extensively (and to my mind, convincingly) criticized, as to present an alternative account of a libertarian perspective that rests on a reading of the nonaggression principle. The ultimate outcome is not a statement of a full libertarian political theory, but is nonetheless a working adumbration of such a statement.

The first half of the essay offers, in Section II, a brief summary of the main problems with the self-ownership assumption in libertarian thinking. The second half, Section III, presents an account of a different basis for a libertarian perspective on politics and, to that extent, an alternative version of libertarianism.

II. Self-Ownership

Do we own ourselves? Before we can answer this question we must address two preliminary conceptual problems: What is to be understood by "own," and what are the "selves" involved. Let us assume for the moment that by "selves" we mean "bodies" (though we shall have to return to this matter eventually), and train our focus on the issue of ownership. What might it mean to say that we—or I—"own" anything? Another way of expressing the same question would be to ask what it might mean for us—or me—to have a *property* claim in some thing or things.

There are two ways of approaching this question. The first would be to say that a property claim describes or asserts a relationship among people with respect to a thing or things. The second would be to say that a property claim describes a relationship between a person and a thing or part of the world. On the first view, someone might have a property claim or right to a thing because the relationship among people with respect to that thing involves their recognizing that claim. On the second view, people (should) recognize a person's claim to a thing or part of the world because that person already has a relationship with that thing. Libertarians who begin with the principle of self-ownership subscribe to the second view to the extent that they believe that there is at least one "thing" to which each person has a property claim that is in no way dependent on people recognizing that claim: the individual's own *self*, understood for the most part as the individual's own *body*. The property I have in my person (to borrow John Locke's phrasing), is not and cannot be a property I have by the grace of others' acknowledgment or recognition but is one I have

[1] Andrew Koppelman's forthcoming book-length critique of libertarianism includes Hayek as a libertarian.

regardless of what others might think, and a failure to acknowledge or respect my property in my "self" is to be in error or commit a serious wrong.[2] The question is: Why should we begin with this assumption?

Two are two approaches one might take in any effort to build a political theory:

1) Start with a first principle and deduce all conclusions—and assess all actions or proposals for consistency with the first principle. There are two risks to this approach: first, it makes it difficult for anyone who does not accept the starting principle to see any merit in the conclusions and proposals that follow; second, it is likely to beg all the questions in contention if the answers offered are simply derivations from contestable principles that imply those answers.
2) Consider a range of problems and the solutions in contention and offer responses or proposals, building up a consistent theory from the answers. The risk here is that the search for consistency may be compromised if there is no philosophical principle to be found, and the result of this may be that some disputes remain unsettled at a deep level.

Libertarians who defend self-ownership take the former of these approaches by offering it as a first principle. This is not to say that they do not offer any reasons why this is the right first principle. A writer like Murray Rothbard, as a libertarian on the Right, has attempted to derive the principle of self-ownership from certain facts about the world,[3] or show that only self-ownership is a logically possible moral assumption once the alternatives are seen to be incoherent.[4] The search for natural foundations for self-ownership is consistent with the outlook that sees property and property rights not as highly variable human conventions but as rooted in the nature of individuals as beings who are able by their own action to establish morally indefeasible claims. "Individuals have rights, and there are things no person or group may do to them (without violating those rights.)"[5] Others, such as Peter Vallentyne, Hillel Steiner, and Michael Otsuka as libertarians on the Left, have offered reasons why self-ownership is an attractive starting point[6]: "It is a strong endorsement of the moral importance and the sovereignty of the individual, it expresses

[2] It is important to note that John Locke did not consider human beings to be self-owners, since they were, if anything, owned by God. Perhaps this is why he said "I have *a* property in my person." See John Locke, *Second Treatise of Government*. What property we have in our persons is enjoyed by God's grace, and that property right is not absolute but highly circumscribed inasmuch as we are obligated to care for our persons as God would expect. We certainly do not have the right to abuse or destroy what God has created.

[3] Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982), chap. 6.

[4] Ibid., chap. 8.

[5] Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974). Nozick's famous opening line asserts that that there are such (natural) rights, though unlike Rothbard he famously offers no reasons why we should think they do.

[6] See in particular Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994); Michael Otsuka, *Libertarianism Without Inequality* (Oxford: Oxford University Press, 2005).

the refusal to treat people as interchangeable objects (things that may be traded off for each other) and it seems to provide a clear and simple starting point for our thinking about justice."[7] Both right- and left-libertarians, however, approach the task of developing a political theory by asserting the primacy of self-ownership.

Both of these approaches to justifying self-ownership assume a particular answer to a fundamental question about the very idea of a property relation, namely, whether property is a relationship among people with respect to things or parts of the world or a relationship between a person and a part of the world. Murray Rothbard's view, for example, is that property is a natural relation between persons and things, with qualifying "things" extending to include all parts of the world, not excepting human beings. After beginning with the assumption that *ownership* is a key notion for accounting for the most fundamental relations that obtain in the world humans inhabit, he then moves on to try to explain why only certain forms of ownership of humans are coherent. Why ownership must be the crucial and necessary relationship on Rothbard's view remains obscure—assuming for the moment that it is not entirely implausible—as does the idea that ownership or property is a natural relationship between persons and things rather than a relationship among persons with respect to things.

