

# A NEO-REPUBLICAN CRITIQUE OF HARD LIBERTARIANISM

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## **ABSTRACT**

This paper argues that hard libertarianism is not a social philosophy guided by the ‘presumption of liberty’. Instead, hard libertarianism is more appropriately conceived of as a ‘property-rights-based theory of justice’. Moreover, libertarians maintain that institutionalizing their avowed theory of justice will sufficiently secure individual liberty. This too is inaccurate: for it will be shown that libertarian theory overlooks relevant social threats to the freedom of persons. The classical understanding of liberty holds that one’s freedom is compromised when their will is subordinated to the will of an arbitrary power. As we will see, libertarianism shows concern for only one mechanism by which arbitrary powers can subordinate the will of others to their own: aggression. However, I will show that there exist other significant mechanisms beyond aggression by which people can see their will subordinated to an arbitrary power. In what follows, I offer the mechanism of ‘dependency exploitation’ as one such example. Thus, a theory of justice focused exclusively on preventing aggression – as libertarianism does – fails to adequately address other meaningful mechanisms of will-subordination. Alternative political theories committed to the presumption of liberty – such as neo-republicanism – takes seriously the problem of dependency exploitation (in addition to aggression), and therefore offer a more compelling social philosophy for freedom lovers.

## **KEYWORDS**

Libertarianism, Republicanism, Non-Aggression, Non-Domination, Nozick, Pettit

Libertarianism is often presented by its advocates as a social philosophy defined by the ‘presumption of liberty’.<sup>1</sup> In the words of libertarian theorist Eric Mack, “Libertarianism is advocacy of individual liberty as the fundamental political norm.”<sup>2</sup> In what follows, I will argue that this proposition constitutes an unwarranted description of libertarian social philosophy by showing that libertarians are not interested in the primacy

<sup>1</sup> David Boaz, *The Libertarian Mind: A Manifesto for Freedom* (New York: Simon and Schuster, 2015).

<sup>2</sup> Eric Mack, *Libertarianism* (Cambridge: Polity, 2018).

of freedom as such. Instead, their most salient concern is the preservation of a particular rights-based view of justice – and contrary to their assertions, a pursuit of justice with harmful consequences for individual liberty.<sup>3</sup> However, before the central thesis of this paper can be directly advanced, a key admission is worth stating: libertarianism is not a monolithic tradition by any means. Like all social philosophies it boasts a large family comprised of related but markedly different members. Unfortunately, it is not feasible within this limited space to consider the specific arguments associated with all of the philosophical branches that diverge from the ‘essential commitments’ of libertarianism.

Thus, as a matter of fairness, we must be clear as to which specific expression of libertarianism the central argument is responding. Libertarian philosopher Jason Brennan offers a typology that sorts the libertarian family into three, generally distinct groupings: ‘classical liberals’, ‘hard libertarians’, and the ‘neoclassical liberals’ (Brennan personally identifies with the last group).<sup>4</sup> Due to concerns of space, we cannot explore their significant and important differences here. Rather, the purpose is simply to note that this article focuses on only one of these groupings, namely, hard libertarianism: a strand often demarcated by its affinity for inviolable natural rights and attributed to thinkers like Robert Nozick, Murray Rothbard, Ayn Rand, among others.

## 1. HARD LIBERTARIANISM: FREEDOM AS NON-AGGRESSION

‘Hard libertarianism’ isolates what may fairly be called the deontologically-oriented approach within the libertarian tradition. Unlike classical liberalism – or what Norman Barry calls ‘consequential libertarianism’ – hard libertarianism is anchored by the central thesis that individuals have fundamental rights (and correlative duties) irrespective of what consequences may result from strict adherence to them; and unlike neoclassical liberalism, this strand denies the moral necessity of any communal commitment such as the promotion of ‘social justice’ (understood in Rawlsian terms).<sup>5</sup> Thus, the core proposition of hard libertarianism is perhaps best expressed in the preface of Robert Nozick’s *Anarchy, State, and Utopia*: “Individuals have rights, and there are things no person or group may do to them (without violating their rights).”<sup>6</sup>

<sup>3</sup> Gerald Gauss, “The Diversity of Comprehensive Liberalisms,” in *Handbook of Political Theory*, ed. Gerald Gauss and Chandran Kukathas (London: Sage Publications, 2004). See pp. 109.

<sup>4</sup> Jason Brennan, *Libertarianism: What Everyone Needs to Know* (Oxford: Oxford University Press, 2012).

<sup>5</sup> Norman P. Barry, “The New Liberalism,” *British Journal of Political Science* 13, no. 1 (1983): 93–123; Michael F. Reber, “Distributive Justice and Free Market Economics: A Eudaimonistic Perspective,” *Libertarian Papers* 2, no. 1 (2010).

<sup>6</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 2013).

Whilst hard libertarians generally share in a subscription to the central thesis that individuals have inviolable natural (pre-social) rights, there are a number of different ways in which this core assertion is defended. Perhaps the strongest argument(s) for inviolable natural rights comes in the work of Robert Nozick. Nozick sketches out a compelling, albeit incomplete, case for such rights – and the thesis of self-ownership more generally – by appealing to the Kantian notion of human dignity. In so doing, he diverges with the precedent set by John Locke of upholding natural law as the foundation for individual rights – a practice continued by Murray Rothbard, another leading light of hard libertarianism.<sup>7</sup>

In taking up the Kantian line, Nozick argues that, in our interactions with others, we must not overlook that each person constitutes, “a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself.”<sup>8</sup> Apparently, unlike other organisms in the universe, human beings possess the (unique) capacity to modulate their behavior, “...in accordance with some principles or picture [she] has of what an appropriate life is for [herself] and others, and so on.”<sup>9</sup> This capacity for people to live a ‘self-shaping life’ – or what others have dubbed our capacity to execute a ‘rational life plan’ – is the source of our inherent dignity that ought to be respected by others.<sup>10</sup> In short, because each person is able to organize their choices, actions, and beliefs according to a worldview of their own construction, to interfere in the ‘self-shaping’ process of others is to treat them as a means and violate their status as ends-in-themselves. Nozick therefore concludes that, “if individuals are inviolable ends-in-themselves” and we are to respect that fact about others, “it follows... that they have certain *rights*, in particular rights to their lives, liberty, and the fruits of their labor.”<sup>11</sup>

The ‘central thesis’ of hard libertarianism, that individuals have inviolable natural rights, ultimately entails that individual freedom is a condition demarcated by the absence of force (i.e. physical violence). For Nozick specifically, the elimination of aggression as *the* imperative for securing individual liberty starts with his claim that a person’s rights ought to function as ‘side constraints’ on the actions of others (in relation to the rights-bearer). Nozick clarifies that there are two possible ways of thinking about how rights could regulate social interaction. On the one hand, rights may be valuable

<sup>7</sup> Murray N. Rothbard, *The Ethics of Liberty* (New York: NYU Press, 2015).

<sup>8</sup> Nozick, *Anarchy, State, and Utopia*, 49.

<sup>9</sup> Nozick, *Anarchy, State, and Utopia*, 49.

<sup>10</sup> Leslie P Francis and John G Francis, “Nozick’s Theory of Rights: A Critical Assessment,” *Western Political Quarterly* 29, no. 4 (December 1, 1976): 634–44 ; See chapter two: Jonathan Wolff, *Robert Nozick: Property, Justice, and the Minimal State* (Cambridge: Polity Press, 1991).

