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The Minarchist’s Dilemma: How Status Preferences Undermine Libertarian Political Stability

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The Minarchist’s Dilemma: How Status Preferences  
Undermine Libertarian Political Stability  

DISSERTATION

submitted in partial satisfaction of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY  
in Philosophy

by

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2016
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This text emerged from hundreds of conversations, remarks in correspondence, and intellectual exchanges of every description. I regret to say that my memory is far from an adequate catalog, but I do know that the work would have remained deeply impoverished had it not received contributions from outside an academic environment. So I would like to begin by noting that a philosopher’s friends and family, peers outside the discipline, and even chance encounters offer many insights and opportunities. I hope what follows suggests that I have been paying attention.

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CURRICULUM VITAE

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FIELD OF STUDY

Social Contract Theory
A minarchist conception of government prohibits levying taxes to fund redistributive institutions and programs. This dissertation argues that due to ubiquitous preferences people hold for higher social status, no minarchist view is compatible with strong and uncompromising libertarian rights under an enduring social contract. Libertarians can embrace the redistributive state, or defend anarchy, but cannot justify the stable “minimal state.”
The Minarchist’s Dilemma: How Status Preferences Undermine Libertarian Political Stability

Nathan Fulton

November 22, 2016

The circumstances of justice may be described as the conditions under which human cooperation is both possible and necessary.

–John Rawls, A Theory of Justice

...Here at least we shall be free; the Almighty hath not built
Here for his envy, will not drive us hence:
Here we may reign secure, and in my choice to reign is worth ambition though in Hell:
Better to reign in Hell, than serve in Heaven.

–John Milton, “Paradise Lost”
A note regarding citations:
In general, I shall be providing citations to outside texts as those texts are introduced. Yet there are two specific works with which this discussion will be so thoroughly and repeatedly engaged that they merit special abbreviations, introduced at the outset:


**STG** Locke, John. 1698. *Second Treatise on Civil Government*.

[nota bene: Citations will be to chapter and section of the 1698 3rd printing, generally known as “Christ’s Copy”.]
Chapter 1

Introduction

This dissertation is primarily concerned with a plausible conjecture, a claim that cannot be deductively proven, but for which I can present a strong argument based on relatively uncontroversial starting premises and extensive empirical evidence. This conjecture is that any socioeconomic arrangement structured according to a libertarian minarchist model will inevitably fracture into a cascade of derivative arrangements over time. This is to say that libertarian societies are inevitably unstable, and that the libertarian conception of justice will prohibit the introduction into the social contract of any features that are actually adequate to create stability.

The defense of this “instability conjecture”, and the exploration of its implications, will be the task of succeeding chapters. But in these introductory remarks I will at least show where we are trying to go, and what the destination has to recommend it. My overall argument can be expressed as an incompatibility claim. We cannot accept all of the following ideas:

• The prevalence of concern for relative status (chapter 2),
• Basic libertarian commitments to free association and property (chapter 4),

• The tendencies of capitalist economies to produce inequality (chapter 5), and

• Stable, ongoing social cooperation.

I develop the incompatibility of these ideas by offering a “proliferation” model in which societies invariably divide (primarily in chapter 3, though we will be concerned with it throughout). My instability conjecture is that a standard kind of libertarianism, defined by certain basic commitments (to protections for free association and property), lacks a principled basis for ruling out such situations. I consider several ways libertarianism might hope to either deny the needed assumptions or simply concede the point, and argue that none of these routes of escape come without a significant cost. Perhaps even more important, none justify what has become the conventional wisdom about libertarian political conceptions.
1.1 The basic claims of the conjecture

The conventional wisdom about libertarian political conceptions is that they are minarchist, which is to say that they do justify a stable state, but it is very restricted, and in particular may not institute taxes for the specific purpose of redistributing goods. This isn’t a conceptually intrinsic feature of libertarianism, at least not if we take the principles of justice articulated by John Locke to be the seminal and still central tenants of the libertarian position. Under the influence of the “Austrian School” of economics, however, minarchism has come to be regarded as the natural implication of core libertarian principles, the best compromise between needing government to protect liberties while still wanting as little restriction on liberties as possible, including from government. The best-known proponent of this minarchist libertarianism in political philosophy is Robert Nozick, whose novel and compelling 1974 text Anarchy, State, and Utopia (hereafter cited simply as “ASU”) introduced a

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1 There are a couple of ways I might identify precisely what counts as a libertarian conception, and who might be thought to champion it. One way would be to give a rough taxonomy of libertarians organized along disciplinary lines: one group in economics, often identified with the “Austrian School” of economic thought, and a second, more recent group working in political philosophy. The former are most famously represented by Ludwig von Mises, F. A. Hayek, and Murray Rothbard, though Hayek resisted being called a libertarian, and the term was not widespread for most of von Mises’ career. The philosophical contingent, most notably Robert Nozick, emerged in the latter half of the twentieth century, and identified themselves more explicitly with a commonly held “libertarian” position. They were informed by certain ideas from the economic contingent, but more focused on the normative basis of rights than the economic consequences of *laissez faire* monetary and fiscal policy. Further variations in this line include a developed thesis of self-ownership (Eric Mack, among others) and a revised account of the basis of the social contract (Jan Narveson). Yet libertarian views are complex and diverse, and an exhaustive survey is beyond the scope of the present discussion. In succeeding chapters, particularly chapter 3, I will approach the matter from the other side, by giving an account of the libertarian principles I am most concerned with. It is the libertarians who hold these (very common, central, even uncontroversial) views with whom I will be most engaged, whomever they may be.

2 Just as many difficulties attend Locke scholarship as one might expect from the close study of any complex and influential historical figure. Certain passages are consistently beloved by the libertarian, however, especially STG ch. VII, §87. For a more comprehensive and thoroughly scholarly analysis of Locke, yet one that retains a libertarian focus, see Mack (2009). I will give somewhat more detailed accounts of certain claims that contemporary libertarianism owes to Locke in the third chapter.

3 It is outside the scope of this discussion to trace thoroughly the connection between Austrian economics and recent libertarian philosophy, but for quick examples of Nozick’s debt to the Austrian school, and especially F. A. Hayek, see ASU 20-21 and 158-159.
number of arguments connecting libertarianism to minarchism that have been so influential that even the most thoughtful and scholarly libertarians now tend to suppose that the two positions are synonymous, or at least that libertarianism entails minarchism.

One note about terminology is in order: I do not wish to get too hung up on what is entailed when referring to a “state”, a “society”, or any other particular conception of a political or social unit. It is for this reason that I will primarily use the somewhat vaguer “socioeconomic arrangement”, or simply “arrangement” for short. The only precise thing these terms designate is the model presented at the beginning of chapter 3, but the general idea is simply any voluntary association for common enterprise that includes an enforcement mechanism to solve assurance problems. I am concerned primarily with the possibility that such social arrangements might take a stable minarchist form, and my claim is that basic tenants of libertarianism preclude this possibility.

My argument relies on the empirical claim that people generally have preferences for a certain relative socioeconomic status, a claim which I defend in chapter 2. I aim to show that a certain kind of rigorous analysis of the predictable effects of these preferences indicates that the set of social contracts that people will actually continue to voluntarily participate in does not include minarchist social contracts. The intuitive idea is that a few modest assumptions about growth in a capitalist economy are enough to show that inequality will keep rising. People worry about having less than others—not just less overall, but less than their neighbors—and so keep leaving. Libertarian principles prohibit any of the measures that would get people to stay. They can’t be forced to stay, and redistribution that would assuage their status worries is also impermissible. But without these options, libertarians lack any principled grounds for defending a stable state.
This is not to say that the status-conscious would not *initially accept* libertarian socio-economic arrangements, either to get out of the state of nature or in preference to some other kind of arrangement. The status conscious can be assumed to have non-comparative concerns as well, and they may prefer (*ceteris paribus*) arrangements that leave them better off in absolute terms. Nor do I claim that the terms of libertarian arrangements would be intrinsically unjust; indeed, I will be making no original normative claims whatsoever in the course of this discussion. Instead, I claim that capitalist arrangements under libertarian terms will eventually make some of the arrangement’s members dissatisfied enough to leave, joining or forming derivative arrangements in which they hope to fare better. Yet because the derivative arrangements themselves create dissatisfaction over time, new arrangements will continue to proliferate, each offering possibilities that can only be realized by a select few, while others become dissatisfied and move on yet again.

This fracturing and proliferation subjects libertarian societies to an ineluctable pattern of instability, because libertarian principles guarantee the dissatisfied individuals the right to leave. The only options for preserving stability and ongoing social cooperation are measure that libertarian doctrine explicitly precludes on moral grounds. If my instability conjecture is correct, the libertarian must either accept the inherently unstable and degenerative nature of (by her own lights) just social arrangements, and embrace a form of anarchism, or conceptualize property rights in a manner that allows for some kind of periodic redistribution of goods. Neither of these options is compatible with the traditional minarchist view of libertarianism.

I will not deny that the libertarian retains the option of rejecting stability as a core desideratum, or accepting that the only just political state is by its nature temporary. Indeed, as I will explore further in my last chapter, my claim is that the libertarian is *forced* into such a (virtually anarchist) position. Because such a view is far less attractive than the picture of
a just and stable minimal state painted by Nozick and others, these are serious challenges to their program.

1.2 Development of the conjecture

1.2.1 Minarchist libertarianism creates unbounded inequality

I begin the argument for the conjecture by describing two claims a view has to make in order to be recognizably libertarian. The first is a claim about freedom of association, so I will usually refer to it as “the association principle” (or simply “AP”). This principle holds that all people have a fundamental right to form organizations, commit to contracts, and otherwise associate with others for whatever kind of mutual enterprises all members consent to. It also has various corollaries and limitations. People have the right to dissolve associations, for example, but only as long as so doing doesn’t violate the rights of other members (you do not have a right to end a business relationship by defaulting on a debt). People can’t contract to violate their own fundamental rights, so they can’t sell themselves into slavery or be held to a contract established under false pretenses.

The second claim is about property rights (I’ll call it “PP” or “the property principle”). It can be presented with a fair amount of variation in details, but always aims to establish what you can do with whatever it is you have property rights over. The property principle enumerates your rights to develop your property, to destroy it, and to exchange it for other property or services. It also usually includes rights to give it away or bequeath it. I’ll discuss the full extent of both of these principle, and what they each entail, at greater length in chapter 3.
I will not argue directly that most historical or contemporary libertarian views include both of these claims. Instead, I will simply stipulate that I use ‘libertarian’ to denote a view that includes both of these claims. Nonetheless, this is not a “straw man” picture of libertarianism. It is easy to find these two kinds of claim rehearsed and defended by libertarian thinkers from Locke and Mill to Nozick and Narveson.