Even if it were granted that property is the concept through which we should understand the fundamental relationships among people in the world, however, it remains to be shown why one particular form of *ownership* is the correct starting point. That form of ownership is what Rothbard refers to as "full 100 percent" ownership—the term he applies to self-ownership in particular. Anthropologists and historians of the many systems of property and property law the world has seen agree that there appear to be no societies that do not have any forms of property. Equally, however, norms of property are many and diverse, and are intertwined with a host of other norms of right conduct that vary from society to society. Nowhere has a form of property been found that corresponds to "full 100 percent ownership." (It is not clear exactly what Rothbard means by this term, but I assume that the existence of any limitation on action by the property holder(s) means that a "full 100 percent" norm is absent.) A. M. Honoré suggested that a "full" concept of ownership includes eleven different types of rights and duties, including 1) the right to possess, 2) the right to use, 3) the right to manage, 4) the right to the benefits derived from use, 5) the right to alienate, consume, modify or destroy the thing owned, 6) the right to immunity from expropriation, 7) the right to pass on or bequeath the thing, 8) the right to indeterminate length of ownership

[7] Peter Vallentyne and Bas van der Vossen, "Libertarianism," *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2014/entries/libertarianism/>

rights, 9) the duty to refrain from use harmful to others, 10) the liability to forfeiture to repay debts, and 11) an obligation to abide by background rules governing the allocation of lapsed ownership rights.[8] And yet, he observed, none of these was essential to ownership even in "mature legal systems"—not even the right of possession. Everywhere we find systems of property that limit the range of actions persons might take with respect to "their" property, and impose duties with respect to their use as well as constraints on the right of bequest. Understandings of ownership are legion. It seems highly unlikely that there is some correct or "natural" understanding of the meaning of ownership that has somehow eluded all known systems of property.

The Rothbardian view of self-ownership presupposes (but does not justify) an understanding of "ownership" that appears to take it as self-evident or obvious what the rights of ownership are, and to have no place for the idea that ownership might come with duties or liabilities. This may not be all that surprising, since it is clearly a view that does not regard property relations and rules of property as the product of convention or social construction—or more simply, tradition. But in fact, understandings of property vary across different societies, as do understandings of personhood, identity and obligations to others. Indeed, not only do social norms establish different kinds of rules of property in different parts of the world but they also issue in different understandings of what kinds of agents exist, and what kinds of rights and duties they have with respect to persons (including themselves) and things. This is not to suggest that all or indeed any of these social norms should be respected or accepted uncritically, but it will not do simply to assume that there is an obvious standard against which they must be judged. Rothbard appears to assume just that by asserting that the "full 100 percent self-ownership" is the standard, without ever offering an adequate account or justification of what it means to be a *self* and what is implied by *ownership*.

Now it may be that these difficulties with self-ownership are not inherent in the philosophical notion or the idea of deploying it to ground a political theory but rather are evidence of problems with one particular defense. If we look to the left libertarians, we encounter very similar problems. The core idea defended by left libertarians is set out by Peter Vallentyne as follows:

> . . . agents own themselves in just the same way that they can have maximal private ownership in a thing. This maximal ownership is typically taken to include the right to fully manage (to use, and to allow or prohibit others from using); the right to the full income; the right to transfer fully any of these rights through market exchange, inter vivos

[8] Anthony Honoré, "Ownership," in *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford: Oxford University Press, 1961), 107–147.

> gift, or bequest; and the right to recover damages if someone violates any of these rights. Redistributive taxation (e.g., of income or wealth) is incompatible with these rights of maximal private ownership.[9]

Maximal ownership appears to include most of the elements specified by Honoré in the account of ownership we noted earlier. However, while Honoré presented his account of property by pointing to these elements of rights that were often implicit in historical understandings of ownership, he did not suggest that property ownership necessarily involved all of these elements, and was careful to point out (as we noted earlier) that *none* of these rights need be present for property ownership to obtain. The left libertarian account of self-ownership, however, invokes the notion of "maximal private ownership" as a philosophical concept that describes the relationship of a person to his or her self.

Unlike right libertarians, left libertarians deny that self-ownership implies such rights to acquire property in the external world in a way that might lead to a highly inegalitarian distribution of property. "Left-libertarianism is a theory of justice that (like right-libertarianism) grounds justice in moral (as opposed to legal) property rights."[10] As such, its two central claims are "(1) full initial self-ownership for all agents, and (2) egalitarian ownership of natural resources."[11] For the left libertarian, agents are *full self-owners* in that that "they own themselves in the same way that they can fully own inanimate objects" or, to put it differently, "full self-owners own themselves in the same way that a (full) chattel-slave-owner owns a slave."[12] While Rothbard failed to offer an account of what "full self-ownership" might mean, left libertarians have done so, and moreover have gone on to acknowledge that since ownership rights come in different degrees and forms (and that "few if any legal systems recognize full ownership" in things), ownership does not have to be all or nothing.[13] They recognize that property rights are decomposable into different bundles of rights. Nonetheless, they maintain that, "*as a matter of normative fact*," all human agents fully own themselves.[14]

The critics of left libertarians have pointed to a number of fundamental difficulties.[15] The largest problem is the *indeterminacy* of the principle: What does ownership of one's body actually imply for one's rights of action,

[9] Peter Vallentyne, "Critical Notice of G. A. Cohen, *Self-Ownership, Freedom and Equality*," *Canadian Journal of Philosophy* 28 (1998): 611.

[10] Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy and Public Affairs* 33, no. 2 (2005): 201–215 at 202.

[11] Ibid., 202.

[12] Ibid., 202.

[13] Ibid., 204.

[14] Ibid., 204. Italics added.

[15] See for example David Sobel, "Backing Away from Libertarian Self-Ownership," *Ethics* 123, no. 1 (2012): 32–60.

and for assessing whether or not the actions of others have respected or violated one's self-ownership rights? The source of the difficulty, as Barbara Fried shows convincingly, is the inherent indeterminacy and malleability of "ownership" as it is used by left (and, she might have added, right) libertarians.[16] What counts as a coercive interference with your person? My blowing cigarette smoke that reaches your nostrils, or wearing a perfume whose scent you find unpleasant? My coming into existence as an unborn child who now refuses to leave the womb? "My imitating your voice in a commercial, passing myself off as you?"[17] The point is not that these questions cannot be settled in some practical way, as they usually are in courts of law or by legislation. It is rather that the appeal to ownership or self-ownership either does none of the work to settle these questions or if it does so it is by begging the question by asserting that one particular answer is built into the notion of self-ownership.