<sup>11</sup> Edward Feser, “Nozick, Robert,” in *Internet Encyclopedia of Philosophy*, accessed April 30, 2019, <https://www.iep.utm.edu/nozick/#H2>.

because they bring about some greater goal or ‘end state’ *G*. For instance, the right against being murdered could be justified on the utilitarian grounds that it would raise aggregate (or average) happiness, as no one would need to constantly worry about the possibility of being murdered. But, Nozick points out, this kind of justification for rights could lead to a ‘utilitarianism of rights’, where a situation might arise that, “would require us to violate someone’s rights [because] doing so minimizes the total amount of the violation of rights in society.”<sup>12</sup>

An alternative view, and the one advocated for by Nozick, holds that the rights of another cannot be violated, under any circumstances, even if it would yield less rights violations in the future. Recall that the first approach to rights, “tries to build the side constraints *C* into goal *G*” – that is, the right not to be murdered (*C*) is a function of wanting to increase aggregate happiness (*G*).<sup>13</sup> This second approach instead conceptualizes “a right [as] an agent-relative side constraint on action and not a goal to be promoted.”<sup>14</sup> Richard Arneson explicates the side-constraint paradigm in the following way: “a side constraint is to be interpreted as follows: in deciding which of the available options for action one should pursue at any given time, one should eliminate from consideration those options that would involve one’s violating any individual’s moral rights.”<sup>15</sup> In short, rights understood as side-constraints honors the fundamental duties we have to other persons – they are not valuable because they help to realize some ‘moral goal’.

Nozick then asks the obvious follow-up question: “Isn’t it irrational to accept a side constraint *C*, rather than a view that directs minimizing the violations of *C*? If non-violation of *C* is so important, shouldn’t that be the goal?”<sup>16</sup> Nozick responds to this possible objection by noting that a side constraint view of rights is meant to “reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are *inviolable*” (my emphasis).<sup>17</sup> Again, the second formulation of the categorical imperative holds that one not be treated *merely as a means* as doing so overlooks the autonomy of each person to live according to a rational life plan. To use Nozick’s example, murdering an innocent person to satiate a mob, despite the potentially beneficial consequences, would clearly involve overlooking the innocent person’s self-shaping

<sup>12</sup> Nozick, *Anarchy, State, and Utopia*, 28.

<sup>13</sup> Nozick, *Anarchy, State, and Utopia*, 29.

<sup>14</sup> Richard J Arneson, “Side Constraints, Lockean Individual Rights, and the Moral Basis of Libertarianism,” in *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia*, ed. Ralf M Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 17.

<sup>15</sup> Arneson, *Side constraints*, 17.

<sup>16</sup> Nozick, *Anarchy, State, and Utopia*, 30.

<sup>17</sup> Nozick, *Anarchy, State, and Utopia*, 30-31.

status – and thus doing so entails treating him merely a means and thereby violating the inviolability of their status as an end-in-themselves.

We can now connect Nozick's underlying moral framework and his assertion that freedom is secured through the minimization of force *as such*. As we have seen, Nozick argues the following: (1) individual persons are ends-in-themselves because they are capable of living according to a rational life plan, (2) as inviolable ends-in-themselves, persons have 'libertarian rights' (i.e. to life, liberty, property) against certain forms of treatment, (3) rights are to be understood in the strict sense of 'side constraints' (i.e. they are inviolable). Nozick further elucidates that the existence of moral side constraints in our interactions with others entails the moral existence of 'libertarian constraints' that ought to govern all social, political, and economic integration. In his words,

This root idea, namely, that there are different individuals with separate lives to lead and so no one may be sacrificed for others, underlies the existence of moral side constraints, but it also, I believe, leads to a libertarian side constraint that prohibits aggression against another.<sup>18</sup>

## 2. THE PROBLEM WITH FREEDOM AS NON-AGGRESSION

We have seen that hard libertarianism – Nozick being our archetypal representative – presents liberty (or the 'free society') in the narrow terms of 'the absence of aggression'. More precisely, for hard libertarians it is the presence/absence of *aggression as such* (i.e. physical violence against a person or their justly held property) that determines whether a person is free or not. We now turn to explore the reasons why this claim, that an individual's liberty is compromised by aggression *simpliciter* against their person or property, is flawed. In short, we can imagine instances where physical violence does not impact personal liberty, or conversely, where personal liberty is compromised even amidst the absence of physical violence. Should this be possible, it calls into question the central thesis of hard libertarianism that freedom is exclusively mediated by the presence or absence of aggression. Consider the following 'hypothetical' scenarios:

Scenario #1: (Y), thinking they are being funny, snaps (X) on the arm with a rubber band leaving (X) with a momentary stinging sensation. No permanent injury results and the discomfort lasts for only a few seconds.

<sup>18</sup> Nozick, *Anarchy, State, and Utopia*, 34.

Scenario #2: (X) is a multi-billionaire that owns dozens of multi-million-dollar estates across the world and moves from one residence to the next, staying at each for only a short time. The boundary edge of one such estate is lined with rows of Apple trees. (Y) is out walking around their neighborhood and passes along the edge of one of (X)'s currently vacated properties. (Y) notices a large number of unpicked apples laying on the ground. She picks up a couple apples to take home to eat later.

Scenario #3: Imagine two sets of slaves with different masters. The master of the first group prefers to use incentives to encourage compliance, and resorts to the whip as a last resort. Generally speaking, his slaves are rarely compelled to action by the initiation of force. The second master prefers to use exclusively the whip, or the threat of it, to motivate his slaves. In fact, he sometimes needlessly uses the whip just to remind his servants that he will use force to maintain compliance.

Scenario #4: A commercial passenger plane, whilst flying over the ocean, malfunctions and crashes on a private island owned by a single (sociopathic) billionaire. All of the passengers survive with minimal injuries. The island is very remote with no cellular service and the plane communications system broke in the crash landing. The billionaire, who happens to be on the island at the time, is irritated with the presence of the crash survivors. He orders the passengers to get off his island. The passengers have no independent means of calling for an emergency evacuation.

The first two scenarios are meant to suggest that aggression *as such* does not, in fact, necessarily compromise a person's individual liberty. In scenario number one, (X) certainly experienced something he wishes had not occurred - there is no denying that. Moreover, (Y) committed an act that he shouldn't have because (X) has a claim-right against such treatment. Even with these facts in mind, however, it is hard to see how this event, being snapped with a rubber band, has limited the liberty of (X). We have admitted that being snapped by a rubber band is undoubtedly an annoyance and that it violates (X)'s rights, but is it really freedom-endangering? According to the hard libertarians, it would be accurate to say that (Y)'s poor and annoying attempt at humor has limited the freedom of (X). But on what causal grounds, exactly, does this proclamation actually make sense? Can the libertarian point to a meaningful obstruction in (X)'s capacity to be a 'self-owner' or live according to a rational life plan that is the result of this event?

Similarly in the second case, it may be true that (Y) has done something objectionable by taking apples that weren't her own, but we can probably make the following assumptions: (1) the billionaire will almost certainly never even know that the apples were taken, (2) the relative importance of the apples to the billionaire's life is so minute that the material impact of losing them will be negligible, and (3) the apples might have spoiled and gone to waste. How, then, could it be that an action which would have approximately zero material or psychological impact on (X) compromise (X)'s liberty? Again, what meaningful obstruction to (X)'s self-ownership status or ability to live according to a rational life plan has resulted from (Y)'s behavior?

The latter two scenarios are meant to show the reverse: that a person's liberty could be compromised without the presence of aggression as such. Scenario number three is classically employed in the writings of neo-republican theorists to immediately depict that aggression is not the fundamental antithesis of freedom. If a person's freedom has a direct relationship with aggression, as the hard libertarian maintains, then slaves of a less forcefully interfering master – say a master who uses incentives as opposed to sanctions to enforce his ends – would be freer as a result of being subject to a lower volume of coercion (as physical violence). But as Frank Lovett explains, “Some find this conclusion deeply counterintuitive: if there is anything to the idea of political liberty, one might think, surely it cannot be found in the condition of slavery!”<sup>19</sup> We will further consider the significance of this scenario in later sections.

