

# A Natural Case for Taxation

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## ABSTRACT

**Libertarianism holds that taxation violates natural property rights, whereas conventionalism denies the existence of natural property rights. I reject conventionalism and defend libertarianism. I then diverge from libertarianism in justifying the infringement of natural property rights via taxation for redistributive purposes, which helps secure everyone's natural property rights, as a necessary condition for everyone's natural right to a decent life.**

Taxes, like death, are hardly popular. Some taxpayers even complain that taxation violates their property rights in confiscating money that belongs to them. Yet like death, taxes are certain. So what justifies governments in levying taxes?

Philosophers have largely neglected this issue.<sup>1,2</sup> Many dismiss taxation as a purely legal matter. Moreover, empirical uncertainties in economics and the rhetoric of electoral politics hinder reasoning about the principles

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1 Three books attempted to address this gap at the turn of the millennium: *The Cost of Rights: Why Liberty Depends on Taxes* (1999) by Stephen Holmes and Cass R. Sunstein, *The Myth of Ownership: Taxes and Justice* (2002) by Liam Murphy and Thomas Nagel, and *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (2003) by Stuart White (see Farrelly, "Taxation," 185–186). Further contributions include the essay collection *Taxation, Economic Prosperity, and Distributive Justice* (2006), edited by Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul. However, the philosophy of taxation remains underdeveloped.

2 Related questions under dispute in the literature include who should pay taxes, how much they should pay, what goals they should pay for, what should be exempt from taxation, which inequalities in taxes or post-tax income are permissible, and which balance taxes should strike between being flat and progressive (Murphy and Nagel, *Myth*, 3–5). I leave these unaddressed here because of space constraints.

behind taxation.<sup>3</sup>

In this paper I hope to demonstrate that the taxation question is a serious philosophical question with a philosophical answer. After showing the inadequacy of contemporary views, I will argue that taxation is justified, even though it infringes the property rights of taxpayers, because it secures a necessary condition for the right to a decent life.

## 1. CONVENTIONALISM, LIBERTARIANISM, AND MY VIEW

Let us consider the existing positions on the taxation question before I detail mine. I call the alternatives conventionalism and libertarianism. Both conventionalists and libertarians accept some taxation. However, they differ on how much. The split stems from disagreement over the nature of property rights.

*Rights*, according to Robert Nozick, are considerations that block certain actions toward the bearer, even when those actions would be beneficial on the whole.<sup>4</sup> More specifically, you have a right against being treated a certain way when such treatment cannot be justified by its eventual promotion of the greater good, or even your own good.<sup>5</sup> Nozick holds that a property right in X mainly consists in the right to use X however one wants within certain limits.<sup>6</sup> If you have a right to your property, then only grave circumstances justify another entity's interference with your property, or *infringement* of your right. An unjustifiable infringement constitutes a *violation*.

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3 Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002), 4.

4 Robert Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1974), ix.

5 *Ibid.*

6 *Ibid.*, 171.

Given this account of rights, the taxation question concerns in part whether taxation needs the special justification that the infringement of a right demands, or whether it can be justified simply on the grounds that it is beneficial. Equivalently, the issue is whether or not taxation infringes property rights.

Libertarians think taxation infringes property rights, and so is justified for urgent purposes alone. They permit only the taxes they deem indispensable for funding the essential functions of government. On the other hand, conventionalists perceive the allocation of property rights as a legal matter, such that the legal system, including taxation, cannot possibly infringe property rights. Conventionalists therefore think that taxation, like any policy that does not infringe a right, can be justified whenever it promotes the greater good or another legitimate goal.

I will expand on each view, starting with conventionalism. In *The Myth of Ownership*, Liam Murphy and Thomas Nagel argue that property rights are purely conventional, and hence cannot be infringed by duly enacted taxes:

Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity. Taxes must be evaluated as part of the overall system of property rights that they help create. Justice or injustice in taxation can only mean justice or injustice in the system of property rights and entitlements that result from a particular tax regime.<sup>7</sup>

Put simply, conventionalism says that your pretax income<sup>8</sup> is *not your money*.

A *convention*, according to David Hume, is a regularity that arises to facilitate cooperation.<sup>9</sup> Within a

<sup>7</sup> *Ibid.*, 8.

<sup>8</sup> Following the Internal Revenue Service (<https://www.irs.gov/businesses/small-businesses-self-employed/what-is-taxable-and-nontaxable-income>), I use “income” as shorthand for money, property, and services that an individual may receive. Taxes can be levied on things other than income, such as sales transactions, but I limit my discussion to income for the sake of simplicity.

<sup>9</sup> David Hume, *A Treatise of Human Nature*, 2<sup>nd</sup> ed., ed. L.A.

society, people follow a convention with the expectation that others will mirror their actions.<sup>10</sup> Hume thinks conventions have no natural basis,<sup>11</sup> in that they rest not on a moral fact, but rather convenience. The community has a strong practical incentive to adopt some set of rules for, say, terminating a phone call. We tell one another “bye,” yet many other rules would have served just as well. Everyone agrees that language, for example, involves conventions in Hume’s sense. “Water” means water thanks to agreements and regularities in the behavior of English speakers, but other agreements and regularities would have done as well.