Now, to an extent left libertarians have agreed that there is some indeterminacy in the notion of ownership, and so likewise in self-ownership, but they have denied that this is a problem to the extent that the notion has "a significant determinate core."[18] Agreeing that self-ownership rights, like all property rights, are "decomposable" into different kinds of rights (to compensation, to enforcement, and to "immunity to loss when a person uses an object over which another has unwaived ownership rights,"[19] for example), they maintain that only some of these are indeterminate. In particular, "full ownership is quite determinate with respect to its implications *where the owner has not made, and is not in the process of making, incursions onto the property of others without their consent*."[20] Unfortunately, this just will not do as it still begs the question—given that what always remains to be established is where the boundaries lie between one person's property in herself and another's. There is no natural boundary, and as Fried shows drawing on the Coase theorem, to suggest that the problem can be resolved by saying that one person's self-ownership rights end when their actions infringe upon or harm the self-ownership rights of another does nothing to settle matters when those rights and those boundaries are in contention.[21]

To the extent that the left libertarians are able to establish the boundaries of self-ownership, however, another problem of indeterminacy arises. If stepping uninvited across the boundaries of the self involves a violation of the rights of the self-owner, and such violations entitle the self-owner

[16] Barbara H. Fried, "Left-Libertarianism: A Review Essay," *Philosophy and Public Affairs* 32, no. 1(2004): 78.
[17] Fried, "Left-Libertarianism," 78.
[18] Vallentyne, Steiner, Otsuka, "Reply to Fried," 203.
[19] Ibid., 205.
[20] Ibid., 206.
[21] Barbara H. Fried, "Left-Libertarianism, Once More," *Philosophy and Public Affairs* 33, no. 2 (2005): 216–22, at 217–19.

to seek redress or to act to protect his person, can social interaction take place at all given how readily we bump into one another, both literally and figuratively? Left libertarians acknowledge this problem quite candidly. Taking seriously the notion of "full self-ownership *in the strict sense*" has some troubling implications: it means self-ownership is put at risk or violated if someone's action has a small probability of resulting in an incursion against me, or if an incursion causes a trivial harm (bumping into me). It also means even harms not reasonably foreseeable are violations, as are harms performed to avoid more serious ones (splashing you with a little water when trying to put out a fire, for example). To avoid these difficulties, left libertarians suggest distinguishing between "strict libertarianism" and libertarianism in a looser sense—so that "self-ownership determinately rules out actions that are foreseeably highly likely to cause incursions on one's person that will significantly harm one and where avoidance of a social catastrophe is not at issue."[22] But while *full self-ownership in a looser sense* is all very well, and surely quite sensible, its benefits come at a cost—a certain loss of philosophical sharpness. And it also leaves us with the question: What work is the concept of self-ownership doing?

The problem for libertarians is that a strong self-ownership standard generates excessively powerful protections against minor infringements against the rights of individuals, and leads to counterintuitive results as we acquire the right to veto a great number of activities, but weakening the self-ownership standard makes it difficult to see what advantage it has over other sorts of moral principles that aim at the protection of individuals' interests.[23] One answer left libertarians have offered has been to say that "there is something theoretically plausible about the thesis of self-ownership: we—and not others—are morally in charge of our bodies and our persons. It is wrong to kill us, strike us, have sex with us, or remove our body parts without our permission. Moreover, *full* self-ownership is both plausible in the abstract (we are *fully* in charge of our persons) and has a theoretical simplicity."[24] Not all of this seems entirely true. The self-ownership thesis does not appear theoretically plausible to everyone, and even fewer would consider it necessary to make sense of the wrongness of killing, sex against one's will, or the forced removal of parts of one's body. And while it may be right to say that every principle generates some counterintuitive implications, this is hardly the most robust of defenses.

There may be better reasons to start with the premise of self-ownership. A plausible justification is offered by Eric Mack, who defines the idea of self-ownership as simply "that each individual possesses original moral rights over her own body, faculties, talents, and energies," and suggests that it explains "the moral inviolability of persons—an inviolability that is

[22] Vallentyne, Steiner, Otsuka, "Reply to Fried," 207.
[23] See in particular David Sobel, "Backing Away from Libertarian Self-Ownership," 32–60.
[24] Vallentyne, Steiner, Otsuka, "Reply to Fried," 207–8.

manifested in the wrongfulness of unprovoked acts of killing, maiming, imprisoning, enslaving, and extracting labor from other individuals."[25] But it is not evident that self-ownership is necessary as a starting point to assert the wrongfulness of these kinds of acts, and more particularly still it is not clear that a claim of *ownership* is needed.

III. Rethinking Libertarianism

Although it has been a mainstay of libertarian theorizing, the self-ownership principle may be less of an asset than a liability But how should one then think about libertarianism? Let me offer now an alternative approach.

A. First thoughts

In 1992, in the case of *Mabo v. Queensland (No.2)*, the High Court of Australia issued a judgment of considerable legal and political consequence, but also of great moral significance for many Aboriginal people. It found in favor of Eddie Mabo and his co-plaintiffs who had ten years earlier challenged the Queensland Amendment Act 1982 that established a system of land grants on trust for Aboriginals and Torres Strait Islanders and that Murray Islanders refused to accept. Eddie Mabo, David Passi, and James Rice, Meriam people from the Murray Islands in the Torres Strait, brought their action to establish what were the legal rights of their people to land they regarded as owned individually or by groups of individuals on those islands. Land on these islands was not collectively or communally owned and custom had established clearly demarcated entitlements to plots of territory. The Queensland Government had tried to thwart this attempt by Aborigines to assert a long-standing right to property by passing the Queensland Coast Islands Declaratory Act (1985), which asserted that upon annexation of the islands in 1879, title to those lands became vested in the state of Queensland "freed from all other rights, interests and claims whatsoever." Eddie Mabo and his co-plaintiffs asked the court to recognize the Meriam people "as owners; as possessors; as occupiers; or as persons entitled to use and enjoy the said islands." In *Mabo v. Queensland (No.1)* 1988 the High Court held that the 1985 Queensland Coast Island Declaratory Act contravened the Racial Discrimination Act (1975), and in 1992 it found in favor of the plaintiffs, rejecting the Queensland government's argument that when the territory of a settled colony became a part of the Crown's dominions, the law of England became the law of the land, and that, "by that law, the Crown acquired the absolute beneficial ownership of all land in the territory so

[25] Eric Mack, "Self-Ownership, Marxism, and Egalitarianism, Part I," *Politics, Philosophy, and Economics* 1 (2002): 75–106, at 76.

that the colony became the Crown's demesne and no right or interest in any land in the territory could thereafter be possessed by any other person unless granted by the Crown."