Scenario four is predicated on a hypothetical found in Henry George's *Progress and Poverty*. In trying to make the point that ‘ownership of land’ can eventually transform into ‘ownership of man’ he offers the following thought experiment: “Place one hundred men on an island from which there is no escape, and whether you make one of these men the absolute owner of the other ninety-nine, or the absolute owner of the soil of the land, will make no difference to either him or to them.”<sup>20</sup> Herbert Spencer made a same point in his *Social Statistics*:

[I]f one portion of the earth's surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has an exclusive right, then other portions of the earth's surface may be so held; and eventually the whole of the earth's surface may be so held; and our planet may thus lapse altogether into private hands. Observe now the dilemma to which this leads. Supposing the entire habitable globe to be so enclosed, it follows that if the landowners have a valid right to its surface, all who are not landowners, have no right at all to its surface. Hence, such can exist on the earth by sufferance only. They are all trespassers. Save by the permission of the lords of the soil, they can have no room for the soles of their feet. Nay, should the others think

<sup>19</sup> Frank Lovett, “Republicanism,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, 2017, <https://plato.stanford.edu/archives/spr2017/entries/republicanism/>.

<sup>20</sup> Henry George, *Progress and Poverty* (New York: Cosmo Classics, 2005), 246.

fit to deny them a resting-place, these landless men might equitably be expelled from the earth altogether.<sup>21</sup>

In other words, certain distributions of ownership over the Earth's resources could entail a social context where the mass of humanity is at the total mercy of a resource monopolist. It is hard to see the masses in such a condition as anything but free, even if the resource monopolist doesn't physically aggress against said masses. As George puts it, in the latter situation where one man is made owner of all the soil (as opposed to owner of the other ninety-nine), "[he] will be the absolute master of the other ninety-nine – his power extending even to life and death, for simply to refuse them permission to live upon the island would be to force them into the sea."<sup>22</sup> Now, Rothbard, for instance, is very clear that the 'refusal of permission' is in no way an instance of aggression. In fact, he accuses Friedrich Hayek of 'confusion' and 'self-contradiction' because, Hayek uses coercion, "as a portmanteau term to include, not only physical violence but also voluntary, nonviolent, and non-invasive actions... [such as] peaceful, voluntary refusal to make exchanges."<sup>23</sup> And here is where the 'rubber meets the road': can we apply the word 'freedom' to a social context where the granting or refusal of permission by an arbitrary power determines the continued existence of others? In a range of plausible circumstances, the libertarian is forced to answer in the affirmative – a position that is seriously objectionable as Henry George's thought experiment so powerfully shows.

As a brief aside, we recognize that the citation of Henry George's work to exemplify the limits of non-aggression as a principle of freedom is a curious maneuver. On the one hand, as a natural law economist, George very much embodies the hard libertarian (and Nozickean) worldview. By upholding natural rights as the fundamental grounds for the regulation of social life, he largely associates liberty (and justice) with the absence of rights-violations. In *Social Problems*, he explains that,

There are those who, when it suits their purpose, say that there are no natural rights, but that all rights spring from the grant of the sovereign political power. It were [sic] waste of time to argue with such persons... there are rights as between man and man which existed before the formation of government ... *These natural rights, this higher law, form the only true and sure basis for social organization.*<sup>24</sup> (emphasis added)

<sup>21</sup> John Offer, *Herbert Spencer, Critical Assessments of Leading Sociologists* 4 (London: Routledge, 2000), 209.

<sup>22</sup> Henry George, *The Essence of Progress and Poverty* (Mineola: Courier Dover Publications, 2020), 32.

<sup>23</sup> Rothbard, *Ethics of Liberty*, 220.

<sup>24</sup> Francis K. Peddle and William S. Peirce, *The Annotated Works of Henry George: Social Problems and The Condition of Labor* (New York: Rowman & Littlefield, 2018), 123.



George later clarifies that, “These natural rights of man are thus set forth in the American Declaration of Independence as the basis upon which alone legitimate government can rest.”<sup>25</sup> He subsequently indicates that these ‘natural rights of man’ set out in the Declaration of Independence imply very strong property rights, and he bemoans the failure of existing institutions to sufficiently protect people’s rightful holdings:

The equal, natural and unalienable right to life, liberty and the pursuit of happiness... require that each shall be free to make, to save and to enjoy what wealth he may, without interference with the equal rights of others; that no one shall be compelled to give forced labor to another, or to yield up his earnings to another; that no one shall be permitted to extort from another labor or earnings... Any recognition of the equal right to life and liberty which would deny the right to property – the right of a man to his labor and to the full fruits of his labor – would be mockery. But that is just what we do.<sup>26</sup>

We can see that George subscribes to a theory of entitlement and natural rights that is quite similar to Nozick’s.<sup>27</sup> Both theorists suggest that individuals have inviolable rights in their person and inviolable *rights to property*. They significantly diverge, however, on whether a rightful property claim to land (i.e. natural resources) is possible. The ‘original acquisition’ of unowned property has long been a thorn in the side of libertarian theory. John Locke, often regarded as a key inspirer of (hard) libertarianism, attempted to set out conditions that, if satisfied, allow for individuals to appropriate unowned resources. Thus, Locke’s account “has become the starting point for almost any discussion of the appropriation-based justification of property rights.”<sup>28</sup>

Central to Locke’s theory of initial acquisition is the notion of ‘labour-based appropriation’, which suggests that, “The first person to mix his or her labor with land needs no one else’s consent to appropriate it.”<sup>29</sup> Additionally, Locke ostensibly places limitations on the acquisition of unowned property, including: “(A) the no-waste proviso or spoliation limitation, (B) the charity or subsistence proviso, and (C) the enough-and-as-good proviso or the sufficiency limitation.”<sup>30</sup> As Widerquist points out, Locke’s original theory is something of a ‘Rorschach test’, with wide-ranging views on what he actually meant. In the case of Nozick, he onboards the labour-based theory of appropriation and views (C) as ‘*the* Lockean proviso’ to be satisfied – however, “Nozick re-interprets the proviso [(C)] to mean that if the initial acquisition fails to make anyone worse off

<sup>25</sup> Peddle and Pierce, *The Annotated Works of Henry George*, 124.

<sup>26</sup> Peddle and Pierce, *The Annotated Works of Henry George*, 126.

<sup>27</sup> John Laurent, *Henry George’s Legacy in Economic Thought* (Cheltenham: Edward Elgar Publishing, 2005), 196.

<sup>28</sup> Karl Widerquist, “Lockean Theories of Property: Justifications for Unilateral Appropriation,” *Public Reason* 2, no. 1 (2010): 4.

<sup>29</sup> Widerquist, *Lockean Theories of Property*, 6.