More controversially, Hume holds that property arises from convention, and that this specific convention persists because to eliminate it would cause chaos of a sort that society seeks to avoid.<sup>12</sup> He posits that there are many possible schemes for assigning control of things to human beings, just as there are many possible rules for assigning meanings to sounds. Some schemes of property might be more efficient than others, so the choice of scheme is not completely arbitrary. Regardless, Hume’s point is that schemes of property cannot be justified or unjustified based on their relation to natural property rights, as none exist.

For the conventionalist, property rights exist exclusively within a particular legal system. Just as an action becomes illegal only once prohibited by law, someone owns an object only when granted ownership by law. Because the government establishes the criteria for ownership, it dictates what belongs to whom. Individuals cannot own property in the state of nature.

People own their post-tax income, according to the conventionalist, because the law allows them to dispose of it more or less as they wish. The central thesis of *The Myth of Ownership*, however, is that it is “logically impossible that people should have any kind of entitlement to all their pretax income.”<sup>13</sup>

The conventionalist’s argument for this claim runs as follows. Many people take pretax income to be the income that results from an agreement between the employer and employee before government involvement. But pretax income in that sense does not exist, since the

Selby-Bigge (Oxford: Clarendon Press, 1978), 490.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Murphy and Nagel, *Myth*, 32.

government has been involved from the start. First, pretax income is arranged via contracts, meaning agreements that the state will enforce. Though an employee might not consider taxes when establishing a labor contract with her employer, the contract incorporates tax law, in that any provision apparently incompatible with tax law is either void or must be interpreted so as to restore consistency. Second, money arises only once the state introduces it,<sup>14</sup> and the government regulates the economy<sup>15</sup> while setting conditions that income must meet, like a minimum wage threshold and non-discrimination rules. In imposing such requirements that determine the amount people receive for their labor, the state's legal apparatus creates pretax income.<sup>16</sup> You cannot have a right to something that does not exist. Hence, you cannot have a right to what many mistakenly construe as pretax income.

The government determines the framework in which property rights arise. So when the government takes an object through legal means, it thereby establishes that you do not own it. Accordingly, we should understand the conventionalist's point as follows: You own something insofar as you have the legal right to use it as you wish. You cannot have the legal right to use your pretax income as you wish, because if the income is pretax, then the government has the legal right to interfere with it (through taxation). Then by definition, you cannot own your pretax income.

Compare the situation to a lender automatically recouping the sum you borrowed at the end of the loan period. In both cases, the transaction follows the rules originally specified by the entity overseeing the exchange. Neither the lender nor the government need justify the morally neutral act of taking money that (as each stipulated in advance) you never owned.

In sum, conventionalism holds that the state cannot infringe property rights because it invents them.<sup>17</sup> If this is true, then legal government appropriation, in particular taxation of pretax income, cannot be wrong as a violation of property rights.<sup>18</sup>

Whereas conventionalism denies the possibility of

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., 32.

<sup>16</sup> Ibid., 37, 175.

<sup>17</sup> Ibid., 59.

<sup>18</sup> For the conventionalist, taxes can be wrong in other ways, namely if the system of property rights to which they belong is unjust or unfair. See Murphy and Nagel, *Myth*, 8, 58–59, 74.

property rights in pretax income, libertarianism champions them. Channeling Nozick,<sup>19</sup> the libertarian insists all people have a *natural*, meaning non-conventional or pre-legal, right to pretax income as part of economic liberty.<sup>20</sup> In the most extreme form, she considers the infringement of those property rights via taxes only justified to the extent that taxes are necessary to defend similarly essential individual rights.<sup>21</sup> These are the rights to freedom of expression, association, and religion; to privacy; and to protection from violence.<sup>22</sup> “The minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights,” Nozick explains.<sup>23</sup> His libertarian would conclude that taxation beyond what the minimal state requires amounts to theft.

While the conventionalist correctly dismisses pure libertarianism as implausible, given that we expect the government to ensure more than our mere survival, he responds primarily to the less radical libertarian who considers taxation for the benefit of people other than the taxpayers *prima facie* objectionable though justifiable in exceptional cases.<sup>24,25</sup> Notably, this libertarian rejects promoting the greater good, distributive justice, or equality of opportunity as grounds for taxation.<sup>26</sup> In Nozick's words, “redistribution is a serious matter indeed, involving, as it does, the violation of people's rights.”<sup>27</sup> The libertarian regards taxation for redistributive purposes<sup>28</sup> as a violation of property rights, whereas the conventionalist regards it as morally neutral,<sup>29</sup> and certainly not as a violation of a right.

I will reject conventionalism, and most of its

<sup>19</sup> Farrelly, “Taxation and Distributive Justice,” *Political Studies Review* 2.2 (2004): 186.

<sup>20</sup> Murphy and Nagel, *Myth*, 36.

<sup>21</sup> Ibid., 65.

<sup>22</sup> Ibid., 64.

<sup>23</sup> Nozick, *Anarchy*, 149.

<sup>24</sup> Murphy and Nagel, *Myth*, 64.

<sup>25</sup> The pure libertarian thinks essential individual rights are all negative rights, whereas the less radical libertarian allows for some positive rights.

<sup>26</sup> Ibid., 65.

<sup>27</sup> Nozick, *Anarchy*, 168.

<sup>28</sup> Non-redistributive taxes are taxes for things that benefit everyone, like the military. Libertarians consider non-redistributive taxes for some social purposes justified. Whether or not the libertarians' reasons are good, they do not extend to redistributive taxes, which I am defending.