Yet while the claims themselves are uncontroversial among libertarians, their deeper implications have often gone unacknowledged. I will demonstrate some critically important implications of the property principle in detail in chapter 5, using a representation of socioeconomic arrangements simply as sets of people. The members of any given set have agreed to accept a social contract constrained by the demands of the two libertarian principles already discussed. This social contract is essentially a function from the sets of qualities possessed by individuals, to packages of goods they receive for their participation in the arrangement. The property principle will heavily constrain what social contracts are acceptable. For example, the individual will have to give up a small portion of the goods produced in order to maintain the institutions that protect the opportunity to produce them, and the contract rights derived from them, and this is acceptable because it is in the individual’s self-interest. But to insist that the individual surrender any more goods than necessary to maximize the efficiency of her own enterprises is prohibited by the property principle.

Modeling the way that the property principle affects the space of acceptable social contracts, and the way that those contracts in turn affect the distribution of goods, will establish certain socioeconomic consequences as unavoidable for the libertarian. Inequality will increase at an accelerating rate and without any necessary upward bound, simply because one decade’s successful entrepreneurs are the next decade’s silent investors and landlords. Their children are the recipients of superior education and interest-free startup capital, and their grandchildren receive legacy admittance to elite schools, clubs and social networks. At the same
time, highly talented and hard-working individuals will see their sets of qualities devalued in comparison to those who simply inherit packages replete with wealth, social access, and educational advantage. Even in eras when the wealth of nations rises steadily, this is a source of discontent; when the aggressive growth of capitalist economies falters, inequality can have immediate political ramifications.

1.2.2 Unbounded inequality leads to profound status dissatisfaction and social instability

Many libertarians will readily accept, at least initially, the consequences of the property principle I have sketched above. Nozick famously defends inequalities resulting from a historical process of voluntary transactions. He holds the aggregation of goods in relatively few hands is just, as long as no violation of anyone’s Lockean rights is associated with the chain of events leading up to it, and he is explicit that this entitlement through historical regress may stretch all the way back to initial acquisitions. But it is another question entirely whether a minimal state with a very high degree of inequality can be stable. Nozick suggests that it can, and is inclined to be. I claim that it cannot be, because people do not only care about being better off than they were before. They also care about being better off than their neighbors, about the social status their children will enjoy, and about the way resources in their society are distributed.

This is an empirical assumption, that people care not only about the rewards they receive for their work, but also about how much they are rewarded relative to others, and what socioeconomic position they end up in as a result. Chapter 2 concerns the form of, evidence for, and entailments of preferences for socioeconomic status. There is a considerable litera-

\footnote{See, e.g., ASU 225-226, as informed by ASU 150-153.}
ture, both theoretical and empirical, regarding these patterns of valuations and the behaviors that are driven by them. Also considered in that chapter are preferences to participate in arrangements that distribute rewards in specific ways, such as in an egalitarian fashion, or an inegalitarian fashion presumed to correlate with desert, or at least to incentivize achievement.

I will show that most socioeconomic arrangements that satisfy the two libertarian principles will dissolve over time because of the implications of status preferences. The model presented in chapter 5 will suggest that inequality increases without bound, but the real significance of this takes hold in the presence of status preferences. Such preferences may be relatively modest in comparison to the desire to gain the largest available package of reward. Yet inequality in libertarian socioeconomic arrangements will eventually reach such a pitch that at least some subset of the members of any such arrangement will no longer wish to participate in it.

Can this simply be admitted? Dissatisfied members of an arrangement must be allowed to leave, and it should not trouble us that they occasionally will. But I will argue that a number of fairly severe consequences arise when the particular dissatisfaction that provokes these departures comes from status preferences. This is the topic of the fourth chapter, but is worth introducing here as a rough thought experiment.

Imagine a world of free mobility from society to society. All societies respect the basic libertarian principles. Now suppose that in one arrangement, the least well-off 20% of members become dissatisfied enough to leave, and they elect to leave together and form a new arrangement of their own (I’ll refer to this case as a “splitting scenario”). This would be a significant and disruptive fracturing of the arrangement, but it cannot be prohibited, given the libertarian principle of free association.
Let’s call the old arrangement $A$, the arrangement composed of the 20% who left $B$, and the arrangement containing the 80% who would not have left the old arrangement $C$. Now, the following feature of $C$ is very important: those who were in the third decile of advantage in $A$ (21% – 30%, roughly speaking) are now in the lowest decile of $C$. Their dissatisfaction will spike sharply, as they find themselves on the bottom of the heap. Either they will be dissatisfied enough leave as soon as this happens, or they will be within a few more cycles of economic activity in which their positions continue to decline relative to everyone else in $C$. So they will form $D$. But of course now some members of $E$, the remainder of $C$, will be on the bottom... despite have been very comfortably in the middle of $A$... and so on.

Nor are things likely to be going swimmingly over in $B$. The lowest-ranked members of the new arrangement will initially have the satisfaction of being in a smaller pond, and this may make their low status less onerous. But as the arrangement grows, and the fortunes of those above them grow more rapidly than their own, low-ranking members of $B$ will begin to consider the possibility of forming $F$, and so on. Eventually this process of division fractures arrangements down to partnerships, effectively restoring something like the notorious “state of nature”. The only strict bound on the iteration of splitting scenarios seems to be at the level of individuals, though if security comes only in numbers, we might suppose that splitting continues until groups are of the minimal size that can protect their members.

The above is the very basic form of a proliferation problem, the ineluctable tendency of libertarian societies to proliferate as members seek arrangements where they can occupy more favorable positions. In real-world cases there are a number of factors that may blunt the impact of proliferation problems or the speed with which they arise, such as the transaction costs of emigration or the economic and political turmoil of revolution or secession. When we return to proliferation problems in the next chapter, I will model them as inherent to libertarian socioeconomic arrangements, and show that the libertarian has severely limited
options for mitigating those consequences. I will also give some attention to higher-order proliferation problems that arise when agents recognize circumstances such as their future likelihood of status dissatisfaction, or the dissatisfaction of others with whom they share an arrangement.

In fact, most capitalist societies mitigate the proliferation problem by simply constraining or altering the distribution of goods in ways that reduce differences in status. These approaches seek to make it worthwhile for the less well-off to continue to participate. This is recommended by socialism and Rawlsian liberalism, and as we’ll see in chapter 6, redistributive taxation can even be motivated by libertarian concerns if the basic libertarian rights are relaxed in principled ways. The libertarian is willing to abridge some of her freedoms in order to better secure the remaining ones, and indeed this is part of the explanation of how she elects to move from the state of nature into a social contract in the first place.\(^5\) It is not unreasonable that she might continue to abridge those freedoms in a modest, structured way in order to maintain the stability of her prior arrangements. And in fact political philosophers who identify as “left libertarian” recognize this as part of a broader argument for the preservation of certain kinds of common pool resources, which I will also discuss in chapter 6 as a method of stabilizing libertarian social contracts.

Alternately, the libertarian can of course accept that any lasting socioeconomic arrangement must produce unacceptable violations of rights, and become an anarchist. At least one prominent libertarian philosopher, Jan Narveson, has suggested in his more recent work\(^6\) that libertarians may have good reason to view anarchism as the only political conception that truly recognizes the demands of justice. Nozick, of course, makes vigorous attempts to deny this and justify the minimal state, but the notion that he can draw the line at

\(^5\)Even Nozick concedes this point, see ASU ch. 1 & 2.

\(^6\)Narveson (1996).
any particular level of state power has met with increasing resistance from both libertarians and their critics.\textsuperscript{7} Anarchism is not seen as an unacceptable cost for following through rigorously on libertarian principles, at least under a certain view of what those principles entail. Of course not all libertarians will accept Narveson’s arguments, but I will give some consideration to the relationship between the different reasons why one might arrive at anarcho-syndicalist conclusions from libertarian premises.

I will not argue for redistributive solutions over anarchist resignations. Either route is consistent with my instability conjecture; I claim only that one or the other is necessary. Rejecting redistribution will inevitably force the least well-off out of a libertarian arrangement, as rising inequality becomes more than they will tolerate. Yet rejecting anarchism will force the well-off to redistribute some of their resources in order to stave off status dissatisfaction. The libertarian lacks a stable middle ground. Either anarchy or redistribution must be accepted as the eventual price for libertarian justice.

1.3 Summary

1. A libertarian view asserts at least one version of each of the following kinds of rights:

   (a) The association principle (AP), an assertion of the right to freedom of association and freedom in voluntary arrangements, and

   (b) The property principle (PP), an assertion of the right to control over private property.

2. The minarchist libertarian interpretations of AP and PP, and particularly the celebrated articulation of them given in Robert Nozick’s \textit{Anarchy, State, and Utopia}, lead

\textsuperscript{7}I have already given the later Narveson as an example of a libertarian anarchist, but for an argument from another perspective that Nozick would be more honest as an anarchist, see Wolff (1996, pp. 112-113).
strictly and analytically to the progressive widening of economic inequality, and in most cases to a rapidly accelerating, unbounded form of such widening.

3. As an empirical matter, all or nearly all people dislike extremely wide inequalities in the rewards received by different members of the same economic arrangement, and will consider sufficiently wide inequalities a source of meaningful disutility (particularly if they are in a disadvantaged position in an unequal distribution of rewards).

4. Because of (2), whatever level of inequality a given individual considers “sufficiently wide” for the purposes of (3) will eventually be realized.

5. Eventually the disutility produced by rising inequality will reduce the value of remaining in any minarchist arrangement to extremely low levels for a significant proportion of the arrangement’s members.

(a) They will wish to leave.

(b) Due to AP, they have a strictly protected right to do so.

(c) Their leaving will worsen the position of some other members, who will now wish to leave...

(d) ...and this process will also contain various other recursive structures that severely undermine the stability and coherence of the minarchist project.

6. Any measure the minarchist might wish to enact in order to prevent proliferation problems will be prohibited by the duty of the minarchist state to protect and refrain from violating either AP or PP.

7. There are no long-term prospects for stable minarchist socioeconomic arrangements.
The conjecture I am proposing, a very general form of which is put quite succinctly in (7) above, is plausible because none of the premises it rests on are controversial. All of them are one of the following:

- Explicitly conceded (or indeed insisted upon) by Nozick and most other libertarians. Point (1) is of this kind, and will be expanded upon in chapter 4.

- Simply and obviously analytic. Points (2), (4), and (5) are of this kind, and are discussed in full in chapters 3 and 5.

- Simultaneously intuitive and supported by overwhelming evidence. Point (3), expanded upon in the next chapter, is of this kind.