The Mabo judgment was significant in law because it recognized what had up until then been denied: that there was a concept of native title at common law. In so doing it opened up the way for many Aboriginal groups in Australia to assert possessory title to lands across the country—even though Aboriginal groups on the mainland did not have systems of individual ownership. The judgment was welcomed by Aborigines and some parts of the general Australian population, but viewed with alarm by many conservatives, by some parts of the business community, and by pastoral interests in particular.

From a philosophical point of view, it is a judgment that is particularly congenial to libertarians. I take the Mabo case as a useful starting point for reflection on the idea of libertarianism because it brings out what I think lies at the heart of the libertarian outlook.

Most discussions of libertarianism in contemporary academic political theory begin (and all too often, end) with Robert Nozick, taking his view of individual rights as the core of the libertarian outlook. Without wishing to disparage Nozick's contribution, I want to suggest that this focus presents a misleading (and limited) account of libertarianism and its concerns. As Nozick is frequently represented (and often misrepresented), it looks as though libertarianism's main purpose is to defend the claims of individuals to retain possession of what wealth they have accumulated no matter what the consequences for others, including the destitute and the downtrodden. Outside academic political theory this understanding of libertarianism has been reinforced (unsurprisingly) by many of the followers of Ayn Rand who present libertarianism as an egoistic doctrine that rejects any form of altruism—though Rand herself repudiated the label libertarian to describe her Objectivist worldview. Neither Nozick nor Rand offers a compelling starting point for thinking about what libertarian political philosophy has to say, at least to my mind. What I want to offer, then, is an account of my own. In this regard I hope to add to the contributions of others since Nozick,[26] including Loren Lomasky,[27] Douglas Den Uyl, Douglas Rasmussen,[28] and John Tomasi.[29]

I start with the Mabo case because I think it serves best to illustrate the libertarian view I would like to defend. In this instance what we have is a

[26] For a helpful survey of libertarian theories see John Thrasher, "Social Contractarianism," in Jason Brennan, *The Routledge Handbook of Libertarianism* (New York: Routledge, 2018), 212–26.

[27] Loren E. Lomasky, *Persons, Rights, and the Moral Community* (Oxford: Oxford University Press, 1987).

[28] Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty* (University Park, PA: Pennsylvania State University Press, 2005).

[29] John Tomasi, *Free Market Fairness* (Princeton, NJ: Princeton University Press, 2012).

group of people (the Murray Islanders) who have, over a period of generations, established a society that is more or less well-ordered by customs or laws that have allowed them to survive, and even to flourish. They had settled on lands that they cultivated and, in doing so, developed property conventions that involved not joint-ownership or communal ownership but individual ownership of plots of territory. While they did not have written records, there was no difficulty within the society keeping track of ownership or entitlements. The threat to the lives of these people came from an external source: a state seeking to supplant one system of law with another. It attempted to do so by denying the existence of any earlier tradition of law, denying the validity of any of the titles by which people had been living for generations, and asserting the authority of an alien legal system. The state sought to subsume society.

At the heart of the libertarian view, at least as I read its main impulse, is the thought that the state does not subsume society. It is, to coin a phrase, an alien power—one that serves particular elements of society even as it asserts its universal concerns. There is no good moral justification for accepting the authority of the state or for thinking its workings are benign. The state is not the solution to any problem that needs solving; and very often the state is the problem. It is not the servant of the common good but an agent that serves particular interests, notably the interests of the powerful. Its main interest is self-perpetuation and its primary tools are education, promises of redistribution, and violence—these tools being deployed to different extents in different regimes and circumstances. The state's concern for security is a concern not primarily for the security of society but for the security of the state. Libertarianism is a political outlook that views matters from the standpoint not of the state but of individuals in their societies. Its sympathies lie with people like the Murray Islanders who assert their independence from the political power that claims they are not independent but a part of some larger collective and subject to a collective authority. It is entirely proper that the Meriam people claim title to their land as a matter of right, and that they not have to accept that land as a grant from some collective who offers it to them in a form they neither recognize nor care for.

The question, then, is what are the terms of the political philosophy that sustains this reading of the Mabo case? The main concern of this essay is to sketch an outline of a libertarian theory. A sketch is by its nature incomplete, lacking the detail that only a more substantial account can provide. But behind the sketch lies the hope, if not the conviction, that the argumentative substance can be supplied.

B. First principles

Human beings need and wish to associate with others in order to live lives they value. Though there is much upon which they agree, they also

find themselves at odds with one another because they compete for the same scarce goods and because they sometimes hold conflicting views about what has value or about what is right. How should such beings relate to one another in such circumstances?

Libertarians, and liberals more generally, begin by assuming that what is important or has value is the lives or well-being of individuals. What matters ultimately is how well individual lives go, not what happens to other entities. Ideas, things of beauty, groups, traditions, histories, and if it comes to that, nature, matter only insofar as they bear—directly or indirectly—on individual well-being.

For individuals to live good lives, they must lead lives they themselves find valuable (though this is a necessary but not sufficient condition for success). Good lives are generally lives that the individuals who live them see as meaningful. Lives lived under terms individuals do not accept as good or desirable are unlikely to be good lives, unless the individuals in question come to value them. Understandings of what kinds of ways of living are valuable (either for oneself or universally) are numerous.

Given these assumptions, we begin with a strong presumption in favor of leaving individuals to determine for themselves how they intend to live. There is no warrant for exercising power over any member of the human race in order to secure his own good, either physical or moral: "He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise, or even right."[30] This is the thought that lies at the core of John Stuart Mill's defense of liberty: there is a very strong presumption against compulsion of any kind, even though there may be good reasons for trying to influence an individual's conduct by remonstration, reasoning, or other means of persuasion that do not involve the threat of doing evil to anyone.