<sup>30</sup> Widerquist, *Lockean Theories of Property*, 7.

who was using the resource before, then it is justly acquired.”<sup>31</sup> Thus, Nozick’s principle of just acquisition holds that,

An individual A acquires at time t a full property right in an object O which has not previously been the property of any individual if and only if: (i) A mixes his labour with o at time t; and (ii) as a result of O becoming A’s private property, no one else is made any worse off than he or she would have been, O having being left unappropriated by anyone and had everyone in consequence been free to use O without appropriating it.<sup>32</sup>

Ultimately, then, Nozick holds that inviolable and *unlimited* rights to property, including land, is permissible if one mixes their labour with it and its appropriation does not make people worse off. George, on the other hand, deviates from Nozick’s account in two significant ways. First, George believes the right of ownership can only be conferred to the products of labour itself. In his words,

... that which man makes or produces is his own... no one else can rightfully claim it, and his exclusive right to it involves no wrong to anyone else... If production give to the producer the right to exclusive possession and enjoyment, there can rightfully be no exclusive possession and enjoyment of anything not the production of labor, and the recognition of private property in land is a wrong.<sup>33</sup>

In short, George, in contradistinction to Nozick, believes that Locke’s labour-based appropriation argument, “justifies ownership of only the value added by the appropriator, not the full resource value of an asset.”<sup>34</sup> A farmer is entitled to the corn he grows because it is a product of his labour, but not the soil he planted it in (because it is not something he created). Second, it could be argued that George takes a ‘stronger’ view of the Lockean proviso than Nozick. Whereas Nozick takes a ‘weaker view of (C) – i.e. “One can appropriate resources as long as everyone else is as well off as they would be if no one had appropriated any property and society remained in a state of nature,” – George believes that, “resources can be appropriated as long as an equal share of the value of unimproved natural resources is available to everyone.”<sup>35</sup> John Laurent therefore summarizes their differences in the following way:

While Henry George effectively accepted an approach to economic justice in the same terms as Nozick... George was basically asserting that the ‘Lockean proviso’ could never be satisfied in the real world... [therefore] justice could only be assured by requiring those

<sup>31</sup> Edward Feser, “Nozick, Robert,” in *Internet Encyclopedia of Philosophy*, accessed April 30, 2019, <https://www.iep.utm.edu/nozick/#H2>.

<sup>32</sup> Conway, David. "Nozick’s Entitlement Theory of Justice: Three Critics Answered." *Philosophical Notes* 15 (1990): 1-7.

<sup>33</sup> George, *Progress and Poverty*, 237.

<sup>34</sup> Widerquist, *Lockean Theories of Property*, 7.

<sup>35</sup> Widerquist, *Lockean Theories of Property*, 7.

using such coveted resources to compensate their fellow human beings for their equal rights by paying full-market rent into a common fund.<sup>36</sup>

We can now see how George's work, even though it is often in alignment with Nozick, can be marshalled to highlight the potential absurdities that result from the hard libertarianism's tolerance for inviolable and unlimited rights in all forms of property. George makes a compelling case for a stronger interpretation for the 'the enough-and-as-good proviso' and thereby underscores the moral dangers of private land ownership. He therefore calls for a 100% land value tax to keep the value of natural resources in common ownership so as to guard against the nightmarish vision outlined by Spencer and alluded to in scenario four – a public policy Nozick explicitly condemns as a violation of liberty, as we explore below.<sup>37</sup>

Thus, to conclude this section, we have seen that for the hard libertarian, whether a person is free or not hinges on the inviolability of their (property) rights. But as our four scenarios suggest, anchoring freedom to undisturbed property leads to all kinds of absurdities. Certain ownership distributions of resources can *de facto* result in ownership of people without any actual rights-violations occurring. Or, alternatively, rights-violations without any measurable effect on others are supposedly freedom-endangering. It is on the grounds of *reductio ad absurdum* that we reach one our overarching conclusions in this paper: hard libertarianism is not defined by the presumption of liberty, instead it is principally a property-rights-based theory of justice. That is, the moral underpinning of libertarian theory prioritizes the absence of rights-violations above all else – even if it means tolerating a social context where the ownership of land translates into *de facto* ownership of people, a situation that must be regarded as one of widespread unfreedom. In the next section, we begin to elucidate how our second conclusion is reached: namely, that libertarianism, as a property-rights-based theory of justice, fails to promote individual freedom, especially when compared to competing social philosophies.

<sup>36</sup> Laurent, *Henry George's Legacy in Economic Thought*, 197.

<sup>37</sup> We should note that Nozick does propose that the suspension of property rights might be morally just in extreme circumstances, and therefore he may agree that in scenario four the island owner has no right to order the passengers into the sea. First, we note that not all hard libertarians agree with Nozick on this. Second, the larger point to be made is that Nozick's theory, even with a caveat for emergency situations, tolerates resource monopolization that arises through the principles of his entitlement theory – and our point is that resource monopolization, whether it arises from a catastrophe or through market transactions, endangers individual liberty.

### 3. NEO-REPUBLICANISM: FREEDOM AS THE ABSENCE OF WILL-SUBORDINATION

If, as we have begun to suspect, that aggression (or subjection to rights-violating behavior) is not what truly makes a person unfree, then what does? Here we look to the theory of liberty dominant in antiquity and reproduced in the ‘republican revival’ – a project spearheaded by the likes of Philip Pettit and Quentin Skinner. In so doing, we cannot help but immediately notice the relative infancy of the liberal/libertarian theory of freedom as non-aggression in the history of political and social thought. Indeed, prior to the rise of liberalism as the dominant governing philosophy in Europe and North America, the prevailing ideal of (republican) liberty did not share “the key assumption of classical liberalism to the effect that force or the coercive threat of it constitute the only forms of constraint that interfere with individual liberty.”<sup>38</sup> Ironically, Friedrich Hayek, a classical liberal, commences his magnum opus *The Constitution of Liberty* by stressing this point. According to Hayek, the free person is one who “is not subject to coercion by the arbitrary will of another” and, he further elaborates that,

... [this] seems to be the original meaning of the word. Man... enters history divided into free and unfree; and this distinction had a very definite meaning. The freedom of the free have differed widely, but only in the degree of an independence which the slave did not possess at all. It meant always the possibility of a person’s acting according to his own decision and plans, in contrast to the position of one who was irrevocably subject to the will of another, who by arbitrary decision could coerce him to act or not act in specific ways.

As Hayek correctly suggests, the ‘original’ conception of freedom – at least, the one that prevailed in the republic of Ancient Rome – derives from a careful analysis of the master-slave relationship. It is, of course, unsurprising that in a slave society philosophers came to define liberty as something to be contrasted with the plight of the slave.<sup>39</sup> In Pettit’s words, “...the Romans, who were familiar with the institution whereby a master of *dominus* held power of his slave... argued that to live *in postestate domini*, in the power of a master, was enough in itself to make you unfree.”<sup>40</sup> Importantly, whilst the liberal definition of freedom eventually ‘eclipsed’ the older republican understanding, both are fundamentally ‘negative’ conceptualizations of liberty. As, Christian Rostbøll

<sup>38</sup> Philip Pettit, “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” *Political Theory* 30, no. 3 (June 2002): 341.

<sup>39</sup> Pettit, *Republicanism*, 31.

<sup>40</sup> Philip Pettit, *Just Freedom: A Moral Compass for a Complex World* (London: W. W. Norton & Company, 2014), 3.

incisively points out, “The idea that freedom must be understood in relation to its opposite is prominent in the republican tradition of political thought.”<sup>41</sup>

A principal aim of the contemporary neo-republican project is to clarify what exactly it means to live *in postestate domini* (or a slavish existence), and conversely, what is required to escape such a condition and live as a free person (*liber*). Pettit, for instance, has argued for a theory of freedom as *non-domination*, “a conception of liberty in which the antonym is not interference as such but rather *dominatio* or domination.”<sup>42</sup> One is dominated, according to Pettit, if they are subject, “to an arbitrary power of interference on the part of another—a dominus or master—even another who chooses not actually to exercise that power.” Quentin Skinner, on the other hand, advances a slightly different model that associates freedom with an absence of dependency (on the good will of another).<sup>43</sup> Both of these accounts critically stress that the classical republican – and the more recent neo-republican – tradition views individual liberty as compromised or endangered by ‘dependence on an arbitrary power’.