<sup>29</sup> Murphy and Nagel, *Myth*, 58.

implications for the ethics of taxation, including the insistence that the government need not justify taxation as an infringement of property rights. While conceding that convention determines most of the content of property rights, I will refute conventionalism by showing in Section 2 that some property rights are pre-legal natural rights, and in Section 3 that others, though grounded in the law, are *also* natural rights. Having defended the libertarian claim that everyone has natural property rights, I will diverge from libertarianism in arguing that infringement of those rights via taxation for redistributive purposes is justified in Section 4. There I will explain that taxation for redistributive purposes helps secure everyone's natural property rights, as a necessary condition for the natural right to basic capabilities or the amount of primary goods necessary for a decent life. In Section 5, I will show that the natural right to basic capabilities or the amount of primary goods necessary for a decent life supersedes natural property rights. I will conclude by summarizing how my justification for taxation keeps the strengths of conventionalism and libertarianism and rectifies their weaknesses, while introducing several advantages.

## 2. PRE-LEGAL NATURAL RIGHTS

Conventionalists think libertarianism results from conflating everyone's legal right to *post-tax* income and other legally acquired property with an "inviolable moral right to the accumulation of property that results from genuinely free exchanges," including pretax income.<sup>30,31</sup> In contrast, conventionalists hold that the legal right to post-tax income indicates no pre-legal right to anything.<sup>32</sup> Rather, "individual citizens don't own anything except through laws that are enacted and enforced by the state."<sup>33</sup> Conventionalists acknowledge property's instrumental value, for people need ownership to have at least some economic freedom, which counts as a genuine good.<sup>34</sup> Still, they maintain, while this instrumental value provides a moral reason for the state to create and recognize property

rights, in doing so the state is not constrained to respect pre-legal property rights, because none exist.

Such a diagnosis appears plausible in light of how convention saturates property regimes. The ability to acquire a property right in some product by swiping a credit card and signing a receipt is clearly conventional. So are rules for inheritance, returns and exchanges, charitable contribution tax deductions, tax bracket percentages, and so on. Yet we would go astray if we inferred from these observations that no natural rights lie behind the conventions.

Intuitively, we think people have rights to dispose of at least some things as they like prior to any property laws. Consider a primitive village where residents have possessions, in that they shape pottery out of local clay and try to prevent others from using it, but no law protects these possessions. They may well believe that taking someone else's pottery would be wrong as a moral matter. To express this judgment, the community might publicly shame the taker, lecture him on his deviance, or otherwise convey its disapproval. We can readily accept their stance and think that if a legal system develops, it should protect these pre-legal property rights.

Granted, pre-legal property rights may be overridden by custom. Imagine that in another village, everyone assumes that possession confers no entitlement of any sort. The residents instead believe the community owns everything. There, following the attitude of the inhabitants, we may not think taking someone else's pottery is wrong. Nevertheless, given a prevailing moral practice that treats possession as conferring rights, no one would deny that people do have a right to control their possessions (provided they have been acquired without violating the rights of others).

The conventionalist might object that unlike pottery, income only exists thanks to a legal system backed by taxes,<sup>35</sup> and so represents a special type of possession to which people have no pre-legal right. However, income proves no different from pottery in this respect. Suppose the village has progressed to a barter economy where the inhabitants trade pots for logs in proportions amenable to the parties. No laws govern these exchanges. Over time, the villagers develop fixed rates for trading gold with one another so as to enable previously impossible transactions, such as between a potter who wants wood and a lumberjack who desires books, a pair who can supply each other's

30 *Ibid.*, 31.

31 Libertarians think a genuinely free exchange involves person *A*'s trading the object he owns *X* for something that person *B* owns, or else *A*'s giving *X* as a gift to *B*; only this process makes *B* the owner of *X* (see Nozick, *Anarchy*, 149, 151).

32 Murphy and Nagel, *Myth*, 34.

33 *Ibid.*, 176.

34 *Ibid.*, 45, 65.

35 *Ibid.*, 32.

needs only through the neutral medium of currency. The same restrictions apply: everyone uses his gold however he wishes while excluding others from doing so, and the appropriation of someone else's gold strikes both members of the society and visiting moral anthropologists as wrong. The gold exchanged for goods in this society—also possibly for labor—counts as income. Currency requires custom, in the form of a general willingness to exchange gold for other things at a relatively fixed rate. But it does not require law as promulgated by a central authority. Since custom can exist without law, even if money and monetary income require custom, they need not require law. Thus, without legal regulations related to property, people can still own income.

These examples suggest the existence of property rights, perhaps contingent on custom, prior to property laws. But it is widely held that people do not need laws or customs of any kind to have property rights. In a famous theory to which most subsequent theories of property respond, John Locke argues that humans own objects in the state of nature. He asserts that the earth, originally held as common property, only benefits the individual if he obtains an exclusive share of it<sup>36</sup> by adding his labor to a specific plot.<sup>37</sup> The toil he pours into tilling a field transforms this piece of nature into his property. Crucially, the man can disregard whether others consent to his appropriation because he needs such ownership to survive;<sup>38</sup> if he waited for a society to form before taking a fertile area for himself, he would die of starvation. A Lockean individual has property rights without any corresponding legal or customary right, indeed without any such rights at all.

The following discussion of Locke will address this starting intuition that you can acquire land by cultivating it. Locke presents a controversial general theory to explain this intuition. The theory indeed faces problems whether in the original mixture version or a modified version. Regardless, the shortcomings leave intact the intuition.