At the heart of the libertarian view, then, is a principle of nonviolence and nonaggression against others. Any form of aggression against others is difficult to justify: the good of the person aggressed against cannot justify it, and one's conviction that compulsion of the other is right is not in itself sufficient to do so either. Libertarians attach very great weight to this principle of noncompulsion—and more weight than many liberals, including Mill, who are willing to endorse the use of compulsion in a wide range of circumstances. Mill famously limited his principle of liberty to civilized communities and thought despotism over barbarians was permissible provided it was for their own good. He also thought compulsion was justifiable if it was needed to prevent harm to others, but while this qualification might be broadly defensible, from a libertarian perspective Mill's exceptions uphold the exercise of violence or aggression much more

[30] J. S. Mill, *On Liberty*, chap. 1, 610.

readily than is warranted. When Mill writes, "In all things which regard the external relations of the individual, he is *de jure* amenable to those whose interests are concerned, and if need be, society as their protector," I take him to be suggesting that the individual is to be presumed responsible for the effects of his action, and also his inaction, on society; and that leaving the individual to his own discretion is justified only in special cases when the exercise of control over him would produce other evils. From a libertarian perspective, the presumption should be in favor of individual discretion. While for Mill there are "many positive acts for the benefit of others which he may rightfully be compelled to perform,"[31] for the libertarian there are few.

What, then, is the basis for anyone exercising authority over an individual? From a libertarian standpoint, only the individual's acceptance, directly or indirectly, of the exercise of authority can make it legitimate. Individuals must be free to associate with one another to address matters of common concern, but they must also be free not to do so. No one has the right to compel others to associate with anyone, or to compel others to submit to his, or his group's, authority. No such claim to authority need be recognized, and any claim by such groups or persons to deny those in their control the freedom to exit also need not be recognized. On this view libertarians must be *philosophical anarchists*, even if they need not be *political anarchists*. There may be reasons to obey the law or to abide by the commands of various authorities, but this is not because the structures of authority have some deep justification (such as might be articulated by a theory of the social contract or settled by appeal to Providence). In this I follow A. John Simmons in his elucidation and defense of the notion of philosophical anarchism.[32]

Libertarians have offered different reasons for holding such a view. One of these is that individuals have certain rights, and that there are certain things that no one may do to a person without violating those rights. A version of this rights view is to be found in the theory (or theories) of self-ownership: my inviolability is grounded in the fact that I own myself and no one has the right to require or force me to act in any ways that deny or violate the rights that flow from that ownership. The view I advance begins from a weaker, more skeptical claim that does not so much assert that there are particular rights (flowing from self-ownership or other natural sources) as deny that anyone has any warrant for asserting a general claim to compel or forbid others to act as they wish. It therefore denies that the state has any authority that might be derived from such sources as the good of the community, or established convention, or a social contract

[31] Mill, *On Liberty*, 611.

[32] A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2000), especially chaps. 6 and 7. I do not, however, share Simmons's Lockean starting point.

(original or hypothetical or signed by an invisible hand[33]), even as it accepts that there may be good reasons (practical or pragmatic as well as ethical) to go abide by many of the norms of governance found in some political societies.[34]

One obvious issue here arises out of the fact that people associate and dissociate not only in the abstract but also in the material world: Who may exercise control over any part of that world, using elements of it for purposes that exclude others therefrom, and on what basis may they do so? Libertarians and others have often addressed this question as the basis for establishing private property. One theory that has enjoyed considerable popularity is that individuals can acquire title to parts of the external world by "mixing" their labor with it, but this has always struck me (as well as many others) as implausible not only because the metaphysics are highly obscure but also because it suggests that a valid claim can be generated purely by an individual's isolated interaction with the world. Any plausible claim to a part of the material world, however, depends upon that claim being accepted by some others. Property relations are not natural but social, and they come into existence not prior to the emergence of society but simultaneously with it.

The question here is: Whose acceptance of a claim to some part of the material world is necessary to generate a property title. One view, shared by left libertarians, is that the whole world must, at least in principle, accept the claim. We begin with the assumption that everything is jointly owned, and any taking from the common stock must be justified to all. I think this approach is untenable. It is incapable of generating any kind of property, whether individual or collective, and cannot make sense of the history of property. A more plausible position is that property titles are generated in collectives of various kinds as individuals (separately or in association with others) gain recognition from those immediately affected by their claim as they themselves recognize the claims of others. Property systems are not the product of the concatenation of independently established titles to things or plots of land but the result of the mutual recognition that is part of the development of a society. Different societies will develop (as they have) in different parts of the world, and different systems of property will evolve with them. From the libertarian point of view, the reason to accept a property claim within a society is that the claim is already accepted by its members. The reason to accept a property claim

[33] The invisible hand justification of the state is offered by Robert Nozick. For my skeptical appraisal of a part of his argument see "*E Pluribus Plurum*, or, How To Fail To Get to Utopia in Spite of Really Trying," in Ralf M. Bader and John Meadowcroft, eds., *The Cambridge Companion to Nozick's Anarchy, State and Utopia* (Cambridge: Cambridge University Press, 2011), 289–302.

[34] In this regard I am sympathetic to the arguments advanced by Leslie Green in *The Authority of the State* (Oxford: Clarendon Press, 1988)—though he rejects philosophical anarchism as an implication of his view.

made by members of other societies is that the fact that title is already acknowledged by others gives us a pro tanto reason to accept it ourselves.

Two points need to be noted here. First, no property claim is indefeasible. The validity of a title can be challenged on a number of grounds, the most obvious of which is that the property was not properly acquired within the terms of the rules of property in that society. Property might have been stolen either by the present owner or by a previous owner. The rules for settling disputes about title are also a part of the rules of property. A property right might also be challenged on the grounds that by claiming, say, exclusive title, the owner is harming the others who are thereby deprived of the use of that property. Someone or some group that takes possession of a well or of a riverbank might be challenged by those who would be deprived of water and have their livelihoods threatened. There is no naturalistic way of settling such conflicts, but good laws of property aim to do so to the satisfaction of the affected parties. If the people of Queensland, or their representatives, had turned up on the Murray Islands and made a case that the Meriam people's exclusive use of those lands was causing (by preventing the averting of) significant deprivation on the Australian mainland, the Murray Islanders would have had to give serious consideration to the question of whether they could rightfully assert a right to the whole of their property. But when the state of Queensland asserted the superiority of its title in 1985 it gave no good reason why the title of the Murray Islands to their lands was not morally and legally valid.