It plainly evident how the slave perfectly embodies the unfreedom that arises from living in a state of total dependence on an arbitrary power. Firstly, “the details of the slave’s existence are wholly dependent upon the dictates of her master. For every question that could be asked about her present and future condition—will she be fed, how will she spend her time, what work will be assigned to her, etc.—the answer will always be, ‘it *depends* on what her master decides’”.<sup>44</sup> And secondly, “the master’s power can be exercised in an arbitrary manner. That is, the master’s private whims (can) inform his answers to all of those questions that shape the slave’s existence.” In short, it is the conjunctive presence of these elements in a social relationship, *dependence* and *arbitrary power*, that result in a situation of unparalleled unfreedom (or domination) for the dependent party. Simply put, if (X) is dependent on (Y), and (Y) can operate on an arbitrary basis, then (X) is, relative to the degree of their dependency, at the mercy of the private whims of (Y).

Ultimately, then, what the (neo-)republican theory of freedom makes clear, and its leading advocates emphatically stress, is that the slave’s uniquely profound unfreedom does not, as the libertarian suggests, flow from the fact that (s)he may be subjected to aggression by a master – although, this is certainly a key part of the domination she experiences. Instead, the slave’s unfreedom is the result of a deeper and more

<sup>41</sup> Christian Dahl and Tue Andersen Nexö, eds., *To Be Unfree: Republicanism and Unfreedom in History, Literature, and Philosophy* (Bielefeld: Transcript Verlag, 2014), 19.

<sup>42</sup> Philip Pettit, “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” *Political Theory* 30, no. 3 (June 2002): 339–56. See pp. 341.

<sup>43</sup> Pettit, *Keeping Republican Freedom Simple*, 341.

<sup>44</sup> Robert Donoghue, “Emancipationism?: An Attempt to Synthesize Neo-Republican and Socialist Thought,” *Ethics, Politics, & Society* 3, no. 1 (2020): 80.

encompassing reality: namely, the slave is (a) invariably at risk of (b) having her *will subordinated to the arbitrary will of a master*. That is, to be a slave is to occupy a social position, or a *status*, where one's will *is not sovereign*. Instead, the will of the slave is subordinated to the total(itarian), arbitrary will of a master. Clearly, in such a state, the slave is denied the possibility of fully projecting herself into the world as her attempted projections are always at risk of being frustrated and overwritten by an alien power. Thus, the *liber* (the free person) is one who orders and exercises their preferences *sui juris* (on their own terms). Insofar as a person (*servus*) must (a) order their preferences according to the preferences of another (*dominus*), or (b) forgo exercising their preferences and execute the preferences of another, they are decidedly unfree. Thus, in social and political life the archetypal nemesis of freedom, is, in the words of Jeremy Bentham, any agent, "who will make everything bend to [its] will."<sup>45</sup>

#### 4. MECHANISMS OF (UN)FREEDOM: FORCE AND DEPENDENCY

The previous section's exposition of neo-republican liberty – i.e. the absence of will-subordination – elucidates why the libertarian view of freedom as non-aggression appears problematic with respect to the four hypothetical scenarios considered earlier. In short, the libertarian's moral framework ultimately mistakes a *mechanism* of unfreedom, namely aggression, for the *condition* of unfreedom itself. In other words, aggression is a mechanism that can compromise liberty because it can function as tool by which arbitrary powers subordinate the will of others to their own – but the presence or absence of this mechanism does not, in itself, necessarily result in a loss of liberty. Recall that scenarios one and two suggested that ostensibly aggressive acts, like rubber band snapping or apple appropriation, do not intrinsically minimize a person's liberty. These acts of aggression did not achieve will-subordination, and this explains our intuition regarding why the person snapped with a rubber band and the billionaire do not suffer a loss of freedom. Conversely, we noted the existence of non-aggressive contexts, like the existence of a benign master and a resource monopolist, that are indeed freedom-compromising. In these scenarios, the benign master and the monopolist are able to subordinate the will of the slaves and plane crash survivors to their own (without aggression), and this accounts for our intuition about the unfreedom of the latter pair. It is now evident how the republican association of unfreedom with will-subordination accounts for the misalignment plaguing the libertarian theory of liberty.

Moreover, not only does the libertarian theory of freedom as non-aggression result in conceptual absurdities – such as proclaiming that a billionaire suffers a loss of

<sup>45</sup> Jeremy Bentham, *The Works of Jeremy Bentham*, vol. 8 (Edinburgh: William Tait, 1839), 533.

freedom if an apple is taken from his vacant property – its greatest limitation is a blindness to other *mechanisms* beyond (the threat of) force that endanger personal liberty. That is, in exclusively aligning unfreedom with the initiation of aggression, the libertarian errs in thinking that (the threat of) force is the only means by which persons can experience a diminishment in their liberty – an oversight that does not arise when unfreedom is equated with subordination to the will of an arbitrary power. For instance, the libertarian either ignores or rejects the key republican insight that for persons in a relationship of dependency with an arbitrary power, the mere presence of *dependency* can, in and of itself, minimize the liberty of the dependent person.

Let us make this point with yet another example. In Libertopia (a society where all institutions adhere to the side-constraints flowing from a libertarian moral framework), (X) cannot afford health insurance in the private market for her son with a critical, life-threatening illness. However, she has managed to land a job with a large employer who offers, as a standard benefit for all employees, medical insurance that will provide sufficient coverage for her son’s medical needs. Moreover, in keeping with the moral commitments of libertarianism, Libertopia has no welfare state nor regulations prohibiting fire-at-will employment. Given these conditions, (X) and her son, are entirely dependent on (X)’s employer – specifically that the employer continues to show a preference for (X)’s employment. What does this mean for a situation where (X)’s will might conflict with her employer’s will? Perhaps (X) wants to take the day off on 25 December to celebrate Christmas with her family. Can we say, unequivocally, that (X) is free to stay home on Christmas day?

We can imagine three overarching, but possibly more, outcomes that might result. First, she may choose not to even ask her employer out of fear that, in so doing, she upsets him, and he retaliates against her for being a nuisance. One might think this a ridiculous notion, but people are sanctioned, penalized, or fired under strangely objectionable conditions all the time.<sup>46</sup> Perhaps she senses that her employer doesn’t like being put in the position of having to deny people’s requests and that he might want to make an example out of (X), and prevent such requests coming forth in the future. Thus, when the dependent surmises that a collision between her will and the will of the ‘dependee’ (i.e. the person on which the dependent depends) are inevitable, the dependent might engage in an act of self-censorship and reconstitute her will to avoid the oncoming collision of wills fearing the consequences of such a possibility (given the power the dependee has in this relationship).

<sup>46</sup> Salvador Rodriguez, “Facebook Employee Says He Was Fired for Speaking out about His Colleague’s Suicide,” *CNBC*, October 15, 2019, <https://www.cnbc.com/2019/10/15/facebook-employee-i-was-fired-for-talking-about-colleagues-suicide.html>.

What is revealed by this first possibility is that, within a relationship of dependency, the dependent may actually propagate their own unfreedom by means of self-censorship. It is conceivable that because (X) anticipates a potential collision of her will with her employer's, she actually proactively subordinates her will to what she perceives to be the employer's will. This underscores a crucial distinction between the libertarian (non-aggression) and republican (non-will-subordination) theories of freedom: whereas the former values only objective indicators to evaluate whether a person is free, the latter is additionally sensitive to subjective indicators. This discrepancy is critical for revealing why, in the aforementioned scenario number three, the slaves with a benign master cannot be said to be freer than the slaves with a cruel master. The slaves of a benign master may be subject to less physical harm, but it might be because they are so well practiced at self-censoring their behavior such that their action predominantly aligns with the will of the master.