Locke's theory faces many objections, especially over competing accounts of what gives labor the power to appropriate.<sup>39</sup> According to the traditional understanding,

36 John Locke, "Second Treatise of Government," in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 26.

37 *Ibid.*, 27–28.

38 *Ibid.*, 28.

39 Gopal Sreenivasan, *The Limits of Lockean Rights in Property*

Locke stipulates that a man owns himself and hence his labor, which when mixed with the object spills his ownership into it, so long as enough remains for everyone else.<sup>40</sup> Nozick raises a serious objection to this claim<sup>41</sup> by pointing out that mixing what you own with what you do not could, rather than entitling you to the latter as Locke believes, instead dispossess you of the former, as when you empty your can of tomato juice into the sea.<sup>42</sup> Nozick's analogy perhaps fails because you own yourself, that is to say your body, in a different, more primary way than you own an object outside your body like the tomato juice. Nevertheless, his argument and others<sup>43</sup> challenge Locke's framework as typically conceived, raising doubts about Locke's account of how natural rights in property are possible.

To restore sense to Lockean appropriation, James Tully's interpretation likens men to God as makers who own whatever they make.<sup>44</sup> The idea seems reasonable, for in making something, you create its value and introduce it into the world. Libertarians would accept the parallel; Nozick notes that every object comes into the world already owned by its maker, whoever purchased or contracted for all the resources involved in production.<sup>45</sup> Further support comes from Gopal Sreenivasan, who attributes to Locke the premise that a man owns what he makes so long as he uses it in a legitimate way.<sup>46</sup> In doing so, Sreenivasan takes as primitive what Locke was trying to explain. Locke claims a man owns what he makes because he owns his labor, which when mixed with an object renders it his. Sreenivasan just accepts that a man owns what he makes. As a result, the comparison to God appears straightforward.

Regardless of whether Tully's picture convinces us, religious objections remain. While Tully's analogy between God and man holds regardless of whether God exists, by turning on the conditional, "[I]f God makes something, then He is entitled to a property in it,"<sup>47</sup> we could hold a

(New York: Oxford University Press, 1995), <http://site.ebrary.com/lib/bodleian/detail.action?docID=10279442>, 33.

40 *Ibid.*

41 *Ibid.*, 60.

42 Nozick, *Anarchy*, 175.

43 Sreenivasan, *Limits*, 61, 89.

44 *Ibid.*, 63, 143.

45 Nozick, *Anarchy*, 160.

46 Sreenivasan, *Limits*, 143.

47 *Ibid.*, 63.

view of God on which He sometimes does not own what He makes. For example, an omnipotent God could act as a brute force that spews out the world but never owns it, just as a spring does not own the water that issues from it. The mechanism of adding labor to nature that forms the core of Lockean property rights descends into murkiness.

But even if the above controversy causes us to discard Locke's theory of how we acquire property in the state of nature, he is clearly right about the main cases he discusses. You can come to own a plot by cultivating it. Surely this intuition is stronger than any explanation that might support it. Locke's core intuition remains quite plausible: if you make something from natural objects in the state of nature (leaving as much and as good for the rest), you acquire a moral right to control its use. A similar intuition suggests that in the state of nature we can transfer this moral right via free exchanges with other property owners. Pre-legal property rights thus prove possible.

To recapitulate, we have two kinds of property rights: natural and legal. Both entail a moral right to control our possessions. Legal property rights, by definition, cannot be violated by the legal phenomenon of taxation, as the conventionalist recognizes. Against him, I along with the libertarians hold that we have natural property rights, which can be infringed and even violated when the state interferes with objects that we should be able to use however we wish (within moral limits). Together, legal and natural property rights compose the general category of property rights relevant to taxation.<sup>48</sup>

Then why does the conventionalist overlook the

48 We distinguish the natural and legal rights in particular pieces of property from a metaright formulated equivalently as a right to ownership, a right to control at least some property, or a natural right to have legal property rights. Taxation can infringe the former, but not the latter. The metaright can be violated by other means, such as when many states prohibited women, slaves, and other groups from owning property. Institutionalizing the metaright, the Universal Declaration of Human Rights proclaims in Article 17 that everyone has the right to ownership. Although extreme libertarians protesting taxes might be accusing the state of violating their metaright by limiting how much they possess, we can easily dismiss their case. The right to ownership does not entail the right to *unlimited* ownership, so the state is not necessarily wronging them by reducing the amount they own. Moreover, levying an income tax does not *completely* preclude people from owning property, and so does not violate the metaright. Beyond not violating the metaright, taxation does not infringe it. As long as the law allows for individual ownership, the metaright provides no reason against taxation.

existence of natural property rights? Murphy and Nagel neglect to argue for conventionalism as a philosophical position. Instead, from the accurate realization that convention infuses property rights, they too hastily conclude that property rights have no normative force apart from the law.<sup>49</sup> They leave the details of the logical leap unspecified. Their rejection of natural property rights turns out to resemble an assumption more than a conclusion.<sup>50</sup>

My recognition of natural property rights, aside from discarding the counterintuitive notion that property rights are completely conventional, reassuringly protects individuals from unjust confiscation by the state, such as that enabled by the tyranny of the majority in a democracy. For the conventionalist implies that if the system of property laws is just<sup>51</sup> overall, then within that system, we cannot make moral protests against governmental appropriation of someone's possessions. In holding that someone can legitimately claim only what the law says she can, the conventionalist fails to account for its content or the process by which it arose, as Geoffrey Brennan notes.<sup>52</sup> If your society happens to enact laws stripping you of all your belongings, too bad for you—you have no basis for claiming an object unless the law grants you ownership. You might complain for other reasons, such as that the state is imposing a disproportionate burden on you that others should share, but your protest cannot appeal to property rights. More generally, the powerful, in forcing the less powerful to relinquish all their goods, do nothing immoral in terms of property rights violations. But the point of a right is to prevent this sort of oppression. The quandary of the oppressed clearly seems wrong, suggesting that while not violating any *legal* right, the law violates *natural* property rights.