The sixth and final chapter of this dissertation will be devoted to assessing what political conceptions, if any, can enjoy the kind of stability unavailable to traditionally libertarian ones. This will require considering both familiar conceptions such as those offered by Marx and Rawls, and modifications to libertarianism that seek to preserve certain of its principles while modifying or reinterpreting others in a way that prevents or corrects for the expansion of inequality. There is a set of socioeconomic arrangements that are stable when established among real people in the world as we encounter it. Even if an ideal libertarian arrangement is not to be found among them, libertarian accounts of rights can still tell us much about what, if anything, we should be prepared to give up in order to establish an arrangement that will both endure and truly serve the interests of its members.
Chapter 2

Status preferences

“Men do not desire merely to be rich, but to be richer than other men, or than certain other men.”


This chapter will introduce status preferences, preferences for high relative socioeconomic position even at the expense of some amount of absolute welfare. I will begin by giving some richer detail as to the structure and conceptual content (express or implied) of such preferences. Once we understand what we are talking about, I will review a small portion of the considerable empirical evidence for the prevalence and impact of status preferences.

\[\text{1} \text{This posthumous essay was first published in 1907. It is not frequently reprinted, and the remark above is best known for being approvingly quoted by Arthur Pigou in his 1920 book } \textit{The Economics of Welfare}. \text{Pigou is of course celebrated among economists for noting the effects of disparities in resources on the real value of those resources for various parties.}\]
2.1 Important features of status preferences

2.1.1 The distinction between absolute and relative welfare

“Welfare” is sometimes taken to mean simply absolute welfare. If this is understood as a collection of goods such as income, holdings, and capabilities attached to an individual, the assumption is often that a person’s bundle of goods determines his or her ability advance his or her good as he or she conceives it.² Because individual conceptions the good life vary, the same collection of goods might represent a somewhat different amount of welfare to one person than it does to another.³ I will assume that even if welfare is not itself intersubjectively comparable, the necessary preconditions for it in terms of individual goods or advantages, such as money, education, or social rank, can be intersubjectively understood well enough for our purposes. Surely, as a psychological matter, most people believe they have a basis for comparing their lot to that of their neighbor (they prefer to have a higher income than their neighbors, for example).

There is considerable evidence that most people are at least somewhat concerned with relative position with respect to such goods, that is, how their income, holdings and capabilities compare to those of others around them. Some people, particularly in societies that stress egalitarian and communitarian values, are uncomfortable if their goods are obviously far in excess of their needs. Others, especially in individualistic societies that put a premium on competitive achievement, are uncomfortable if the goods held by others far exceed their own,

²I might have said “maximize their expected utility” or the like. I am prepared to be ecumenical about nature of welfare and its measurement.
³Rawls specifically identifies certain goods as “primary goods”(see Rawls (2001), §17), and includes certain political and social protections and privileges among them; he considers freedom of association, for example, to be among the freedoms that are an intrinsic subset of primary goods (ibid.). I am not assuming that welfare requires all of the goods Rawls lists, but I am certainly not denying it, and I doubt that most libertarians would take issue with Rawls on this point either.
even if their own goods are more than adequate for all of their reasonable needs. Hardly anyone actually considers the rewards received by others irrelevant. I will return to the empirical evidence of this below.

Preferences for relative position come in different forms that reflect different levels of sophistication. The simpler form concerns only ordinal ranking, that is, if all individuals were ranked according to the criteria above, “Where would I stand?”. I will refer to this as positional preference or concern (or sometime “pure positional concern” for emphasis). A more informed, more content-rich kind of preference concerns cardinal ranking, which we can treat as ordinal ranking with additional information about how big the gaps are between ranked positions. I will refer to this as status preference or concern. As a basic conceptual fact, we can note that a status preference entails a positional preference, but the reverse is not true. One reason why this distinction matters is that while positions may be plausibly attributed to natural facts about talent, and/or considered matters of desert grounded in effort and judgment, these assessments are harder to justify for status. Status is much more dependent on the nature of socioeconomic arrangements.

As an illustration, consider an imaginary individual sport called “sportsball”, in which most tournaments award a medal (of no intrinsic value beyond the rank it signifies) and a cash prize to the top three competitors. Suppose that April is a championship-level sportsball player considering which of three tournaments to enter. She is very talented and well-trained—a prodigy—but she is just starting out, so she can only afford to go to one tournament this year. She expects to be competitive against most of the field, but she doesn’t think she can beat June, the undisputed dominant player this year. April is considering two choices. Each has the same total prize pool available, but it is distributed differently in each case:
• In the *Dutch Open*, she will have to face June, but no other players that she considers to be of her caliber. She would expect to take second place. The prizes for this tournament are $15,000 for gold, $7,000 for silver, and $5,000 for bronze.

• In the *South Korean Open*, she will face an extremely competitive field that includes June. She will plan as though she can depend on medalling, but perhaps no higher than bronze. The prizes are $10,000 for gold, $9,000 for silver, and $8,000 for bronze.

April’s choice will depend upon the structure of her preferences. If she acts as *homo economicus*, she will without hesitation choose the South Korean Open. The prize available to her there is the largest, even though she expects to finish in third place, and her absolute reward is the only one that counts. If she has a strong positional preference, however, she may choose the Dutch Open. There are a number of reasons why she might have such a preference (she wants to be seen by prospective coaches competing in the final against June, she is a psychologically competitive person, she promised her mother that she would get at least a silver, etc.) but we are for the moment simply assuming that she does, and enough so that an improvement of one place is worth $1,001 or more to her.

But if her positional preference is a status preference—if she cares about the *distance* between her and those above and below her—she might choose the South Korean Open after all. She might note that even placing third in that tournament, she is within $2,000 of the prize accorded to the champion. And she will be within a mere $1,000 of the competitor immediately above her. If her positional concern has to do with being recognized as being very close in ability to those ranked above her, being seen as not that far from the top, then

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*Homo economicus* is a term of art, primarily used in the social sciences and occasionally in contemporary philosophy, for an individual who acts strictly rationally to maximize utility (or the expectation thereof). Notably for our purposes, such an individual will only consider her own gains and losses in absolute terms.
the difference in scale of reward may be more important to her than a nominal difference in rank, and this is a status preference.

Note that this is not merely a matter of a higher reward for the second and third place positions. It has to do with the first place competitor in the Dutch Open receiving a reward that treats her as more than twice as accomplished as the second place competitor, which April might find objectionable. We can highlight this distinction further by supposing that April becomes aware of a third tournament:

- The *Columbian Open* is a similar case to the Dutch Open. April can expect to lose to June, but otherwise will face no real challenges. But this tournament is simply not as well funded, so its prizes are $9,000 for gold, $7,000 for silver, and $5,000 for bronze.

Now April may decide that she prefers this third option, even with her status preference. She will take second place, and while she will make $1,000 less than in the South Korean Open, she will still be within $2,000 of the champion, in a prize pool distributed in even intervals. To produce this third option, we started with an existing (objectionable) option, and modified only June’s expected prize, not April’s. April’s place and prize is identical to what she would receive in the Dutch Open. But she cares about the size of the gaps, so she cares about June’s prize.

I will be claiming that most people do care about the sizes of the gaps, and most of my discussion will focus on status preferences. I will offer some arguments regarding why it might be rational to have such preferences. But my primary claim will be that people do have such preferences. I will support this partially by appealing to some common intuitions, but mostly by reviewing a robust and diverse body of empirical evidence. First, however, there is one more distinction that we must consider.
2.1.2 Status preferences, distributional preferences, and conflation of preferences

In the example just discussed, the final characterization of April in which she has overriding status preferences should not be taken as necessarily indicating that she is ideologically motivated. Of course she might be, perhaps because she is somewhat egalitarian and thinks that competitors should only receive modestly differentiated rewards, or because she is meritocratic but genuinely believes that competitors in her sport are very close in merit, or for some other reason. But those sorts of concerns are not status preferences. They are instead distributional preferences, values about what the overall shape of a distribution of goods should look like, or by what kind of process it should be determined. One might be very satisfied with one’s own position in an arrangement, and the status one occupies in virtue of being in that position, while still feeling that the overall distribution of status in one’s socioeconomic arrangement is unacceptable. In an arrangement that results in a sharply unequal distribution of welfare, even those in favorable positions might object that the inequality is unjust for various reasons. Nor are even distributions necessarily ideologically acceptable to everyone; in an extremely egalitarian arrangement, some individuals might object that differential effort and ability are not sufficiently rewarded.

Moreover, outcomes are not the only aspects of political circumstances that can be the subject of distributional preferences. The mechanisms that produce those outcomes also matter to most people. So in any arrangement where rewards are redistributed according to some algorithm or set of criteria, that algorithm or set may be objectionable to some even if the distribution of rewards it produces is not. Suppose that I live in a socioeconomic arrangement with a constitution dictating that all persons with ten fingers shall be given a monthly living stipend once they turn 65. It may be the case that no-one in my arrangement
has ever been born with the wrong numbers of fingers, or lost a finger, and so the provision has resulted in a very egalitarian welfare program for retirees, something that I quite approve of. But I still might object to it as unjust despite the fact that it has always (thus far) produced a desirable result. My objection would be grounded in the fact that having a certain number of fingers is not the sort of criterion that should ground an entitlement.

April the Sportsball Player’s preferences, in contrast to any of these distributional concerns, were offered as an example of personal status preferences. As such, they are to be understood as driven by concern for her own status relative to others, but not for the overall distribution of welfare. Even so, it might easily appear that April has a distributional preference, especially if she is satisfied with her pure position, but dissatisfied with the status she has as a result of occupying that position. In other words, she might accept that she is simply not the very best sportsball player as long as June is still active in the sport, but she may prefer to be rewarded as much as possible, relative to those around her, in the second-place position she does hold. She might then make arguments that all players in the top tier played in heavily attended championship games, for example, and should all be rewarded nearly equally because they all contributed to ticket revenues. But this is a disingenuous argument she makes because she does not want June’s rewards to exceed her own by any more than necessary. April may not even be aware her argument is disingenuous; she might genuinely believe that she is an egalitarian, and claim that she prefers the Columbian Open to the Dutch Open because it is more egalitarian, when in fact she prefers it because it will pay the only competitor above her considerably less. It is easy (and probably common) to conflate concern for personal status with a direct concern for overall distribution.

It is also possible for a person to erroneously blame an arrangement for her status because she is mistaken about her position, currently or at some previous point, with respect to the overall distribution of income, holdings and capabilities. Suppose that April participates
in a try-out in which she has to demonstrate various skills in order to be admitted to a
tournament, but in the end, she fails to get in. If she firmly believes that she is among the
very best players there, she will of course claim that the metrics and systems used to assign
slots in the competition are severely flawed. This situation is even more natural if she has (or
seeks) a job in some other economic sector (say, sprocket stamping) where it is very difficult
for her to assess her own competitive position. She may believe all of the following:

1. I (April) am among the 20% most capable sprocket stampers in the city.

2. The 30% most capable sprocket stampers should receive high-paying opportunities...

3. . . . and everyone else should either accept low pay or train themselves to do something
other than sprocket stamping. This will maintain the efficiency of the economy.