And herein lies the rub: from an objective, third-person point of view, it may look as though the slave (or the worker) of a benign master (or employer) has 'free reign' – and on the libertarian account of freedom, they do! But this is all just an appearance that belies the phenomenological reality: namely, that the slave (worker) is subordinating her own will out of a concern for avoiding the wrath of a *dominus* (employer). Furthermore, in relationships of dependency, even if the superior truly does grant 'free reign', and the dependent may never feel the need to truly subordinate their will on a proactive basis, it will always remain the case that the dependent's 'free reign' could be *reined in* at any moment. Pettit actually uses horse riding to make this analogy in quite plain terms.<sup>47</sup> A rider in the saddle may from time to time forfeit their 'operative control' by dropping the reins and giving the horse their head. But by remaining in the saddle, the rider nevertheless retains 'reserve control' because they can grab the reins whenever it suits them. The same principle applies in human relationships of dependency: the more powerful party always has some form of reserve control, and the dependent, aware of this fact, will always have an experience of liberty shadowed by that omnipresent threat.

A second outcome may be that (X) asks her employer for the day off, but he outright denies the request. Again, this is not an inconceivable outcome, regardless of how mean-spirited it might seem. Depending on the industry (X) works in, it might make sense that her employer wants her to work that day. In fact, millions of Americans still go to work on Christmas day.<sup>48</sup> In these circumstances, when a collision between the

<sup>47</sup> Pettit, *Just Freedom*, 1-2.

<sup>48</sup> Hadley Malcolm, "Quarter of Americans Will Work over Holidays," *USA Today*, November 25, 2014, <https://www.usatoday.com/story/money/business/2014/11/25/employees-that-work-holidays/19487341/>.



wills of the dependent and the dependee does actually materialize, the dependee can leverage the power afforded to him by the dependence of the dependent – and thus ultimately assert his own will and subordinate the dependent’s will to his own. The mechanics of this possibility are rather obvious: (X)’s employer denies her request to stay home on the 25<sup>th</sup> of December and informs her that doing so would result in immediate termination. Further, as we have already specified, this job provides access to medical care her seriously ill son desperately needs. In such a circumstance, the daylight between the libertarian and republican ideals of freedom is most visibly revealed. Should this particular situation unfold, the libertarian would say (X) is still ‘free’ to take time off for Christmas so long as the employer does not use force to keep her in work on Christmas day.

Whilst it’s true that in Libertopia she need not fear violence from her employer, the assertion that she is still ‘free’ to not attend work is perhaps best described by Adam Swift as a ‘cruel joke’.<sup>49</sup> It is not at all clear that she is in fact ‘free’ to take the day off given that it could lead to termination from the job responsible for keeping her son alive. This potential scenario suggests that dependency and force become nearly indistinguishable as threats to freedom in profoundly precarious conditions. In other words, extreme dependency, and the exploitation of it, begins to look hardly any different than physical violence itself when assessed from the respective outcomes: (a) I force you to work by pointing a gun at your son, or (b) if you don’t work I will sign off on your son’s death by revoking an employment contract. At what point does the act of depriving that which maintains life become morally equivalent to the act that takes life? We have one single event, with two starkly different interpretations of what is happening – and it seems there is no way to bridge the gap between them. Either, you believe that exploiting someone’s dependency is a threat to the dependent’s freedom, or you don’t.

Simply put, if an agent can arbitrarily subordinate the will of others to his own, the mechanism employed to achieve this feat ought to be regarded as a weapon that may target personal liberty. Surely, the republican is likely to admit that physical violence is perhaps *the* most powerful weapon one could use to achieve will-subordination. But here we have attempted to show that *dependency exploitation* can achieve the same end of will-subordination without actually engaging in forceful aggression. Moreover, it should be noted that the concern over relations of dependency is no mere theoretical speculation, especially with respect to something as fundamental as access to health care. Robust empirical data shows that Americans, who rely on employer-sponsored health insurance, suffer the shackling experience of ‘job lock’ at much higher levels

<sup>49</sup> Adam Swift, *Political Philosophy: A Beginner’s Guide for Students and Politicians* (Polity, 2006), 55.

than their European counterparts who enjoy universal healthcare.<sup>50</sup> The practice of employer-sponsored health insurance has detrimental effects on job mobility and entrepreneurship, and it forces people to work longer than they otherwise would.<sup>51,52</sup> According to Sterret et al.: “A system that provides universal access to health coverage, on the other hand, is ‘far more likely to promote entrepreneurship than one in which would-be innovators remain tied to corporate cubicles for fear of losing their family’s access to affordable healthcare.’”<sup>53</sup>

Both empirical findings and theoretical considerations therefore demonstrate that a person’s will can be and often is exposed to manipulation via the dependency embedded in a particular relationship. In other words, nested within relations of dependency is the omnipresent possibility that when the dependent’s will runs contrary to the will of the power on which they depend, the latter could leverage such dependence to superimpose their own arbitrary will upon the will of the dependent. In this sense, the act of arbitrary termination is a tool that can be used for exploiting dependency, and dependency exploitation is thus a *mechanism* that can bring about will-subordination (and unfreedom for dependents).

This section has sought to illustrate that the libertarian is unwilling to concede that exploiting someone’s dependency is an infringement on their liberty because they are interested not in the promotion of liberty *qua* liberty, but in the promotion of justice (understood as conforming to duties associated with property rights). Interestingly, thinkers like Eric Mack can be found claiming that, “each individual has a natural right to pursue her own good in her own chosen way; each individual has an original (baseline) right not to be subordinated to the ends of others.”<sup>54</sup> Yet, Mack, and fellow libertarians, fail to apply this ideal consistently across all social possibilities. That is, if we understand liberty to be the condition of having one’s will subordinated to the will of another, then, it is hard to see how (X) is free to not work on Christmas, even though the mechanism utilized to subordinate her will is exploitation of her dependency (not force). Therefore, a philosophy truly dedicated to the preservation of individual liberty

<sup>50</sup> David Sterret, Ashley Bender, and David Palmer, “A Business Case for Universal Healthcare: Improving Economic Growth and Reducing Unemployment by Providing Access for All,” *Health Law and Policy Brief* 8, no. 2 (2014): 41–55.

<sup>51</sup> Scott J. Adams, “Employer-provided Health Insurance and Job Change,” *Contemporary Economic Policy* 22, no. 3 (July 2004): 357–69.

<sup>52</sup> Jeannette Rogowski and Lynn Karoly, “Health Insurance and Retirement Behavior: Evidence from the Health and Retirement Survey,” *Journal of Health Economics* 19, no. 4 (July 2000): 529–39.

<sup>53</sup> Sterret et al., *A Business Case for Universal Healthcare*, 45.

<sup>54</sup> Eric Mack, “Natural Rights,” in *Arguments for Liberty*, ed. Aaron Ross Powell and Grant Babcock (Washington, DC: Cato Institute, 2016), 79.

– as libertarianism claims to be – would show concern not only for the mechanism of violence as a will-subordinator, but also for dependency as another meaningful tool for an arbitrary power to overlay their will on others. But of course, libertarianism does in fact only show concern for the employment of violence and shows no concern (from a liberty-maximization perspective) for dependency as a tool for will-subordination.