Let us take stock. I have presented two objections to conventionalism's rejection of the existence of natural

49 Geoffrey Brennan, "The Myth of Ownership," *Australian Journal of Legal Philosophy* 30 (2005): 130.

50 Notably, unlike many critics of natural rights, like Jeremy Bentham, Murphy and Nagel are moral realists who do not reject natural rights in themselves. They probably believe in natural rights to bodily integrity and life, so that assault, rape, and murder count as wrong in the state of nature.

51 The conventionalist leaves open what counts as just. Murphy and Nagel list potential considerations like the greater good; equality of opportunity; and individual liberty, desert, and responsibility. See *Myth*, 75.

52 Brennan, "The Myth of Ownership," 130.

property rights. First, my arguments concerning the villages and Locke have shown it is possible, in the absence of laws, to acquire natural property rights. Second, I have followed Brennan in holding that the state confiscation of property can be unjust even when lawful.

But the content of natural property rights remains unspecified so far. Even if we distinguish between legal and natural rights, natural rights could all be vague, so that whatever we say about the state of nature, we might be tempted by conventionalism in any modern, law-saturated economy. In response, Section 3 will show that even if property rights are conventional, they can remain pre-legal. We can own our pretax income not only in the state of nature, but also in a contemporary civilization.

### 3. LEGAL NATURAL RIGHTS

It is as obvious that the exact rules of ownership depend on the laws in a particular society. I acquire a car, house, or pair of jeans within a highly technical framework of regulations that may differ substantially from that of a country across the ocean. At first glance, no universal normative principle governs which items I am entitled to and exactly what I am entitled to do with them.

However, conventions can have a natural basis. Brennan gives the example of murder.<sup>53</sup> The legal prohibition of murder is conventional, in the sense that it would not exist without the law, and also in the sense that the law could distinguish between murder and other forms of killing in any of several perhaps equally defensible ways. But that convention clearly has natural roots in the fact that murder is wrong regardless of what statutes prescribe.<sup>54</sup> While some legal conventions, like the Internal Revenue Service's mid-April deadline for filing tax returns, have no independent basis, those condemning murder, rape, maiming and so on denounce wrongs. From the fact that our legal rules against killing are partly conventional, it does not follow that people lack a moral right to not be killed.

Indeed, our moral commitments often inform the conventions we adopt. Aside from the examples in criminal law just mentioned, citizens of many countries seek and express consent in conventional ways before initiating

53 Brennan, "The Myth of Ownership" Liam Murphy and Thomas Nagel: A Review Essay," *Constitutional Political Economy* 16 (2005): 211.

54 Ibid.

sexual acts in recognition of the right to bodily integrity, or establish courts with some conventional protocol to administer the right to a fair trial. By categorically dismissing conventions as devoid of moral content, the conventionalist overlooks the plausible view that natural property rights underlie legal property rights. His approach neglects the moral constraints on conventions like taxation that derive from pre-legal rights in property.

We see that according to common sense, property rights exist in the state of nature and transfer into society. The conventionalist cannot defend taxation for redistributive purposes just by assuming no pre-legal property rights exist, as Murphy and Nagel do. Instead the conventionalist must overcome common sense's compelling considerations with an argument, which so far remains absent from the literature.

Sections 2 and 3 have established the existence of pre-legal property rights. The extent of those property rights, including how much pretax income the earner has a pre-legal right to, is an open question. Two possible answers emerge under my view. First, the earner has the right to all his pretax income, and the state's appropriation of some of it for legitimate purposes (redistributive or otherwise) counts as a justified infringement. Second, the earner has a right to only some of his pretax income, and the state's appropriation of the rest does not infringe that right. I will assume the first response because it is simpler and more intuitive. Moreover, this interpretation supports the libertarian position, a relevant matter since my paper will henceforth mainly object no longer to conventionalism but rather to libertarianism.

### 4. PROPERTY FOR PRIMARY GOODS OR BASIC CAPABILITIES

I have argued that we have pre-legal natural property rights according to both the philosophical tradition launched by Locke and my village thought experiments, and that the conventionality of ownership cannot in itself negate this right. Next, I will demonstrate that natural property rights must exist for a deeper reason: everyone has the natural right to basic capabilities or the amount of primary goods necessary for a decent life, which can only be secured by the ownership of property.