4. By (1) and (2), along with the basic mathematical observation that if I am among the
best 20% I am necessarily among the best 30%, I should receive high-paying opportu-
nities.

Suppose that on discovering that she does not receive high-paying opportunities, April does
not discard (1). Instead, she may simply conclude that she is not receiving the opportunities
she should, perhaps because her socioeconomic arrangement is not well run. But it might
well be that the top 30% are in fact receiving valuable opportunities, and she is simply not
among them.

We might expect, as a psychological matter, that even if she became aware that she is only
in the top 40% she would reject her own premise (3) rather than oblige herself to retrain.
I will examine some evidence for and implications of this tendency toward the end of the
chapter.
2.1.3 Status preferences are ubiquitous

Specific preferences for certain profiles of relative rewards are not niche or minority preferences, though minority groups may tend toward specific patterns of preference. They are widely prevalent, even ubiquitous, to the point where it would be surprising to find someone who does not care about how her level of reward compares to that afforded to her neighbor or co-worker. Certain kinds of preferences are more common than others, and certain kinds of status preferences tend to go along with certain kinds of distributional preferences. A libertarian in the style of Nozick is most explicitly committed to systematic preferences about the origin of her arrangement’s distribution, for example, and this does not strictly entail that she has any preferences about her own individual socioeconomic status. But she may also believe that her own capabilities are adequate to secure her some target level of status in a libertarian arrangement.

Expressions of status preferences also need not be confined to any particular arena of social or economic activity. Yet in real-world socioeconomic contexts they are often expressed most strongly by minority groups and their advocates, because minority groups are often exposed to the risk of systematic disadvantage with regard to status. One important characteristic of status is that patterns in its distribution often in fact track systematic injustices, unless these patterns can be justified, either as desirable in themselves or as side-effects of some necessary policy, unavoidable circumstance, etc. It is not at all surprising that groups of people who enjoy, on average, more desirable status are likely to argue for distributional policies that protect their existing status, as a means of justifying the status quo in intersubjectifiably defensible terms. Groups that consistently find themselves tending to lower status examine existing patterns of distribution, and explanations for those patterns, with a more critical eye. The essential point here is that everyone has an opinion.
The ubiquity of status preferences, and especially of certain basic patterns of status preference, will become very important when we consider the effects that they have on the stability of socioeconomic arrangements. It can be extremely difficult to accommodate, or even acceptably approximate, the status preferences of a number of people who are in some respects cooperating while in other respects competing. Before we turn to these effects, however, we must consider why the libertarian objects so strongly to taking status preferences seriously.

### 2.2 Libertarian objections to considering status preferences

A very rough version of the first few steps of my argument can be stated thusly:

1. Libertarian principles (especially the property principle, and *especially* if it includes protections for property rights that confer rents and inheritance) lead to rapidly rising, unbounded inequality in income and holdings.

2. Massive inequality is a problem because it creates great dissatisfaction, which creates instability.

3. This destabilizing dissatisfaction is motivated by status preferences.

The libertarian might try and undermine this argument by attacking status preferences and then running the whole thing backwards:

a) Status preferences do not reflect rights, nor is there a right to have such preferences satisfied (and the same goes for distributional preferences).
b) Therefore, the state doesn’t have to try and prevent dissatisfaction based on status or distributional preferences.

c) Therefore, the state doesn’t have to do anything about inequality.

The first two moves are the ones I’m going to explore and counter. I’ll start with some of the best-known attacks on these kinds of preferences, launched by Nozick in ASU.

2.2.1 Nozick and mere “envy”

Nozick argues that minarchism is rationally justified even if it would be unpopular with the disadvantaged, and he specifically dismisses status concerns as irrational—mere “envy”. One interesting feature of his analysis is that he develops an extensive series of formally defined positional preferences for two-person scenarios, each with a plausibly intuitive label: ‘envious’, ‘jealous’, ‘begrudging’, ‘spiteful’, and ‘competitive’.

His set of possibilities is not quite formally complete, but to be fair, it is still more extensive and rigorous than any such taxonomy described by political theorists before him. Unfortunately, he only gives this account in a footnote, and immediate sets most of it aside; the only one of these preferences he really engages with is envy, which he connects to egalitarianism, suggesting that he thinks all egalitarians have that particular structure to their preferences.

Nozick’s “envy” goes as follows: suppose that Julius is considering some good—a milkshake, for the sake of the example—that his friend August might achieve, and that he also might have, and that they both value. Now suppose that Julius would prefer to have a milkshake even in the case that August does not. In addition, suppose that if Julius himself cannot

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5 See ASU 239n.

6 Nozick expresses this in a curiously disquotational way: “People have often claimed that envy underlies egalitarianism.” (ibid. p. 240) But because he gives no direct citation for the claim, and his arguments regarding envy proceed directly after it, I presume that he endorses the claim.
have a milkshake, he would prefer that August doesn’t have one either. For Nozick, to say that Julius is envious is to say that he has this conjunction of preferences.

I won’t weigh in on whether or not this is a good account of what envy might be. But is certainly can’t be an egalitarian position, if we understand egalitarianism on its own terms as a distributional preference, not merely a positional one. One-half of the description involves a preference for having what another person does not have (and there is certainly no talk of finding a way to share the milkshake). So Nozick is not actually making an argument against egalitarianism. He is suggesting that self-described egalitarians are (at least in most cases) disingenuous, and are actually envious. This is a way for him to argue against envy, rather than arguing directly against egalitarianism. He is conflating distributional and status preferences, whether intentionally or no, in much the manner I described in 2.1.2.

We might also consider whether he at least has a strong argument against envy. He claims that he is interested the “strangeness” of it. Here ‘strangeness’ is an oblique way of saying ‘irrationality’. He is in effect contending that:

1. Only expected absolute welfare is a rational consideration in assessing self-interest, and

2. Only rational self-interest as understood from the abstract position of the theorist needs to be considered in protecting rights.

But in fact rights do not turn on possessing a particular kind of utility function or arriving at a particular form of judgment. If decline to renew a contract, I have the right to do so, even if my reasons are irrational from the point of view of another party. I have the right to do so even if my reasons are provably irrational on unimpeachable theoretical grounds, and even if my choices leave me predictably and observably worse off.

\textsuperscript{7}ibid.
My conjecture only claims that persons will eventually wish to leave certain arrangements, and that they are entitled to do so. It makes no claims about whether they are rationally justified in doing so. Not only does Nozick’s argument against envy fail to find purchase on a genuinely distributional egalitarian preference, it also falls short of presenting a real challenge to the right to leave unsatisfactory contracts. A plausible claim to the effect that some particular person’s dissatisfaction is caused by an irrational set of preferences is not sufficient to suggest that such a person should be denied her rights. The libertarian should be the first to reaffirm this principle.

Does this mean that I concede that positional preferences are irrational? Hardly. But my defense of their rationality is best framed as a response to another of the libertarian’s objections, so we’ll defer them until we’ve discussed more aspects of the libertarian position.

2.2.2 Patterns and their discontents

Another objection to certain forms of redistribution which Nozick raises and elaborates on extensively is the rejection of what he calls “patterned” distributions of goods. He gives a very clear definition of this term:8 “Let us call a principle of distribution patterned if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions.” This definition is offered by way of contrast with Nozick’s own libertarian account, which he characterizes as historical—roughly, one justly possesses certain goods if the history of productive activities and transactions through which one came to possess them contains no violations of rights. The overall idea is that the proper function of a social contract or other socioeconomic arrangement is to prevent such violations of rights, and as long as this is done all members

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8See ASU 156, also appears in Nozick (1973, p. 52).
of this arrangement will be properly entitled to their holdings. So this objection is clearly not conflating status preferences and distributional preferences; it is specifically an objection to distributional preferences (including disingenuous ones motivated by status concerns under the covers—see the latter part of 2.1.2).

One might suppose that a patterned distribution could still be just in Nozick’s sense, because after all, it might not involve any violations of rights. Perhaps everyone involved in such a distribution understood it and agreed to it. But Nozick points out that even if an entire society temporarily achieved some desired pattern in its distribution of wealth, further freely made choices of the society’s members would alter that distribution (in his famous “Wilt Chamberlain” example, many people each choose to give one person, Wilt, a little bit of money, for perfectly understandable reasons. The end result is that Wilt has a lot more money than he was originally assigned under the distribution, but no unjust act is to blame for this circumstance, and indeed we do not typically take it to be unjust that he is enriched in such a manner.\(^9\)).

The distinction Nozick is drawing here seems clear at first, but it turns out to be very hard to explain without circularity. This will be clear if we consider a simple way of modeling socioeconomic arrangements (we’ll develop such a model more thoroughly in chapter 5). Suppose that an arrangement can be seen as a function from a list of qualities, \(Q\), to a list of rewards, \(R\). What this shows is simply that any distribution of goods, any \(R\), is a patterned distribution, because any \(Q\) is in effect a “lexicographic ordering of natural dimensions”. In a libertarian arrangement, it is precisely the natural dimensions of Wilt Chamberlin’s qualities that put him in a position to demand additional rewards. So it seems that Nozick is in fact arguing in favor of a patterned distribution of a certain kind, albeit a different kind from

\(^{9}\text{ibid. pp. 160-163.}\)
those advocated by Marx, Sedgwick, Rawls, or other representative thinkers Nozick disagrees with.

There must be some other “un-patterned” element that accounts for why Nozick thinks the libertarian view is different, and indeed there is, but he seems to appeal to it implicitly rather than addressing it directly: free will.\(^\text{10}\) The political libertarian may elect to make common cause with the metaphysical libertarian. If he takes this option, Nozick can argue that the liberty he appeals to as disruptive of patterns is specifically the exercise of free will, and thus there can be no function from $Q$ to $R$, because there is no way of knowing with real confidence what choices people will make about the employment of their qualities.

Of course, this move will have consequences of its own. If Nozick argues for a strong conception of free will, he will underscore the point I made above: the right to make one’s own choices cannot turn on those choices being rational. Even if he adopts a somewhat Kantian picture, under which the greatest freedom is found in acting in concert with rationality, that rational action must remain unconstrained by external forces as long as it does not interfere impermissibly with the liberty of others.