Second, it is important to note that there are numerous property conventions both within and across nations, only some of which grant rights-holders exclusive and unfettered use of what they own. Since ownership is social and societies and forms of property are innumerable it would be a mistake to look for a single, universal conception of ownership that covers all property relations. Even within single systems of property there are many forms of property. In the case of land, property may be held as fee simple property or as leasehold property or under any one of a number of forms of ownership. It is also not uncommon for property law to specify the nonpossessory interests of third parties, who may have rights of usufruct, or rights to easements. When the state of Queensland asserted title over the lands of the Murray Islanders and denied the validity of their claims to rightful title, it was doing what other Australian governments, and Australian courts in the past had done: asserted that forms of property that did not conform to English common law standards were invalid. In the nineteenth century in the Punjab, British colonial authorities had similarly refused to recognize Punjabi women as property-holders since only men could own property.[35]

[35] On this see Veena Talwar Oldenberg, *Dowry Murder* (Oxford: Oxford University Press, 2001).

Libertarian first principles require respect for conventions of property rather than an insistence on the correctness of one universal understanding of property. Violent or aggressive efforts to take any part of another's property is just as unjustifiable as the exercise of force against another individual's person. Here the writings of Francisco de Vitoria provide an important touchstone for thinking about how to deal with the fact that in a diverse world there are many different conventions and norms that govern a variety of societies. In considering the claims of the European powers to assert jurisdiction over the peoples of the new world he noted that neither religious nor political authorities had any warrant for intruding into these societies or their practices—even though he considered it reasonable to approach the inhabitants of distant lands to trade or to proselytize.[36]

One important question that has to be considered here is whether this means that there is *any* core notion of property on which libertarians rely in adopting this standpoint—a notion of property that has to be respected in all contexts? Are *any* conventions of property permissible so long as they are accepted by the community that abides by them? This issue is not an easy one to settle because insisting on a certain core understanding of property supplies a warrant for intervening in the practices and lives of people who might not accept that understanding—something of which the European colonizers of new worlds were certainly guilty—but denying that there is any core leaves one unable to distinguish between genuine or valid or legitimate property claims from spurious, invalid, or illegitimate ones. The conclusion advanced (but not fully defended) here is that there is no core notion of property to which appeal can be made and that, to this extent, we are left only with the option of engaging with those whose views of the matter differ from our own and seeking some accommodation or compromise.

Of course, there is the alternative of trying to establish philosophically the correct definition of the *core* understanding of property and then taking this to those whose understanding is defective and persuading them of the correct view. But if they are reluctant to accept this definition, what then? The Spanish colonizers of the New World went with "clear" instructions from their King and Queen to confiscate lands and impose alien rule only after the natives encountered had been properly advised of the legal and moral basis of these actions. Conforming to the "Requerimiento" issued in 1513 by Isabella and Ferdinand, the Conquistadors therefore read out to the "Indians" they encountered the standard proclamation outlining the legal and religious justifications for taking their lands. Since resistance to Spanish occupation could be the result of ignorance rather than simply malice, the point was to eliminate the excuse of ignorance by explaining

[36] See especially Vitoria's lectures "On the Indians" and "Dietary Laws," in *Political Writings*, ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 19).

the reasons for dispossession. Yet it hardly seems plausible to think that the mere offering of reasons is sufficient if those who are offered them do not recognize them as such—however much one might be convinced that one is presenting reasons that are logically sound and morally weighty. To those who do not accept them they might be nothing more than sounds. (And indeed the Conquistadors seem to have conceded this point since they realized that it made no sense to issue proclamations in a foreign tongue to uncomprehending people, and in the end contented themselves with reading aloud to rocks and trees before going on to take what they had already determined was theirs to acquire.) In the end, such efforts can be nothing more than an exercise of power; and the fact that such power is exercised by or on behalf of a state does nothing to make it more legitimate.

Although states have had a profound influence on the development of property law, conventions of property pre-date the state. From a libertarian point of view it is a mistake to think of the state, or any political authority—democratic or otherwise—as having the right to determine what property titles are valid. If the exercise of state authority is legitimate and property takings are justifiable, it remains the case that there is a taking. Some theorists have argued that if a taking is justified, say via taxation, there is no confiscation of property since the rules justifying the taking establish what people are rightfully entitled to call their own. What is taken was never theirs to keep.[37] What people are entitled to is their post-tax income and the things they have in their possession as determined by the laws of property as structured by political authority. From a libertarian point of view this position is untenable: property conventions pre-date political authority and even if property may be taken under certain conditions or for particular purposes it cannot be redefined at will.

There is, however, a further implication of the idea that property conventions vary and pre-date the state that ought to be noted. Much libertarian theorizing about property has assumed that property relations involve or originate in *individual* ownership claims. Yet property has not always been, and is not everywhere, individual private property but rather collective, communal, or institutional. Property might be held by people who share a collective right to use and manage a resource without any individual (or even the group as a whole) having the right to take or dispose of a part of it. While the Murray Islanders owned individual plots of land, other aboriginal peoples have thought about their property in communal terms. To use a more modern example, however, even a

[37] See, for example, Peter Singer, *The President of Good and Evil: The Ethics of George W. Bush* (New York: Dutton, 2004); Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York, Oxford University Press, 2004). For a critique of Murphy and Nagel see Geoffrey Brennan, "'The Myth of Ownership' Liam Murphy and Thomas Nagel: A Review Essay," *Constitutional Political Economy* 16 (2005), 207–19.

"private" university, which is run by its fellows with oversight by its board of trustees, may not choose (even unanimously) to liquidate all its assets and distribute the proceeds. Nor can the board of a charitable foundation decide to turn it into a different sort of enterprise even if everyone thinks it's a good idea. In the end, respect for property conventions does not mean only recognition of and respect for individual private property but respect for property conventions more broadly—including forms of property that are communal or collective rather than individual.