Primary goods and basic capabilities constitute the

two<sup>55</sup> most influential metrics of justice.<sup>56</sup> In *A Theory of Justice*, published in 1971, John Rawls introduced primary goods as things that every rational agent needs to lead a full life as a free and equal participant in society,<sup>57</sup> and wants as much of as possible.<sup>58</sup> We limit our discussion to the subset of primary goods that Rawls thinks the state can directly control: rights, liberties, opportunities, income and wealth, and the social basis for self-respect.<sup>59</sup>

In 1982, Amartya Sen elaborated Rawls's insistence that a just state afford equal access to primary goods by proposing to replace them with basic capabilities. The term denotes the freedom to do certain activities and realize certain goods that are necessary for a decent life.<sup>60</sup> Sen seeks sensitivity to "the *ubiquitous* variations in conversion opportunities between any two different persons,"<sup>61</sup> such that basic capabilities may vary widely between two people with equal access to primary goods.<sup>62</sup> For instance, two children receiving an education will attain different literacy levels if one child has dyslexia and the other does not, all else equal. Another example from Sen holds that the capability approach concerns nutrition level, whereas the primary goods approach concerns food supply.<sup>63</sup> Capability theorists think their approach, unlike the primary goods approach, guarantees real advantages for individuals.

The debate about primary goods versus capabilities continues today among philosophers as well as scholars

from other fields.<sup>64</sup> Primary goods proponents have extended Rawls's framework to show that a just distribution of primary goods takes interpersonal variations into account.<sup>65</sup> An increasingly popular view holds that this extension amounts to the capability approach.<sup>66</sup> Neither definitively prevails among philosophers as the better metric of justice.<sup>67</sup>

Given the above considerations, I will avoid taking a stance and instead treat primary goods and basic capabilities as interchangeable for my purposes, so long as whichever interpretation of primary goods we use truly ensures, for every individual, the freedom to live as a full and equal participant in society. I will refer to basic capabilities and the amount of primary goods required for a decent life collectively as "basic goods."

What matters is that a political philosophy according to which the state has an obligation to provide basic goods differs fundamentally from the libertarian stance, which holds that the government has no obligation to promote people's flourishing. Both our metrics of justice demand that the government furnish positive goods of some kind for people.

The basic goods serve two roles in my argument. First, the state must recognize natural property rights, because owning a certain amount of property is necessary for securing basic goods. Second, securing basic goods for everyone requires and thereby justifies infringing those rights.

Why should we expect the government to secure basic goods for all? Notice that a state is legitimate only if it promotes the goods for which society exists. People live together in society because doing so benefits them more than living alone or in unorganized packs in the state of nature, as held by a long philosophical tradition including Locke, Hobbes, and other theorists. Rawls adds that we have a natural duty to comply with the laws of a just state,<sup>68</sup> and in return for our obedience, we are supposed to reap rewards from the cooperative scheme. The minimum such reward is an increased likelihood of achieving a decent life. If your chance of doing basic things like earning enough money to support your family remains unimproved, you make sacrifices for a government that has failed to fulfill

55 Other metrics include Ronald Dworkin's equality of resources and Richard Arneson's opportunities for welfare. See Robeyns and Brighouse, "Introduction," 6.

56 Ingrid Robeyns and Harry Brighouse, "Introduction: Social Primary Goods and Capabilities as Metrics of Justice," in *Measuring Justice: Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010), eds. Ingrid Robeyns and Harry Brighouse, 1.

57 John Rawls, *A Theory of Justice*, rev. ed. (Oxford: Oxford University Press, 1999), xiii, 54.

58 *Ibid.*, 123.

59 *Ibid.*, 54.

60 Amartya Sen, *Choice, Welfare and Measurement* (Oxford: Basil Blackwell, 1982), 367.

61 Sen, "The Place of Capability in a Theory of Justice," in *Measuring Justice: Primary Goods and Capabilities*, eds. Ingrid Robeyns and Harry Brighouse (Cambridge: Cambridge University Press, 2010), 247–248.

62 Sen, "Justice: Means," 115.

63 Sen, "Capability and Well-Being," in *The Quality of Life*, eds. Martha Nussbaum and Amartya Sen (Oxford: Clarendon Press), 43.

64 Robeyns and Brighouse, "Introduction," 6.

65 *Ibid.*

66 *Ibid.*, 8.

67 *Ibid.*, 10.

68 Rawls, *Theory*, 330.



the very responsibility for which it formed.

To clarify, I am not requiring the government to guarantee basic goods as its first priority. It may place more emphasis on other goals like protection from violence. I am simply saying that the provision of basic goods constitutes an urgent priority. The state must equip each citizen with them to the extent possible given other urgent priorities. If some citizens have enough income beyond that required to assure their basic goods while others do not have enough, the state must take some money from the “rich” to assure basic goods for others. We therefore need taxes for redistributive purposes.

Beyond representing an appealing alternative to conventionalism and libertarianism, the imperative to supply basic goods for everyone holds more appeal than some other potential justifications for redistributive taxes. Many people reject pattern-based conceptions of distributive justice, which state that what A possesses bears on what B should possess. Such balancing of relative advantages and disadvantages among a population fails to respect each person as a separate entity, instead treating society like a super-organism. Because the basic goods approach focuses on every individual’s good, it avoids this pitfall.

I have sketched an attractive picture in which the state is obligated to ensure everyone’s basic goods. However, the libertarian could still protest that taxing some people to ensure the basic goods of others would violate the former’s property rights. “How can the government justify taking what I own to benefit others?” she might demand.