Moreover, if there truly is no function from $Q$ to $R$, it is hard to see how we could still make sense of the common reliance on qualities collectively called “character”. A person’s actions are treated by any social arrangement or association, from the simplest friendship to the most comprehensive social contract, as an indicator of that person’s qualities and a measure of their past achievements and future potential. The question of whether those actions are

\(^{10}\text{Nozick has made an extensive and nuanced contribution to the philosophical literature about metaphysical free will in the fourth chapter of his } \textit{Philosophical Explanations}\text{[Nozick (1981)]}, \text{ and it is beyond the scope of the present work to seriously engage with the views he held on that topic. It is also not clear that the account presented there was specifically implicit in } \textit{Anarchy, State, and Utopia} \text{ eight years earlier. My remarks should merely be taken to lay out the impact metaphysical libertarianism would have of Nozick’s political libertarianism if he were to adopt both, with no claims offered about the extent which he did so.} \)
metaphysically free is less important, in social and economic contexts, than questions about how consistent they are and whether they are cooperative and productive.

### 2.2.3 Forms of disutility: the dismissive version

We might expect to see one very simple objection to the conjecture: utility is utility absolute. A libertarian might claim that there is nothing special about the loss of utility caused by widening inequality. “Yes”, she might say, “that will make low-paying jobs even less desirable, and those who are especially dissatisfied will leave... which will reduce the supply of a labor and provoke and increase in the wage rate, and inequality will narrow again.” This objection suggests that my conjecture ignores the key stabilizing forces built into the capitalist models of labor economics. There will probably be roughly two forms of the objection, so I’ll start with the simpler one and move forward.

The first points to the work of the invisible hand. “The flight of malcontents is to be welcomed, not feared,” will be the refrain. “In their wake, wages will rise, and the reduced ranks of the dissatisfied will vanish entirely as inequality lessens. Everything will stabilize naturally, and Adam Smith will triumph again!”

This simplistic position would have some plausibility if wages were the problem. In fact they are not. As we will discuss in chapter 5, rents are a much more plausible candidate as the driving engine of income inequality. This might seem like a Marxist point about the exploitation of laborers, but it’s really just a simple claim that return on labor is limited by the amount of labor one can do, even if that labor is valued highly. Return on property rights, on the other hand, is limited only by the amount of rent-yielding property one can own, and our economic customs make that effectively unlimited. The most powerful effect of a high wage on a person’s finances is that it allows her to stop paying rents, starting
with the contract rent where she lives, and start accumulating rent-yielding property. Small
business owners who pay themselves very high salaries, as well as CEO’s who extract absurd
compensation packages from their executive boards, are pulling the same trick: extracting
rents from an economic sector that generates far more capital than it needs to maintain
itself.

Indeed, the rents themselves are not quite the problem, either. The power of a landlord to
tack a heavy rent onto a contract for use of his property, or of a CEO to tack a heavy rent onto
his compensation for labor, or of an entrepreneur to tack a heavy rent onto the fees for use of
his patents, these are all by and large a symptom of the incredible productive power of post-
industrial societies. The problem is that the tremendous surpluses contemporary economies
generate are being channeled to relatively few individuals, based on socioeconomic positions
that are self-reinforcing and largely historical in origin. Even if markets were actually allowed
to self-regulate (and this is undesirable for any number of reasons), no market forces could
correct for this. Moreover, any socioeconomic arrangement that is designed primarily to
protect the property rights of the winners in early phases of economic activity will eventually
turn out this way. This will be any society that strictly protects rents and inheritance. It is
analytically true that the winners in early phases end up with the most stuff, so the majority
of the stuff protected will be theirs.

2.2.4 The Rationality of Status Preferences

Are status preferences, or any positional preferences, rational? And does it matter? We can
now see a first reason that status preferences are very plausibly rational: large differentials
in relative holdings now can be expected to translate to massive losses in absolute welfare
down the line. I return to why this is so later in the chapter. For now, notice that it means
that if no-one may be obliged to act against their own rational interest, as the libertarian
believes, then no-one can justly be forced to accept a socioeconomic arrangement that is
indifferent to their relative holdings. Concern for relative position is thus not in tension with
libertarian justice, but is rather demanded by it.

Because the minarchist forbids redistribution, she is simply not able to meet this demand.
The members of an arrangement cannot be protected from rapidly expanding inequality by
any arrangement that insists on protecting even the most extraordinary rents and inher-
itances. In chapter 6, I will sketch out the points of entry for satisfying status concerns
that are available to the minarchist’s rivals—the socialist, the left-libertarian, the Rawlsian
liberal—but a libertarian in the cast of Nozick (or Mack, or the early Narveson, etc.) is
ideologically barred from addressing status concerns in an effective manner, a manner that
would really speak to the rational basis of those concerns. Toward the very end of this
dissertation we will consider whether the libertarian can accept any just redress of this kind
whatsoever. If she cannot, libertarianism is anarchism by *reductio ad absurdum*, and this is
a possibility that deserves to be taken seriously.

This is not yet to defend the rationality of status preferences in non-instrumental terms.
While I believe the case for this can be made as well, I should emphasize that the rationality
of status concerns isn’t essential to the argument I have made and will continue to develop.
People are not entitled to their political rights because they behave rationally, individually
or collectively, and certainly not because they behave rationally according to the particular
standard of some governmental institution. That would not be a sufficient form of the liberty
the libertarian cherishes. Nozick makes a mistake on his own terms in disregarding “envy"
on grounds of its irrationality, and thus overlooks a crucial source of instability in status
concerns. If we take the traditions of classical liberalism and social contract theory seriously,
as libertarians do, it does not fall upon the people to explain themselves, their aims and
values, to the government. It falls upon the government of a free people to explain to them how its actions best protect and forward those aims and values. This is the duty that I believe the minarchist libertarian cannot hope to fulfill.

If the libertarian must respect the choices people make based on the preferences they actually have, it is important that status preferences are a pervasive and empirically grounded phenomenon. So I now turn to some of the theoretical grounding and empirical evidence for the strength and pervasiveness of attitudes about status and distribution of resources.

2.3 Examining the structure of status preferences

2.3.1 Observations and theoretical foundations: Hobbes to Frank

Even the earliest political philosophers had some views regarding distributive justice. Unfortunately, a nuanced survey of those views is quite a bit outside the scope of our present discussion. We can, however, make some observations about the effect one important concept had on the foundations of the social contract tradition. The Greek word πλεονεξία (pleonexia), which is sometimes loosely translated as “greed” or “desire for wealth”, more strictly indicates a desire to possess that which properly belongs to another, and it was considered a shameful quality. On its face, the censure of pleonexia is not an assertion of a status preference, or even the justification for such an assertion. I might say, pejoratively, that you want more than your share without saying anything about what that share is or how it is to be determined. But in combination with an assertion of some fundamental equal status among people, the rejection of pleonexia becomes the rejection of special rights for some people over others, and so there is already at least one kind of status that must be conferred upon all. This point was given one of its earliest articulations by Thomas Hobbes:
If nature therefore have made men equal, that equality is to be acknowledged; or if nature have made men unequal, yet because men that think themselves equal will not enter into conditions of peace but upon equal terms, such equality must be admitted. And therefore for the ninth law of nature, I put this that every man acknowledge another for his equal by nature. The breach of this precept is pride.

On this law dependeth another: that at the entrance into conditions of peace, no man require to reserve to himself any right which he is not content should he reserved to every one of the rest. As it is necessary for all men that seek peace to lay down certain rights of nature (that is to say, not to have liberty to do all they list), so is it necessary for man’s life to retain some (as, right to govern their own bodies, enjoy air, water, motion, ways to go from place to place, and all things else without which a man cannot live, or not live well)...

...The observers of this law are those we call modest, and the breakers arrogant men. The Greeks call the violation of this law pleonexia; that is, a desire of more than their share. \(^{11}\)

Hobbes puts a few important pieces in place here: the idea that a person will only enter into a social contract if on equal terms with all other entrants; the idea that there is a set of rights people will not give up in entering into a social contract, and some of them are material requirements of a good human life; and the idea that there is some limit on what a person can claim for themselves without violating these first two fundamental requirements. He leaves some room for negotiating what this minimal set of material rights might comprise, but connecting them to the notion of equality already suggests one aspect of a status preference. The minimal profile of rights is the same for everyone regardless of their talents or productive capacity. This is not because all men are created equal, but rather because men that think themselves equal will not enter into conditions of peace but upon equal terms.

John Stuart Mill was extremely aware of the impact of status concerns, as we saw in the epigram to this chapter. He also understood that we place limits on how far the status

\(^{11}\) See Hobbes (1994), ch. XV.
of some may justly exceed that of others, and like Hobbes expresses this with reference to the classical political conception. He lists “the desire to engross more than one’s share of advantages (the πλεονεξία of the Greeks)” as among “fit subjects of disapprobation which may rise to abhorrence.”

Note that Mill explicitly characterizes pleonexia as a desire to increase advantages, and in so doing he links holdings to future economic performance. His expertise in economics translated into a sharp awareness of the fact that differences in property holdings not only represented the fruits of a previous economic cycle, but also an important determiner of what success at, or even kind of, economic activity would be available to the property holder in future economic cycles. This point will also be essential in future phases of our inquiry.

Yet it was Karl Marx, a contemporary and astute reader of Mill, but also a pioneering advocate of the use of empirical economic and sociological observations, who first noted that differences in economic status must be treated in two distinguishable ways: not only with respect to the science of political economy, but also the sociological effects of perception and psychology. His analysis of the first is well-known. He saw property holdings as creating a class separation among members of an economy that was not merely a distinction of degree, but one of kind, a class struggle. His second form of analysis begins with the observation that these differences had a profound effect on people’s experience of their economic status:

A house may be large or small; as long as the neighboring houses are likewise small, it satisfies all social requirement for a residence. But let there arise next to the little house a palace, and the little house shrinks to a hut. The little house now makes it clear that its inmate has no social position at all to maintain, or but a very insignificant one; and however high it may shoot up in the course of civilization, if the neighboring palace rises in equal or even in greater...

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12 Mill (1859), ch. 4.
13 Marx (1847), ch. IV, as translated by Engels in 1891.
measure, the occupant of the relatively little house will always find himself more uncomfortable, more dissatisfied, more cramped within his four walls.

Here we find Marx noting precisely the point that I would like to emphasize. The utility conferred by some property, at least in the perception of the holder of the property, is often relative to the holdings of others. Moreover, this is because of the way that it emphasizes the degree to which people of the property holder’s social position are rewarded relative to others, and impacts their perception of how their position in society is valued. No-one wants to occupy a social position that is not at all valued in comparison to the positions of others around them. While some may try to avoid this by trying to find an economic arrangement in which they are competitive (thus satisfying their pure positional preference), it is more common and more feasible to insist that the arrangement one is already in should reward the occupants of every position in it in a manner that shows that they are valued. Those with more productive capacity may indeed naturally occupy higher positions, but if their status (the package of rewards they receive) indicates that they are valued orders of magnitude more than those in lesser positions, the natural hierarchy may not seem to justify such extreme differences.