What this means for the version of libertarianism presented here is that it does not assume that the outcome of respect for property conventions, or of different ways of living more generally speaking, will be a world of libertarians or libertarian societies. It may be that the development of different forms of human association leaves many parts of the world governed by different norms and not necessarily by commercial or market relations.[38] The theory's individualist starting point does not lead to advocacy of an individualist way of life. In this regard, it assumes a particular interpretation of libertarianism's nonaggression principle. Two alternatives are available. On the first, the nonaggression principle implies that there is no warrant for exercising force to compel others to live according to norms they do not accept, and so no justification for requiring a community or society to live according to libertarian principles. On the second, the nonaggression principle requires the enforcement of a libertarian order, including the enforcement of the nonaggression principle, even among people who wish to live by other norms. It is the first interpretation that is favored here.[39] On this understanding of libertarianism, what it offers is not an account of how a state should govern according to libertarian principles but rather a perspective from which to look critically at the way in which we should forbear from the exercise of power over others.

This brings us directly to the question of the state. The state is, ironically, the raison d'être of libertarian theory. We need, then, to look more closely at what libertarianism might say about the state.

C. The state

The state is a modern form of social organization, which emerged in Europe over the past five hundred years and has been imitated throughout

[38] This is perhaps the thought that lies behind Nozick's discussion of utopia in Part III of *Anarchy, State and Utopia*. This is not to suggest that libertarians are not sympathetic to market societies but rather that the primary commitment is to nonaggression and, so, respect for the conventions of property by which people live. This is not incompatible with an appreciation of markets both for their economic productivity and their civilizing qualities.

[39] I have treated this issue in more detail in Kukathas, "Two Constructions of Libertarianism," in *Libertarian Papers* 1, no. 11 (2009), 1–13. See more generally my *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003), esp. chap. 4.

the rest of the world.[40] According to Martin Van Creveld, the state emerged because of the limitations of the innumerable forms of political organization that existed before it.[41] The crucial innovation that made for development of the state was the idea of the corporation as a legal person, and thus of the state as a legal person. It enabled the emergence of a political entity whose existence was not tied to the existence of particular persons—such as chiefs, lords, and kings—or particular groups—such as clans, tribes, and dynasties. The state was an entity that was more durable. Whether or not this advantage was what caused the state to emerge, it seems clear enough that such an entity did come into being. The modern state represents a different form of governance than was found under European feudalism, or in the Roman Empire, or in the Greek city-states. There was no necessity or inevitability of the state's emergence. Some scholars have suggested that several other alternatives might well have emerged in the post-medieval Europe that gave birth to the state, including a network of trading cities without central governance, a theocratic commonwealth dominated by the Catholic church, or some loosely knitted form of empire or political federation. Or feudal forms of governance might simply have continued.[42]

With the emergence of the state came a succession of theoretical efforts to account for this new development and to explain its purpose or its point. The point of the state, according to most of the philosophers who tried to explain it, was to serve human interests, or the human good, or the demands of justice; and it was its capacity to serve these ends that ultimately justified the state or accounted for the legitimacy of its authority over those in its power. The state had a point because it secured order, or freedom, or justice, or happiness, or some combination of these things, which could not otherwise be had.

From a libertarian point of view, however, all these theories are wanting because the state does none of these things. The origins of the state lie not in a principled concern for justice or freedom, or even in a longing for order, but in the violent pursuit of power and the quest for riches. For most of its history, the dominant activity of the state has been war, first against the inhabitants of its own territory and then against societies further away. In so doing, it has acted not for the common good but for the benefit of particular groups. Thus Charles Tilly famously suggested that the most appropriate analogy for state-making is organized crime.[43] The state is not

[40] I have tried to offer a fuller analysis in "A Definition of the State," *University of Queensland Law Journal* 33, no. 2 (2014): 357–66.

[41] Van Creveld, *The Rise and Decline of the State* (Cambridge: Cambridge University Press, 1999), 52–58.

[42] See Charles Tilly, "Reflections on the History of European State Making" in Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton, NJ: Princeton University Press), 51.

[43] Charles Tilly, "War Making and State Making as Organized Crime," in Peter Evans, Dietrich Ruefemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985), 169–86.

the instrument or the servant of society but parasitic upon it.[44] As an institution it has interests of its own, and while it may be captured to serve particular interests, it also works to serve its own purposes.[45]

This is not to suggest that it might not be highly desirable that the state pursue justice, or protect individual freedom, or serve the common good. But even if a case can be made that some people have, from time to time, succeeded in directing some states to serve the interests of the poor and the helpless rather than those of the rich and powerful, the overall record of states and instruments of justice is not inspiring. Liberals generally have for this reason, even as they've tried to theorize the state as an institution whose point is justice or freedom, placed great emphasis on the need to control or limit the state by reducing the scope of its power and limiting its influence by dispersing political authority. Libertarians, however, are the most skeptical of liberals, agreeing with the conclusion that the state needs to be brought under control and doubting that it is an institution with a noble underlying rationale. None of this is to say that a stateless condition will always be superior to one with an established state. It would be better to live in Switzerland than in Somalia, where the stability of the state is precarious after nearly two decades of civil war. But it would be hard to draw from this the conclusion that the state is desirable. The most we can say is that some states are better than others.

The most desirable state, from a libertarian point of view, is one that is least capable of being manipulated or used to serve the interests of particular elements of society, or simply the interests of the agents of the state—particularly when those interests require making war. But such a state is difficult to create and even harder to sustain. The best of all possible states is one whose predatory or parasitic activities are not so damaging as to overwhelm society. Better Sweden than China; better China than Burma; better Burma than North Korea.

D. Redistribution

On this understanding of the nature of the state it is a mistake to think that one of the tasks of the state is to bring about a more just distribution of the benefits of social cooperation. There are two interrelated reasons for this. First, there is no one who legitimately holds the authority to redistribute; and second, there is no mechanism available to bring about a just distribution.