I respond that for the purposes of political philosophy, a lack of basic goods counts as a harm, which the government has an obligation to mitigate. Virtually everyone, including the libertarian, expects the state to protect us from harm. Both natural and manmade harms merit state intervention, for no conceptual difference separates them:<sup>69</sup> they both constitute threats to our lives that we cannot handle as individuals, so we assume the government ought to help us resist them. We think the government should help victims of an explosion from a volcano, and similarly should not abandon victims of a bomb detonated by terrorists. We should see inevitable harms that significantly limit human beings’ capacities to live good lives as equivalent theoretically. Regarding

<sup>69</sup> Capability theorists think the institutional order should be arranged to correct some natural inequalities, but primary goods theorists do not (Pogge, “Critique,” 33).

property rights, even Nozick thinks infringement justifiable to avert, say, an outbreak of disease, regardless of whether some of those taxed are immune to the disease. In the same way that disease is bad for the individual, life without basic goods is bad, and we have a parallel justification for redistributive taxes that prevent that deprivation. When people cannot provide basic goods for themselves, the government ought to aid them.

To secure basic goods, an individual must own resources that he can channel into minimal provisions for himself. Prior to the advent of modern industrial capitalism, Locke highlighted the importance of owning property for survival, and the same holds, even more than in his time, in our contemporary context of individuals supporting themselves and their dependents with wages. Our natural rights include our entitlement to the amount of income necessary for basic goods.

The conventionalist could easily agree with me that people have a pre-legal right to basic goods, since conventionalism rejects only pre-legal *property* rights. Securing basic goods requires owning some property, on my view, so he should recognize a derivative pre-legal right to possess some property. The conventionalist who accepts this pre-legal right should concur that a scheme of taxation that infringed it would be unjust. He would thereby contradict his strong claim that *no* taxation scheme can infringe property rights. In consequence, he should repudiate his thesis that property rights are purely conventional, instead accepting my view and its implication that taxation infringes—perhaps justifiably—our property rights.

A communist could counter that private ownership of land and of the other means of production, the hallmark of capitalism, represents the greatest obstacle to guaranteeing basic goods for all. In the competition to accumulate personal wealth, she would explain, capitalists and the bourgeoisie form an elite class that lords over the comparatively destitute proletariat. The communist would instead advocate for the sharing of all items among the community. For example, the state could own all property, ensuring equal access so that everyone has basic goods without needing to individually own anything.

However, the communist is not really objecting to my argument. I am not insisting on a logical or conceptual link between private property and basic goods. Indeed, I can imagine a possible world in which the government assures basic goods without private property. But in our

world, as suggested by the historical unworkability of sizable communist regimes, we do need private property to secure basic goods for everyone. I suspect what makes the former crucial for the latter is the widespread human tendency to take more, sometimes far more, than needed of the limited resources available. Excessive consumption by some of a finite pie will always leave others wanting. Holding this feature of psychology fixed, private property is indispensable to securing basic goods.

In any case, we can set aside communism and assert our entitlement to property in at least a liberal state. To meet the goal of securing basic goods for everyone, given our current motives and tendencies, the government must codify our pre-legal property rights. That goal also requires the government to protect these pre-legal property rights to a lesser degree than the libertarian wants, as I will argue in the next section.

## 5. THE WEIGHING OF RIGHTS

If we have both a right to basic goods and property rights, but securing the one requires infringing the other, we must somehow discern which to prioritize.

The stringency of a right depends on the value it protects. Accordingly, the right to basic goods overrides the right to private property in that the value of a life worth living surpasses the value of property, which is always instrumental and therefore has indeterminate worth. In particular, the value of a life worth living exceeds the value of gaining property at the top end of the income scale.

The right to basic goods outweighs the right to property beyond the minimum required for subsistence, that is, your right to keep and control *everything* you own. This is because what matters most is not what you have, but what you do with what you have. Moreover, under the traditional understanding, the state should promote each citizen's good, to which basic goods are more relevant than property past the point of necessity.<sup>70</sup>

<sup>70</sup> I am appealing to a principle that all else held equal, state infringement of someone's right X is justifiable when it represents the only means to protecting someone else's far more important right Y. One might object that this principle does not hold in general. As a counterexample, if the government infringes someone's right to bodily integrity by harvesting his kidney to protect someone else's right to life by saving her, that move constitutes a violation. I respond by characterizing the right to bodily integrity and right to life as exceptions. In Lockean terms, the state may not infringe your property rights in yourself for the sake of someone else's right to basic goods. This is not because

To complicate our considerations, Nozick implies that income taxes violate the right to autonomy or the right to own one's own labor. He characterizes such taxation as "[s]eizing the results of someone's labor"<sup>71</sup> so as to enslave him, coercing him to do certain work for a certain amount of time without his consent. But this dramatic argument by analogy means nothing more than the uncontroversial observation that income taxes make people work longer to make a given amount of money. We might call the effect tedium, but to compare it to forced labor as Nozick does is ridiculous. No abusive conditions, massive restrictions of freedom, or other horrific circumstances affect the employee who must pay a slice of his income to the government each year. We can dismiss Nozick's point as groundless. Taxation constitutes an acceptable cost for the government's protection of the right to basic goods.<sup>72</sup>

One might object that from my argument that our interest in living a decent life surpasses our interest in having property beyond a certain point, it does not follow that the state is justified in infringing property rights to protect the right to a decent life. After all, we lack a theory about the circumstances under which the government can justifiably infringe some rights to protect other rights. The question represents a deep, perhaps unsolvable mystery in political philosophy. Nevertheless, my paper fundamentally assumes that people have not only a profound interest in, as all agree, but a profound right to a decent life. This provides the basis for a strong though not conclusive argument that the state is justified in infringing property rights to protect this right to a

such taxation violates property rights, but rather because your body is a special class of property—the source of all your property through the mixing metaphor, for Locke—that ought not be redistributed by the state. Notice the uncontroversial nature of my claim. We never think the government justified in mandating that pieces or wholes of people be given for the benefit of someone else, except via the military draft, which may well be wrong.