Both the sociological and the economic directions of inquiry into perceptions of status and behaviors driven by those perceptions continued to see considerable theoretical development. A seminal analysis was given by Thorstein Veblen, who coined the highly influential phrase “conspicuous consumption” to denote forms of spending engaged in not to satisfy material needs, but to signal social status.⁴⁴ Veblen’s work integrated the formal and psychological aspects of status-driven economic behavior, emphasizing that psychologically conditioned spending can still be analyzed as a market force once its deviations from traditional economic rationality are accounted for. Nor was alone among the great economists of his day in giving

⁴⁴Veblen & Banta (2009).
attention to these phenomena. In 1912, Corrado Gini proposed a sophisticated method for
determining a mathematical coefficient measuring the degree of income inequality in a society,
and emphasized the importance of considering how economic growth is distributed.\textsuperscript{15} Veblen
and Gini were among the first economists to take distributional preferences as seriously as did
Marx, while providing alternatives to the comprehensive Marxist analysis. Keynes was also
aware of the significance of status preferences, and in fact explicitly made the distinction
between absolute and relative welfare (or in his language, “needs”), though he gave little
analysis of how relative needs might be dealt with:

\begin{quote}
Now it is true that the needs of human beings may seem to be insatiable. But
they fall into two classes—those needs which are absolute in the sense that we
feel them whatever the situation of our fellow human beings may be, and those
which are relative in the sense that we feel them only if their satisfaction lifts us
above, makes us feel superior to, our fellows.\textsuperscript{16}
\end{quote}

Yet these analyses remained fragmented in their theoretical structure and intellectual in-
fluence. In fact it would be toward the end of the second World War that concern with
status preferences hit its peak among political economists, and even then only for a brief
moment. Two notable scholars of this moment were Karl Polanyi, who went so far as to
assert that relative wealth was more important to most people than absolute wealth,\textsuperscript{17} and
James Duesenberry, who advanced a theory of consumer behavior in 1949 that offered one
of the most significant advances in explanatory power of any 20th century view regarding
consumption.\textsuperscript{18} Both of their views gave great attention to the social value of appearing

\textsuperscript{15}The Gini coefficient, first proposed in Gini (1912), is calculated using the frequency distribution for the
incomes of some group of people, generally the citizenry of a state or other highly economically integrated
political entity. A Gini coefficient of 0 indicates precisely equal incomes for all members of the target group,
while a coefficient of 1 indicates that one person receives all income. The precise importance of this figure is
a matter of ongoing debate, and there are numerous variations on methods for calculating and normalizing
it(see e.g. Macunovich (2011)), but it remains a mainstay of economic analysis.

\textsuperscript{16}Keynes (1933), part II.

\textsuperscript{17}Polanyi (1957), especially pp. 56-57 and 266-268

\textsuperscript{18}Duesenberry \textit{et al.} (1949).
to be prosperous relative to one's peers. Unfortunately, Duesenberry’s work all but disappeared from view within a couple of decades, and the fear of “psychologizing” consumer behavior seemingly dissuaded an entire generations of economists from serious exploration of consumer behaviors deemed irrational.

As with any trend, there have been some specific exceptions. Ken Galbraith, among the most celebrated economists of his generation, was following Keynes when he observed in *The Affluent Society* that those wants that are created by the satisfaction of wants—the desire to have what your neighbors has already achieved and more—cannot be satisfied without provoking a symmetrical desire in those same neighbors and a cycle of demands without end. Fred Hirsch also ventured into these waters in 1976, though his contribution is little read now. Moreover, the topic of relative welfare has seen continued development in sociology, with many variations on the theme. Relative deprivation, understood as a social and psychological force rather than an objective economic phenomenon, received particular attention in the postwar years.

Some revival of the interest of economists in status preferences began in the 1980’s, notably in the work of Robert H. Frank. In fact, his 1985 book, *Choosing the Right Pond: Human Behavior and the Quest for Status*, was more than simply a revival of the topic. Frank analyzed the rational basis of positional preferences in any society that is structurally designed to award massive status and material benefits to those occupying the highest positions in a market hierarchy. He continued to develop this idea and a number of related principles

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22 A seminal text here is Runciman (1966). Important further considerations are addressed in Townsend (1987).
as themes in his work, culminating in 2005’s *The Darwin Economy*, in which he gives the following examples of the role status preferences play in economic motivation:

> When you go for a job interview, for example, you want to dress presentably, but the standards for looking good are almost purely relative. An interviewer many have no conscious awareness of how different candidates were dressed. But if you show up in a $500 suit, you’ll be more likely to get a callback if other candidates were wearing $200 suits than if they were dressed in $2,000 suits. And as discussed earlier, parents who want to send their children to good schools must outbid other parents for houses in good school districts. Their ability to do so depends almost entirely on relative income. Here, too, we see the logic of musical chairs: no matter how much money people earn, only half of all children can attend schools in the top half.  

Frank’s work is rife with such intuitive examples of how status preferences impact consumer behavior, and explanations of why they in fact should. He gives apt analyses of numerous patterns in spending behavior, attitudes toward savings, risk management, and the politics of taxation, among other topics. His theories and his synthesis of relevant empirical literature are invaluable to anyone interested in these topics.

What Frank does not do, however, is draw a clean distinction between positional preference, status preference, and distributional preference. Recall that April the sportsball player knows she can’t satisfy her positional preference—to be better than her rival June—or at least not immediately. It certainly isn’t the responsibility of any tournament or league to help her improve. But she does have the right to choose what events she participates in based on her status and distributional preferences, and she will choose the events that give the distribution of rewards she feels most correctly reflects the status due to the occupants in each position. Depending on her preferences and the available alternatives, this may not even be the event that offers her the greatest absolute rewards.

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23Frank (2011, pp. 25-26).
In some respects, Frank captures the nuances of these various kinds of positional preferences. The lack of a theoretical structure, however, prevents him from presenting the various scenarios he describes in a systematic way. Instead, he addresses a number of topic areas within a relatively conventional economic framework, as if to urge the thoughtful libertarian to accept certain compromises that offer demonstrable gains in economic efficiency. In the next chapter, I will suggest that a crisper formal distinction between positional, status-driven, and distributional preferences allows us to see that the kind of libertarian view Nozick offers isn’t simply less efficient, it is intrinsically unstable.

Before we move on to the empirical literature, one more author bears mention. Peter Drucker was not an economist in the conventional sense, but he is often regarded as the founder of modern management theory, and his views on the optimization of organizations are canonical in many business schools. It is striking, then, to find him asserting the following in *The Wall Street Journal* in 1977:\(^{24}\)

> These few very large salaries are being explained by the “need” to pay the “market price” for executives. But this is nonsense. Every executive knows perfectly well that it is the internal logic of a hierarchical structure that explains them...

> Money is a status symbol which defines an executive’s place in the corporate hierarchy. And the more levels there are, the more pay does the man at the top have to get...

> This rewards people for creating additional levels of management. I have seen it more than once.

Drucker went on in the same article to insist that hierarchical levels of management should be kept to a minimum, and that an explicit corporate policy fixing a limit on the gap between rates of pay—allowing no ratio more disparate than 25 to 1 between the pay of a CEO and

\(^{24}\)Drucker (1977).
an entry-level employee—would be in the best interests of even the largest corporations. He did this not out of a moral concern for fairness, but in the interests of productivity in the organizations themselves and careful attention to the importance of public perception.

Both Drucker and Frank had a great interest in what could be found, empirically, to be true about status preferences and their impact on the behavior of consumers and on the labor force. The last twenty years have seen a great deal of research of this kind, so it is worth surveying some of the high notes before expanding on the implications of such preferences.

2.3.2 Empirical data

In the last few decades, a considerable volume of experimental economics and psychology has accumulated dealing with status concerns and closely related phenomena. In some cases the interpretation of the data received leaves something to be desired, but I can still offer some analysis of what is most useful in this remarkable and diverse empirical literature.

Some researchers have developed evidence for the importance of status preferences through statistical analysis of large bodies of existing data. A correlation between neighbors with higher incomes and dissatisfaction with one's own income, for example, could establish the presence of status preferences as long as other factors are appropriately controlled for. Some of the first effective analyses of empirical statistics focus simply on whether increases in the average income within a nation correlated with overall subjective well-being (SWB) of citizens. Surveying data from dozens of countries across a period spanning roughly the 70’s and 80’s, R.A. Easterlin was able to conclude:

Today, as in the past, within a country at a given time those with higher incomes are, on average, happier. However, raising the incomes of all does not increase the happiness of all. This is because the material norms on which judgments of
well-being are based increase in the same proportion as the actual income of the society.\textsuperscript{25}

This is simply to say that raising the level of a person’s absolute material resources will not make them feel they are doing better if their expectations are also increasing, and in fact those expectations seem to increase in a manner strictly correlated with improvements in income. Of course, the above remarks are merely the opinion of one scholar and the outcome of applying a single method. But a number of other researchers have reached importantly similar conclusions, particularly within the last 20 years. Michael McBride obtained results in 2001 that were broadly consistent with Easterlin, using particularly rigorous and sophisticated econometric and statistical methods.\textsuperscript{26} Luttmer controlled specifically for the absolute incomes of individuals, and found that higher income among a person’s neighbors negatively correlates with happiness across a broad spectrum of other demographic categories.\textsuperscript{27} A number of other researchers have made related points,\textsuperscript{28} and in fact Easterlin has revisited the topic with new theoretical formulations and a larger, more diverse collection of data.\textsuperscript{29}

More targeted evidence for the particular form and content of status preferences can best be obtained by experimentation using survey questions, economic games, and other social science methods. These are especially helpful because they not only provide strong evidence for the presence of status preferences, but also demonstrate some of their specific content. Economists and other scholars have performed substantial number of these sorts of experi-

\textsuperscript{25}Easterlin (1995).
\textsuperscript{26}McBride (2001). It is of further interest that McBride found the impact of relative income and status norms to be less significant, relative to absolute income.
\textsuperscript{27}Luttmer (2005).
\textsuperscript{28}See e.g. Layard (1980), 2003, 2006, 2008 on happiness and rivalry, Marjit et al. (2015) on poverty and the relative value of food(!) among the poor in India, and Dynan & Ravina (2007) on status-related happiness and economic habit formation. Some models even connect status effects explicitly to policy considerations, such as the Pigouvian taxation rates discussed in Wendner & Goulder (2008).
\textsuperscript{29}Easterlin (2001).
ments within the last twenty years. The following is a brief survey of some of the most useful results for our purposes.\textsuperscript{30}

“Goods are more positional than bads”: Solnick and Hemenway

Some of the first sophisticated surveys regarding positional concerns were performed by Sara J. Solnick and David Hemenway.\textsuperscript{31} They provide strong evidence for a number of features of what they call “positional preferences” (as with most authors, they are conflating positional and status preferences). Two of the areas they discuss stand out. The first is the heightened relevance of positional preferences when they concern a person’s children. Out of the diverse questions that Solnick and Hemenway posed, the ones that elicited the most positional responses were those concerning the potential attractiveness of a respondent’s children. Other questions concerning the respondent’s children also received more positional responses than those concerning the respondent directly. These results are not really surprising; countless pieces of conventional wisdom note that people want and expect their children to be higher in the social hierarchy than they are, and particularly in the United States.