[44] For an interesting analysis see Mancur Olson, *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships* (New York: Oxford University Press, 2000). Olson argues that the move from anarchy to civilized life involves a move from rule by "roving bandits," whose incentive is to steal and destroy, to "stationary bandits," who try to protect society from roving bandits in order to encourage the production of wealth—which, as the holders of power, they would be able to exploit.

[45] The libertarian political thinker who has explored this view most fully is Anthony de Jasay in *The State* (Indianapolis, IN: Liberty Fund, 2017 [1985]).

There is no one who has legitimate authority to redistribute justly precisely because there is no mechanism to bring about a distribution that could be described as just. I take it to be a general truth about politics that the spoils go disproportionately to the politically adept, the well connected, and the powerful. This should not be surprising. It would be odd, to say the least, if the politically skilled fared poorly in the contest while the weak prospered. It's not that the poor will not have their advocates or that they will never gain anything; but the bankers, the arms manufacturers, the established farmers, and the medical doctors will do better.

This problem cannot be alleviated by democracy or by the development of a more democratic politics—even though democracy has many virtues when compared to alternative types of political regime. A part of the difficulty here is the familiar problem faced by all democratic polities arising out of the logic of collective action. Groups with a great deal to gain are much more likely to organize politically to secure advantages for themselves at the expense of the majority—who have little incentive to organize when each individual has relatively little to gain by doing so.[46] But in more general terms, the problem is that the distributive outcome of the democratic process has no necessary connection with just distributive outcomes. Whatever form democracy takes—deliberative, discursive, aggregative—the distributive outcome will be the consequence of the political process. There is no reason why the outcome of a democratic process should be a just outcome.

One possible argument for viewing the state as the instrument of just redistribution is that, despite the fact that the politically powerful will always fare best in any political system, the poor will nonetheless gain some benefit from efforts made on their behalf. Another reason is that it would be a mistake to assume that the existing pattern of distribution is just when there is plenty of historical evidence suggesting that great injustices have been perpetrated to bring about the current division of wealth and property. And there is no doubt that many of the injustices of the past endure. The objection cannot then be to particular efforts of reform or rectification, which may be considered and assessed on their merits. But it would be a mistake to try to understand the state as something that was by its nature the proper instrument of justice. As often as not, the injustices that need remedying are ones perpetrated by states.

E. Second-best solutions

All of this said, it remains the case that we live in a world of states. What could be the relevance of a political theory whose starting point is extreme skepticism about the value or purpose of the state as a form of

[46] See Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1965).

social organization? This question is especially pertinent in a world in which the total number of libertarians makes the Hutterites look like a mass movement.

Libertarians have responded in various ways to the fact that, in the real world, the only solutions that are of any interest are second-best solutions. One response has been to try to reform the state to make it less capable of being used to protect or advance the interests of particular segments of society at the expense of others. Recommendations have ranged from constitutional reform to the establishment of some form of basic income.[47] Another has been to advocate policies that reduce the involvement of the state in social life—whether in education, business, the arts, or the way communities are run generally. Here the complication is that, particularly in modern welfare states such as the United States or the countries of Western Europe, the state is so extensively involved in the life of society that it is not obvious how this can be changed without serious cost.

To the extent that libertarians are good Millians who are firmly committed to the importance of individual freedom from interference in activities that do not concern others, libertarianism has much to offer as a doctrine of resistance against oppressive use of state power. Libertarianism has always condemned conscription and found very few cases where the march to war was defensible. Nonviolence, free trade, and peace are its main watchwords. But given its limited influence in a world where very few are sympathetic to this minimalist doctrine, the question remains: Why bother? Why not take the path of other, more mainstream, forms of liberalism?

For my part the reason is fairly straightforward. None of the stories justifying the exercise of power by some people over others seems remotely plausible. Arguments that it is necessary to preserve the nation or a culture are unpersuasive because they presuppose that there are entities other than individual human beings that matter—and matter more than the lives of persons. Arguments that it serves the common good look less convincing in the light of the long history of the abuse of power by people claiming to act for the common good. Arguments that such an exercise of power is something we would have agreed to under suitably contrived circumstances also seem unlikely. Whatever people might have agreed to, it seems incredible that they would have generally (let alone universally) consented to any of the actual forms of political power we have seen in human history. To think that there could be forms of political power that come close to meeting the standards set by theories of social contract seems no less incredible, even though it is true that some polities are much better than others.

[47] For a defense of constitutional reform see the works of James Buchanan. On basic income see Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 2002); and, more recently, Charles Murray, *In Our Hands: A Plan to Replace the Welfare State* (Washington, DC: American Enterprise Institute Press, 2016).

To be a libertarian is to be unable to rid oneself of the cynical thought that all stories about the justified exercise of power are, at best, self-serving and generally pernicious.

IV: Final Thoughts

Libertarianism is an individualist political philosophy. It is suspicious of the collective: of groups of all sorts, and particularly of powerful groups. It denies that the group has any authority over the individual unless the individual is willing to acquiesce in the exercise of that authority.

It might, however, be argued that the modern liberal state is founded on similarly individualist convictions. It recognizes the paramount importance of the good of the individual. The virtue of the modern liberal state, the argument goes, is that it is dedicated to the protection of the individual—upholding his rights against other individuals and groups in societies. Indeed, if one is worried about the power of collectives over the individual, the best guarantor of the individual's freedom is the (suitably constrained) liberal state.[48]

From a libertarian perspective, the problem with this view is, first, that it is too sanguine about the wisdom of establishing a greater power to control or keep in check a lesser one. The state may protect us from the power of particular groups; but it is just as likely to suppress the groups that matter to us or to align itself with our oppressors within those groups. If the individual can appeal to the state for help, so too can the group or its leaders.

The second problem with the view of the state as the guarantor of individualism is that it leaves insufficient room for the fact that many, possibly even most, people are not individualists in the way that they live. To the extent that the modern liberal state assumes that individualism is a way of life that ought to be promoted or encouraged it takes a stance that libertarianism cannot in good conscience countenance.

School of Social Sciences, Singapore Management University

[48] Some would say not the liberal but the republican state, but my quarrel here is with both of these viewpoints. See for example, Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).