We might note that some libertarians try to invoke a thinly conceived notion of ‘voluntariness’ as a potential response to the problem of dependency. For instance, Gerard Casey summarizes libertarian thought as a “deep-rooted resistance to having your life and actions ordered by others to whom you have not voluntarily subordinated yourself.”<sup>55</sup> In other words, if subordination arises by a series of voluntary agreements and exchanges, then no injury to a person’s freedom has transpired. We have already seen the problem with this position: namely, that it suffers from a collapse into absurdity under certain conditions. Casey, like most hard libertarians, maintains that unlimited ‘private ownership of natural resources, capital... [or] property’ is a ‘key element to the realization of our freedom in the world’.<sup>56</sup> But recall Henry George’s astute observation that, under certain circumstances, ownership of resources translates into ownership of people (a fact recognized even by Nozick).<sup>57</sup>

What would Casey make of the aforementioned scenario four? The surviving passengers of the plane crash find themselves in an arrangement not of their own choosing. They did not intentionally put themselves on this small plot of privately-owned land in the middle of the sea. Yet, they are completely at the mercy of the island owner. So here we have a circumstance where people are subordinated to a power that they did not consent to, and a power that can arbitrarily order them to their death. But let us now imagine that the island owner sees an opportunity and offers the passengers the right to stay on the island if they sign a contract forfeiting 80% of all income, they earn for the next ten years. Thus, the options are (a) walk into the ocean, or (b) sign the contract. I think it is fair to assume that all passengers would sign the contract, and in so doing, subordinate themselves to the island owner. The crucial question is: did the passengers choose that subordination on a voluntary basis? If Casey alleges that they did, then we have reached the point of absurdity, wondering yet again what distinction there is between being forced to sign a contract at the point of a gun or forced into the ocean by revoking permission to be on land. On the other hand, if Casey alleges that their signing of the contract wasn’t voluntary, he would be admitting there are indeed circumstances of non-voluntary subordination that are not a product of immoral use of

<sup>55</sup> Gerard Casey, *Libertarian Anarchy: Against the State* (London: Bloomsbury Academic, 2012), 60.

<sup>56</sup> Casey, *Libertarian Anarchy*, 60.

<sup>57</sup> Lacey, Alan. *Robert Nozick*. (United Kingdom: Taylor & Francis, 2014), 21.

force but dependency. This would lend credence to our central argument that dependency should be regarded as a potential mechanism of unfreedom in addition to force.

## 5. QUALIFYING THE LIMITS OF WILL-SUBORDINATION

Which brings us to the final element in need of addressing. The libertarian might object at this point with the well-reasoned observation that the institutions required to eliminate dependency exploitation and promote neo-republican liberty might end up making us less free because it would require such large-scale (and forceful) interference in our lives – a concern that we saw was prominent for Nozick. Naturally, the institutions that might be implemented to minimize social relations of dependency – such as decommodifying universal programs in healthcare, education, retirement pensions, housing, etc. – would require significant redistribution of resources amongst members of a society. Which raises an important concern (especially for the libertarian): isn't redistribution subordinating the will of the taxpayer to the will of the state? Further to that end, how far should we go to eliminate dependency as such? Is it not conceivable that, at the extremes, extensive 'physical violence' used to eliminate all dependency could be a greater threat to freedom than the resulting diminishment of dependency achieved by such policies? These queries certainly embody worthwhile concerns that must be addressed by those advocating for the minimization of will-subordination via social policy. Unfortunately, a sufficient reply is beyond the scope of the present work. Nevertheless, I will briefly introduce the standard neo-republican response that merits further discussion elsewhere.

Recall Nozick's assertion that the existence of side constraints protecting individual persons entails a general libertarian constraint prohibiting aggression by any social actor. On these grounds, Nozick claims that when the state enacts a policy to promote a moral goal like the 'eradication of poverty' or 'reduced inequality' – what Nozick calls 'end-state' or 'patterned principles' – the state disobeys its libertarian constraints by forcefully interfering with unwilling taxpayers. Simply, enforcing a chosen patterned distribution requires, "continuous interference with people's lives" and deprives people of the freedom to live according to their rational life plan. Thus, redistributive policies deny the core libertarian thesis that individuals are ends-in-themselves and have natural rights against being used merely as a means to the benefit of others. Nozick even goes so far as to define compulsory tax-financed redistribution as enslavement, because the taxed individual is physically forced to surrender the 'produce of their labour' to a non-entitled state. In his words, "Taxation of earnings from labor is on par with forced labor... taking the earnings of  $n$  hours labor is like taking  $n$  hours from the person; it is

like forcing the person to work for  $n$  hours for another's person..."<sup>58</sup> Thus, Nozick declares, "liberty upsets patterns" – that is, the polity cannot use the state to realize a desired wealth distribution if it cares about securing individual liberty.

Given that neo-republican freedom is based on an opposition to the master-slave relationship, this appears to be a damning objection to the neo-republican claim that dependency-minimizing policies – which require continuous interference in people's lives – promote individual liberty. Is it not the case that, as Nozick argues, dependency-minimizing institutions functionally subordinate the will of one group to another, such as the will of the taxpayer to the will of the state and thereby render the taxpayer unfree? The neo-republican response to Nozick's claim is complicated, because whether will-subordination is the result of redistributive taxation ultimately *depends* on the social context in which it occurs. Indeed, neo-republican theorists take this problem seriously, noting that if the minimization of dependency in society,

...requires a coercive state, then the specter of public power looms large. For the coercive state is essentially an interfering state: it intrudes in the lives of its citizens by enacting laws, levying taxes, and imposing penalties. The core idea in the republican response to the challenge posed by such power is that nevertheless this interference by the state need not be a threat to people's freedom.<sup>59</sup>

Recall the full republican formula of freedom: a person (or group) is free so long as they are not subordinated to the will of (or dependent upon) an *arbitrary* power. If the state exercises power in an arbitrary manner, then it may very well be the case that the taxpayer suffers from an encroachment on their liberty. But, if state interference does *not* constitute an exercise of arbitrary power, then, according to neo-republican thinking, taxation does not necessarily amount to a freedom comprising intrusion.

Within the republican literature, three standards prevail for determining whether power is arbitrary. As John Harris and Samuel Arnold explain, "According to the first, championed recently by Frank Lovett, power is arbitrary insofar as it is unconstrained. According to the second, advanced most prominently by Philip Pettit in his recent work, power is arbitrary insofar as it is uncontrolled by those subject to it. According to the third, found in Pettit's early work, power is arbitrary insofar as it is not forced to track the interests of those subject to it."<sup>60</sup> There is considerable debate over which of these standards constitutes the 'necessary and sufficient conditions for rendering power

<sup>58</sup> Nozick, *Anarchy, State, and Utopia*, 169.

<sup>59</sup> Pettit, *Just Freedom*, 111.

<sup>60</sup> Arnold, Samuel and Harris, John R. "What Is Arbitrary Power?" *Journal of Political Power*. 10:1 (2017), 55-70. 55.

non-arbitrary'.<sup>61</sup> No argument for one over the other will be levied here. Instead, the point is to stress that interference becomes will-subordinating only if it is unconstrained, or uncontrolled by those subject to it, or not forced to track the interests of those interfered with. Let us, once again, draw on an example to further clarify this distinction. In delineating between arbitrary and non-arbitrary power, Samuel Arnold offers the following illustration:

My university's library can fine me: this is a form of interference power. So too, it can deny me access to materials: this is another form of interference power. And because it can interfere with me in these ways, it can get me to do things I would not otherwise prefer to do, such as return library materials on time. Yet there's nothing morally amiss with this relationship; in having these forms of power over me, the library does not dominate me. But why not? The basic answer is that the library's power is constrained to track my interests, and is therefore not arbitrary. It can't fine me without reason; nor can it deny me access to its collections on a whim. It must operate in accordance with public rules. And indeed, not only is the library's power constrained; it is constrained in ways that force it to track the interests of its patrons.<sup>62</sup>

Arnold, in this example, makes clear the crucial point: interference as such cannot be deemed a threat to individual liberty. It is the contextual social details surrounding an instance of interference that establishes the moral legitimacy of that interference and whether it reaches the threshold of will-subordination. If, for instance, the state's taxing powers are controlled by those who are subject to it, as would be the case in a democratic society, then state activity – including redistribution – does not constitute 'an alien and arbitrary will' in relation to the citizenry, including the tax-paying citizens. As Pettit explains, "The reason why a state that meets the republican specifications is legitimate in this sense is that it does not take from the freedom of citizens; it operates on terms they impose."<sup>63</sup> We saw above that the horror of the slave's unfreedom stems from her being entirely hostage to the master's private, unaccountable whims. The relationship between the democratic state and a citizen is not the same: those who are subject to the State's interference power have control over it, whereas a slave has no control over the power wielded by the master. In sum, enslavement occurs when one is forced to execute commands over which they have no control, i.e. from an arbitrary power – and taxpayers of a republican (and democratic) state do not fit that description.