Another of their findings, that goods are more positional than bads, is somewhat less obvious. But their evidence for it is striking (and was reinforced by a second survey in 2005.\textsuperscript{32}) Survey respondents consistently cared particularly about receiving improvements in their position that were commensurate with those receives by other members of their society. Yet if they were asked about suffering a loss, they were significantly less likely to give a positionally motivated response. This may suggest that people will be more willing to accept the expenses of moving or changing who they do business with in order to improve their relative status.

\textsuperscript{30}Some parts of the analyses I will give are heavily indebted to Heffetz & Frank (2008).
\textsuperscript{31}Solnick & Hemenway (1998).
\textsuperscript{32}Solnick & Hemenway (2005).
than to avoid a loss of status (but see below regarding Zizzo’s “money-burning” results). We
will return to these asymmetric dynamics periodically throughout the rest of our discussion.

**Relative consumption as a positional concern: Alpizar et. al., Carlsson et. al.**

In 2001, Alpizar et. al. confirmed Solnick and Hemenway’s findings in new areas of
the world using even more sophisticated reasearch methods. But they also added a so-
phisticated analysis of the relationship between relative income, relative consumption, and
positional satisfaction. By showing that conspicuous consumption or any other positional
consumption behavior should consistently correlate with positional preference for income,
they successfully provide a standard for comparison across a broad range of data. Their
results were in many ways comparable to what we have already seen, but covered a broader
range of contexts and demographics, and showed that positional concerns have applicable
policy implications for taxation and regulation.

Further exploration of positional trends in consumption behavior is provided by surveys given
in Sweden by Carlsson et. al. In addition to providing further confirmation of positional
trends in preferences regarding a number of forms of commodity consumption, they identified
an area of particular interest where preferences were much less positional: risk management.
Both safety equipment and insurance were assigned worth at strictly absolute levels by survey
respondents, who paid almost no attention to the positional aspects of the options offered.
This is not surprising, as these sorts of goods are intrinsically less positional. If the brakes
on my car aren’t very good, it is of no use to me that yours are worse. But it is important
to note that the landscape of economic choice, inasmuch as it has been mapped, admits of
some variation.

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33Alpizar et al. (2005).
34ibid.
35ibid.
36Carlsson et al. (2007).
Money Burning to improve status: Zizzo

Perhaps the most striking experimental work on status preference in recent years is that of Daniel Zizzo, who has shown that participants in experimental exercises will deliberately reduce their own rewards in order to narrow reward gaps that they see as unfair.\(^{37}\) Zizzo conducted a series of experiments in which subjects received tokens which would be exchangeable for a monetary reward at the conclusion of the experiment. The amount of tokens they received was determined by a series of fair bets, so there was little sense in which the distribution reflected an earned reward. In the second phase of the experiment, subjects could elect to spend tokens to reduce the holdings of others. The cost of these expenditures was always below parity—spending one token allowed you to burn more than one of your opponent’s tokens—so burning the tokens of those with larger holdings would in fact reduce gaps between subjects.

Not only would test subjects burn those with greater holdings than their own, they would do so even in cases where this would narrow the gaps without altering the ordering of holdings (indicating a status preference rather than a pure positional preference). Even when the cost of burning was high enough to make it infeasible to bring all holdings to the same level, many would still elect to reduce the gaps in holding to a significant degree. In fact, many test subjects would burn the highest two pools of holdings regardless of their own positions, suggesting full-blown distributional preferences.

These results are more than a quirky feature of human psychology when confronted with certain kinds of economic games. They are a \textit{prima facie} indicator that people will give up some absolute welfare, in the form of money they were to be owed at the end of the experiment, in exchange for relative welfare, a reduction in the gap between themselves and those receiving the greatest amount of unearned reward. Zizzo’s work shows that in real

cases with money on the line, reasoning grounded in an understanding of fairness and status trumps the more simplistic approach of *homo economicus*. If we also suppose that Pigou, Frank and others are correct to emphasize the strategic impact of status on future economic opportunity, we should not be surprised to see a non-cooperative game with a Prisoner’s- Dilemma-like quality. It will be strategic to burn an opponent before she burns you, because the money you spend burning her will be less than what she would burn of yours if allowed to act with impunity. Ideally neither of you would burn the other one at all, as money-burning is by definition less than Pareto efficient. But the gains from ensuring that you end up with the highest position might override the costs to you of tactical burning. We’ll consider further reasons why sacrificing absolute welfare for status might be attractive in the next chapter.

More work in this area, and a greater body of empirical data and analysis of status preferences in general, is required if we are to have robust and fine-grained information about the nuances of such preferences and the economic and political behaviors driven by them. But the research seen in the last twenty years certainly makes clear that some use of positional reasoning is far more common than narrow maximization of absolute gains in the manner of *homo economicus*.

### 2.3.3 How people assume that they have a certain position

One further aspect of status preference bears examination, before moving on to considering its implications for social arrangements. I mentioned earlier that a person’s estimate of what they are entitled to in terms of rewards, given they position they occupy relative to others in their community or profession, must rely on their estimation of that position. It also, however, is evaluated relative to who those others are, what cohort establishes a frame of
comparison. Babcock et al. 1996 suggests that in many contexts, people will make self-serving assumptions about their representative peer group—or more precisely, about what other individuals they ought to be compared to on the grounds that they occupy a similar socioeconomic and professional position. By examining teacher contract negotiations, they were able to confirm the intuitive hypothesis that these assumptions tend to be self-serving. The researchers’ survey data indicated that the comparisons that unions deemed appropriate for the employees that they represented involved assuming a significantly higher status on a variety of socioeconomic metrics than those used by the school districts with which they were negotiating, and this finding held even under survey and analytic methods designed to control for negotiating posture.

These assumptions are made in the interests of justifying packages of compensation, and they imply a principle of positional consistency that I will return to in the next chapter. But they also reveal a cognitive bias with a particular structure that is likely to exaggerate dissatisfaction with status. Advocacy groups (in the results found by Babcock et al.), and intuitively individuals as well, both tend to evaluate deserved rewards with reference to a desirable frame, rather than one they can be objectively shown to be appropriate. Moving forward, we will want to keep in mind that the epistemic aspects of status preference go hand in hand with the structures of the preferences themselves.

2.3.4 Forms of disutility: the reductive version

As a formal matter, there is in fact no essential incompatibility between the preceding discussion of positional or status preferences, and expected utility theory. Both can be seen as analyses of preferences over certain outcomes, which are then represented in an overall

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38 Babcock et al. (1996).
39 ibid..
preference ordering, along with any other preferences. We have seen that people do seem to in fact have such preferences. There may be difficult tradeoffs, and depending on one’s conception of welfare, there will be familiar questions about interpersonal comparisons (though again, I am officially neutral on the matter). But as long as positional and status preferences can be seen as preferences over outcomes involving holdings of goods or positions, they can be modeled as preferences in the usual ways.

Nozick and some economists might nevertheless suggest that status preferences can and must reflect implicit expectations for absolute welfare, and so perhaps that any trade-offs concerning status outcomes can be resolved by appeal to expectations about non-comparative outcomes. As suggested earlier, an advocate of this sort of “reductive” view can point out that status matters a great deal even for absolute welfare. But if we review the conditions under which this can be true, in light of the examples offered earlier, I think we see that status preferences should have great instrumental importance as a general, all-purpose means to maximizing expectations. They would arguably also be assigned great importance in their own right, but in any case they are essential to any plausible assessment of a person’s self-interest. Consider several such conditions.

**Opportunities hinge on conspicuous consumption.** Many dynamics for how people choose economic partners turn on trying to identify shared cultural values, patterns of past success, and other desirable qualities that are easily signaled with conspicuous consumption. Fashion-savvy dress, country club membership, and attendance at exclusive schools are all effective shibboleths for use in selecting one’s cooperative partners, for reasons that are beyond the scope of this discussion but are probably familiar to the reader, and they all depend on consumption of expensive goods that signal economic status. This means they

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40 Also see Frank (1985), especially chapters 4 & 5.
serve as gating mechanisms that tie ongoing economic opportunity even more tightly to past economic success. The libertarian may argue that the desire to engage in conspicuous consumption, and the status concerns it engenders, are simply strategic intuitions tied to creating cooperative opportunities and improving future prospects for absolute welfare.

This means three things. First, those in disadvantaged positions cannot expect to see improvement in their rewards in future economic cycles, or those offered to their children, without first accumulating significant resources. Second, the effects seen due to expending such resources by consuming conspicuously can even override qualities such as intelligence and capacity for consistent effort, qualities actually tied to real economic productivity. Third, there aren’t any grounds to suggest that these phenomena are intrinsically unjust. Consumption patterns—how one chooses to use one’s resources—are a sort of activity that cannot really be construed as violating anyone else’s rights, as long as they don’t generate large negative externalities (consider secondhand smoke as an illustration of a case that has crossed the line to unacceptable based on changes in how we evaluate the externalities it produces). In addition, it is rarely regarded as economically prudent to dampen consumer enthusiasm. So this is not an injustice, but it is a powerful and rational reason to be skeptical of the libertarian’s ability to secure upward mobility, even for the very talented.

**Status is essential for managing risk.** In many cases, a disadvantageous position isn’t necessarily dramatically less rewarding on average, but it is riskier. Having sufficient resources to diversify investment, participate in insurance schemes, decline risky opportunities, etc., allows those in better positions to maintain high levels of **reliable** income. Often, egalitarian intuitions are tied less directly to income than to things like vulnerability to bad luck. This is easily seen if you consider how far legislation requiring employers to provide
health insurance went in mitigating status dissatisfaction in the U.S. after the second World War.

Lower status also affects the management of even very moderate risks by creating pressures to discount the future. The importance of investing in education and training (think student loans), investing in collecting rent or at least overcoming having to pay it (even by way of a risky mortgage), and of course the demands of conspicuous consumption described above, all combine to encourage those in lower tiers of socioeconomic status to take on massive debts now in the hope that they can improve their status and overcome those debts later. Most people in such a position understand the risks they are taking, and the anxiety this raises motivates status dissatisfaction. This might be seen simply as a rational concerns about risks to one’s future absolute welfare.