<sup>71</sup> Nozick, *Anarchy*, 172.

<sup>72</sup> Inspired by an objection Thomas Pogge raises against the capability approach ("Critique," 53), we might fear that my justification for taxation requires the state to pay to correct someone's deficiencies anytime that doing so would significantly increase her basic goods. The worry would be that equipping high-need individuals would cost the state too much. In response, I follow Pogge's acknowledgement that certain schemes could plausibly balance the interests of such individuals with those of everyone else ("Critique," 58). The nature of such schemes remains a topic for investigation elsewhere.

decent life. Even though some libertarians might remain unconvinced, insofar as anyone knows how to answer the question, my response offers the best we can do.

I showed libertarianism to be much closer to the truth than the conventionalist claims. The libertarian correctly claims that we have natural property rights that taxation can in principle infringe. However, she wrongly thinks that such infringement is hard to justify. It can be justified by the state's obligation to provide basic goods to citizens.

## CONCLUSION

Against the conventionalist, the first half of my paper argued that everyone has natural property rights, which taxation infringes. Against the libertarian, the second half of my paper argued that such infringement is justified insofar as it protects everyone's natural right to basic goods.

The conventionalist bases his defense of taxation on the notion that property is completely conventional, an inadvisable step because this notion is farfetched—and as I have contended, false.

As Brennan indicates, the conventionalist's strategy of attacking property rights undermines his mission by feeding the libertarian view that either property rights are purely conventional or taxation is illegitimate.<sup>73</sup> This dichotomy forces us to pick between two unappealing options.<sup>74</sup> To escape the trap, I have balanced the recognition of natural property rights with legitimate taxation. Murphy and Nagel think that to spread through a capitalist democracy, a conception of justice must be intuitive,<sup>75</sup> so my portrayal of pretax income as something to which we are entitled better achieves the practical effect on policy that they desire. In short, I have strengthened the conventionalist's conclusion by negating the main obstacle to its plausibility: the central premise that your pretax income is not your money.

Let us juxtapose my conclusion with that of the conventionalist as well as that of the libertarian. For the conventionalist, taxation infringes no rights. For the libertarian, taxation for redistributive purposes not only infringes but violates our natural property rights. For me, taxation for redistributive purposes infringes our natural

property rights—but that infringement is justified as the only way to provide the possibility of a decent life that we owe to each of our countrymen. My conclusion is weaker than the conventionalist's. I consider taxation justified for the sake of basic goods, and possibly other goods of similar importance that would outweigh property rights, whereas they see taxation as justified for much less urgent purposes, like public libraries and farming subsidies. This contrast reveals how my view resonates with that of the libertarian. She believes taxation can be justified for urgent purposes, like national defense. I agree, but have a longer list of urgent purposes.

Besides preserving the advantages and correcting the drawbacks of conventionalism and libertarianism, my justification for redistributive taxes introduces several benefits. If the government assured basic goods for everyone to prevent natural and social contingencies from impeding the most essential life decisions,<sup>76</sup> we could better judge citizens by the effort they make within the context of their backgrounds and resources, so as to reward right and punish wrong behavior. Beyond the decision-maker's perspective, her basic goods would enable us to more accurately evaluate what she does in moral terms. We could hold her accountable for her actions because her newfound ability to do basic things would bestow responsible agency, which requires critical understanding of the genuine options available to her<sup>77</sup>—options she may overlook or misperceive when trapped in perilous circumstances.<sup>78</sup>

Economically, with basic goods guaranteed, many people who would otherwise fall below the subsistence threshold would feel a greater incentive to work productively and meaningfully, since the resulting income could enhance their lives rather than serving as a temporary fix for a cycle of destitution. The incentive

76 Gerald A. Cohen, "On the Currency of Egalitarian Justice," *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy* (Princeton: Princeton University Press, 2011), 9.

77 Ibid.

78 Comparing my basic goods view to luck egalitarianism may prove helpful. Luck egalitarianism, as characterized by Richard Arneson, holds that "the aim of justice as equality is to eliminate so far as is possible the impact on people's lives of bad luck that falls on them through no fault or choice of their own" ("Luck Egalitarianism," 339). The luck egalitarian would concur with me up to the minimal threshold. Beyond that, the luck egalitarian would try to correct inequalities whereas I would not. People are accountable for more on my view because they alone must handle what they do beyond the threshold.

73 Brennan, "The Myth of Ownership," *Australian Journal of Legal Philosophy*, 131.

74 Ibid.

75 Murphy and Nagel, *Myth*, 188.

would decrease for some people above the threshold, who know they could live decently no matter what they do, especially in the case of the wealthiest because of marginal tax rates, but these groups would still want to work enough to secure a comfortable lifestyle. As a result, quality of life would generally improve across the state.

The traditional question governing taxation that the conventionalist rejects remains the one we should ask: “How much of what is mine should be taken from me to support public services or to be given to others?”<sup>79</sup> The answer is: as much as is required to assure basic goods for all. In reorienting the discussion toward how the government can equip human beings to lead fulfilling lives, we can turn redistributive taxation into a tool to help every citizen prosper.

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<sup>79</sup> Murphy and Nagel, *Myth*, 176.