Naturally, the mere presence of a 'voting citizenry' does not intrinsically imply that a state operates on 'terms imposed by the citizenry'. How state interference comes to

<sup>61</sup> Frank Lovett, "What Counts as Arbitrary Power?," *Journal of Political Power* 5, no. 1 (April 1, 2012): 137.

<sup>62</sup> Samuel Arnold, "Capitalism, Class Conflict, and Domination," *Socialism and Democracy* 31, no. 1 (January 2, 2017): 109-110.

<sup>63</sup> Pettit, *Just Freedom*, 145.

embody a mandate of the people is a difficult subject that cannot be explored here, but other thinkers have put forward detailed accounts of the republican view on how this is achieved.<sup>64</sup> The point at hand is that Nozick's view of taxation is undermined by the reality that state imposed taxation, if exercised on a non-arbitrary basis, does not mirror the master-slave relationship, and therefore taxation need not amount to some kind of enslavement. To be sure, the interference of taxation could annihilate individual freedom if that power is wielded in an arbitrary manner. Monarchs, dictators, or even fascist democracies could levy taxes in a way that is uncontrolled by those subject to it. But it isn't accurate to say that state imposed taxation *as such* is arbitrary and will-subordinating, because, "State interference will not be dominating... so long as it can be subjected to the effective, equally shared control of the people."<sup>65</sup> Thus, as with many republican prescriptions, the contextual details and mechanics of social policies matter in deciphering whether a given government-led initiative endangers or engenders freedom – a clear distinction from the libertarian 'non-aggression principle' which can deduce all politically relevant questions from *a priori* abstraction in the armchair.

Not let us turn to the second objection that seeking to eliminate all iterations of dependency would be a greater threat to freedom than the resulting diminishment of dependency achieved by such efforts. In *Just Freedom*, Pettit addresses this very problem by breaking up his detailed account of the neo-republican theory of freedom into two chapters entitled 'freedom with depth' and 'freedom with breadth'. The first of the two chapters deals with what has been discussed thus far: namely, explaining that the free person is one who doesn't experience will-subordination (or domination as Pettit would say). It is under such circumstances that they can be said to enjoy liberty with depth. The second chapter takes up the problem of how far our institutions should go about eradicating will-subordination in the name of freedom. Pettit summarizes the predicament as follows:

How, then, should we determine the range of choices in which you must enjoy freedom [non-will-subordination] to count, intuitively, as a free person? We know that the freedom you enjoy must have the depth described in the last chapter; it must involve the resources and protections associated with freedom as non-domination. We now have to settle on the breadth of choice – the range of decision which such freedom should be available.<sup>66</sup>

Pettit resolves this problem by arguing for the minimization of dependency along a range of critical choices people confront in their daily lives. In other words, republican

<sup>64</sup> See chapter six and seven for a detailed consideration of what is required to make states non-dominating: Philip Pettit, *Republicanism: A Theory of Freedom and Government* (OUP Oxford, 1997).

<sup>65</sup> Pettit, *Just Freedom*, 111.

<sup>66</sup> Pettit, *Just Freedom*, 56

theorists have traditionally argued for the existence of a set of *basic liberties* that individuals must be able to exercise in order to be deemed a *liber* (free person) who can live *sui juris* (on their own terms). Thus, the totality of republicanism is to argue for an institutional framework that ensures individuals are not dependent on an arbitrary power to execute such basic liberties. Pettit offers a few examples of what might reasonably be considered basic liberties: freedom of speech, freedom to practice one's religion, freedom to change employment and occupation, etc.<sup>67</sup> Imagine that a polity decides that the ability to practice one's religion is in fact a basic liberty – it is a fundamental choice people need to be able to make in order to live on their own terms. Should that be the case, then, a law banning arbitrary employment termination based on a person's religious affiliation would be regarded as freedom-engendering: such a law ensures that an employee's capacity to practice their religion does not depend on their employer tolerating it. The critical point is that once the polity fleshes out some sort of consensus as to what the basic liberties are, the parameters for how far state interference should go to minimize dependency come into view. For instance, a polity would likely reject that playing Nintendo is a basic liberty and therefore the state would have no business in empowering individuals (likely children) whose access to a Nintendo console is dependent on an arbitrary power (their parents). Limiting the function of governmental institutions to promoting each person's capacity to independently exercise their basic liberties constitutes a natural barrier against totalitarian overreach.

In dealing with this second objection, we have invoked the 'authority of the polity' to determine what comprises the basic liberties, and then tasked it to design political institutions – imbued with the power to employ force – to ensure that citizens can exercise those liberties with sufficient independence from arbitrary powers. Naturally, the liberal tradition – and particularly the libertarians we have been considering in this paper – maintain(s) a skeptical stance towards democratic governance. Perhaps the liberal concerns surrounding democracy were best stated in Mill's *On Liberty* where he raises the most salient fear associated with democratic rule: a 'tyranny of the majority'.<sup>68</sup> With respect to our current discussion, the libertarian might argue that if the polity seeks to declare certain things a basic liberty, a dissenting minority who object to participating in the process of securing those liberties for all might feel like victims of persistent will-subordination. Do not the mere preferences of a majority, backed by the power of the state, constitute interference by an arbitrary power in the lives of the minority constituency? The republican tradition shows a profound awareness of this problem, namely, that states can also become dominating powers, even when acting on a democratic mandate. It is for this reason that republican writers have spoken of the *two* great evils

<sup>67</sup> Pettit, *Just Freedom*, 72

<sup>68</sup> Mill, John Stuart. *On Liberty*. (United States: Barnes & Noble Books, 2004), 4.



of *dominium* (private power) and *imperium* (public power).<sup>69</sup> Thus, a key aim of the republican tradition is to develop a theory of government which ensures state activity does not transform into the imposition of an alien will upon dissenting citizens. Whilst exploring such a theory is beyond our scope here, I again point to the work of republican theorists who address this very problem.<sup>70</sup>

## 6. CONCLUSION

The principal finding of this article is as follows: hard libertarianism confuses a mechanism of unfreedom with the condition of unfreedom. Mere subjection to aggression is itself not what makes people unfree as the hard libertarians suggest. Instead, as we have seen, a loss of liberty occurs when one's will is subordinated to an arbitrary power - and force is simply a reliable and powerful mechanism that can bring about will-subordination. The fallacious alignment of freedom with non-aggression underscores that hard libertarians are primarily (and exclusively) committed to a system of deontological justice predicated on (natural) property rights. Moreover, the further libertarian claim that a deontological property rights theory of justice is freedom-engendering has also been shown to be seriously problematic because it fails to account for other challenges to individual liberty, namely, dependency exploitation. We explored above how certain social contexts, particularly resource monopolization, can result in undeniable and profound unfreedom for persons even when no aggression has transpired. Thus, a theory of justice truly committed to liberty (as non-will-subordination) would take seriously the constraints of violence *and dependency exploitation*, as a neo-republican approach does. What the libertarian is guilty of, then, is mistaking a mechanism of unfreedom for unfreedom itself.

<sup>69</sup> Pettit, *Just Freedom*, 6

<sup>70</sup> See: Philip Pettit, *Republicanism: A Theory of Freedom and Government* (OUP Oxford, 1997); Frank Lovett, *A General Theory of Domination and Justice* (OUP Oxford, 2010).