Moreover, in addition to the direct importance of risk aversion to status dissatisfaction, there is also an important related effect that status preferences may be sensitive to common cases where:

**Great inequality increases the risk of negative externalities.** Because those in better positions are better able to insulate themselves from risks, they are more willing to risk creating substantial negative externalities. In order to see the full impact of this clearly, it helps to note that from the perspective of executives and large shareholders in the best-positioned firms, regulatory efforts simply represent additional risks. If a firm can make twenty dollars by taking a ten percent risk, a one in ten shot, of paying a one hundred dollar fine, it will do so every time, and from the point of view of rational decision theory that will be the correct choice. If a firm can make twenty million dollars by compensating senior managers for a small possibility that they will serve a prison sentence, they will do that as well. Risk can also be offloaded in various ways to desperate wage employees, corruptible
regulators and legislators, inattentive consumers, etc. Those who are informed are com-

plicit, but due to poor bargaining positions, even they may not be able to extract optimal

market value for their complicity. Those who are not informed are effectively exposed to

an externality, an unchosen harm, as regulatory institutions are increasingly compromised.

Hardly any real risk will actually filter up to those in these transactions with the greatest
capital, authority, or other forms of status advantage. Economists sometimes refer to this as

“the socialization of risk”, the spreading of economic or even physical hazards across a broad

segment of a society. Notably, the profits from such risky economic activity are rarely, if
ever, spread across society in the same way.

The effects of this are seen in a number of industries, but at times have become so severe as
to provide powerful political and cultural touchstones. Particularly notable examples include
Upton Sinclair’s celebrated 1906 novel *The Jungle*, about the horrific labor conditions in the
meatpacking industry, and Ralph Nader’s 1965 account of the disregard for safety displayed
by the automobile industry, *Unsafe At Any Speed*. More recently, Michael Lewis’s *The Big
Short: Inside the Doomsday Machine* chronicles the disregard for risk that pervaded financial
institutions, both commercial and regulatory, in the years leading up to the 2008 financial
crisis. This is perhaps less visceral than the dangers to workers and consumers described by
Sinclair and Nader, but it is surely responsible for an even greater scope of human misery.\footnote{Sinclair (1906), Nader (1965), Lewis (2011).}

Much of the task of a socioeconomic arrangement is precisely to insulate its members—all of
its members—from risks that they cannot insulate themselves from unilaterally. The percep-
tion that inequality of resources amounts to inequality of protection from such risks would,
in fact, be a plausible reason to care about inequality simply out of a concern for absolute
welfare. The libertarian may of course respond by saying that exploitative distribution of
risks is almost always a form of fraud, and *of course* we should act to prevent fraud. I would say two things in response:

- Massive inequalities in status always bring important information asymmetries with them.

- It is hard to draw a crisp line between large information asymmetries and outright fraud.

At least the libertarian and I agree on one thing: a lot of absolute welfare does ride on these information asymmetries, whether they are legitimate or not, and it is rational for the less well-off to be concerned about them.

**The supply of important goods is limited and inelastic.** Certain classes of goods, and many classes of goods when found in certain circumstances, have strict upper bounds on their available supply. There are a few kinds of circumstances that produce these effects:

- Some goods require a time and energy intensive natural process to produce, a process that may span entire geologic epochs (and hence take millions of years), thus rendering the supply fixed as a pragmatic matter. This is the case for many mineral resources (oil, tantalum) and was once the case for many more (diamonds, magnetic materials, veins of usable metal, etc.).

- Others are rarities due to a systematic feature of how something is valued, a feature that can intrinsically only be shared by a limited number or amount of the desired goods (the provenance of an art object, the location of a piece of real estate).
• Still others are renewable under certain conditions, but vulnerable to overuse or damage (a population of fish, the water table in a particular region).

  – In such cases the available supply at time \( t + 1 \) may be a function of the unconsumed supply at time \( t \), and the nature of that function will set the optimal upper bound on consumption if the supply is to be maintained.

  – If there is some unpredictable variance in how the supply increases, the supply problem is complicated by a risk-management problem. We’ll return to this point shortly.

• Certain intellectual property systems foster artificial scarcity by restricting production to rights holders. These rights holders may lack the production capacity to truly meet demand for their product, or they may deliberately choose to constrict supply; either way, scarcity effects will ensue.

There are of course other ways in which the supply of a good can be limited, but the list above covers the vast majority of cases. There are also several variations on the way scarcity of goods has a differential impact on people of varying status:

• **Not everybody gets some:** Perhaps the most obvious consequence of scarcity is simply that not everyone can have rare goods, or as much of those goods as they would want. This may be because there simply isn’t enough to go around, but it may also be because market factors like cost of production and personal utility are entirely overwhelmed by the kinds of status phenomena we have already noted. The possession of rare, expensive goods *signals* status, and this conspicuous consumption then *reinforces* status. Speculation and monopoly, both which I will discuss further shortly, also distort markets, ensuring that limited goods will rarely be distributed evenly. This is true
even in cases where the limited goods are important to quality of life and everyone could receive a supply that is at least adequate for their basic needs. Those with less desirable status will experience these deficiencies in at least two ways:

- **Deprivation**: In some cases the very survival of those of lesser status is threatened by scarcity, or at least their thriving and potential for productivity and satisfaction. Status concern may therefore be parsed as rational wariness about how precarious life in the lower positions becomes when a resource such as clean water is limited.

- **Exploitation**: When certain goods are extraordinarily valuable due to their scarcity, this provides economic incentives to extract those goods from their natural settings even at substantial costs or in the presence of substantial risks. This means that actual processes of extraction will fall to those in disadvantageous positions. Mining is a notoriously hazardous activity across virtually all historical periods and in an array of distinct forms, and also notorious for rarely paying in a manner commensurate with the risks it involves. This is no coincidence.

- **Speculation creates extraordinary conditions**: Markets in scarce goods tend to see abrupt shifts in pricing as perceptions shift regarding just where the supply cap lies and how the goods will continue to be valued. This motivates rampant speculation, which has a number of generally undesirable effects that fall disproportionately on the least well-off. Two are especially worth noting here:

  - **Information asymmetries become more severe**: Effective speculation is usually less a matter of effort or even great skill than it is of having accurate, pertinent information, and better information than competitors possess. Suppose, for example, that two firms create a private contract for the structuring of a new kind of financial instrument, a form of bond, that allows one of them to diversify risks
associated with speculating on a market for scarce goods. Their special knowledge of this instrument allows them to anticipate shifts in its value, while others who wish to engage in the second-order (or “derivative”) market for these bonds are forced to go through the originating firm, paying fees and possibly accepting offloaded risks because of their lack of information. This lack of information is a form of status disadvantage; obtaining understanding of new financial instruments is only possible with access to exclusive educational institutions, social networks created through conspicuous consumption, and the like.

- **Opportunity costs and failures create collateral economic damage:** Neoclassical and monetary economic models often suppose that the economic actors in a position to allocate capital will consistently put it toward enterprises that produce utility in some reasonable efficient way, which will create jobs and perhaps make more goods available to consumers. But scarce goods in speculative environments cannot be increased in supply beyond their fixed upper bound. Capital devoted to them is overwhelmingly occupied in trading and hoarding them, not in producing them. So in this context, productivity and profit come further and further apart, and there is no benefit to those who are not in a position to speculate. Moreover, speculation on markets often ties up capital that would otherwise be used in productive activity. It can also cause shocks to credit markets that make it hard for borrowers that actually intend to invest in productive enterprises to see any liquidity. These are opportunity costs that are often suffered by a large segment of the economy, with those of low status particularly severely exposed. Those in the least advantaged positions need them to be the least advantaged positions in the most robust economy possible.
- *Monopoly looms constantly and duopoly is frequently enforced:* The fact that a resource is limited raises the threat that some small number of people or firms, perhaps even just one, will come to control the entirety of it. This concern often arises in cases where the initial creation of a resource happens over time and/or requires massive funding, generally as a matter of infrastructure improvement for an entire city or region. In such cases the construction of a parallel resource is impractical or impossible, or is at the least absurdly inefficient. This raises a question as to who is entitled to provide services that rely on the infrastructure already in place, services that are provided to a captive market. In telecommunications, for example, governments typically license the rights to broadcast in various spectra and use existing network infrastructure to a limited number of firms, and sometimes only one in some particular area. It is expensive to obtain these licenses, and difficult, bordering on impossible, for new firms to enter telecom industries once the available licensing is exhausted. So the capacity to innovate or optimize is once again less important to success than existing status advantage.

The scenarios described above are common, and their consequences are severe. At very least, then, any libertarian who acknowledges them must accept the rationality of status concerns, and hence the legitimate right of members of a socioeconomic arrangement with particularly disadvantageous status, or under threat of particularly disadvantageous status, to leave. What the objection by reduction to absolute disutility shows, if it shows anything, is this: status preferences are not a matter of envy, they are a matter of foresight.
Chapter 3

Proliferation Problems

“For he that wants protection, may seek it anywhere; and when he hath it, is obliged (without fraudulent pretense of having submitted himself out of fear,) to protect his protection as long as he is able. But when the power of an assembly is once suppressed, the right of the same perisheth utterly, because the assembly itself is extinct; and consequently, there is no possibility for the sovereignty to re-enter.”


Imagine that the following is a feature of at least some socioeconomic arrangements:

δ. Some members of the arrangement receive a lesser rate of return on their efforts than others, and the difference cannot be accounted for by any clear difference in rate of productive output.

Now suppose that the following two things are true:

1. Many members of arrangements that have feature δ object to it, especially those receiving the lesser rate of return.
2. Libertarian arrangements will always include some measure of feature $\delta$, and it will become more and more prevalent over time.

I have already argued for (1) in some detail, and I will argue for (2) in later chapters. For now, I’ll merely ask the reader to stipulate to these two points, or at least accept them hypothetically.

The conjunction of these two propositions entails that libertarian arrangements will have a lot of dissatisfied members, and will have more and more as time goes on. But this might not seem to be a serious problem, or at least, it might not seem serious enough to undermine a minarchist libertarianism\(^1\) like Nozick's. According to Nozick, inequality—even systemically inevitable, severe inequality of the kind I have described—is not a violation of the libertarian rights of citizens.

I will not be contradicting these points. Yet it would certainly undermine Nozick’s view if the society he envisions is entirely untenable. Nozick does explicitly consider whether a libertarian utopia could be stable in a specific sense, using a thought experiment combining modal and game-theoretic reasoning.\(^2\) He assumes that a stable arrangement will in fact involve a conspicuous lack of concern about feature $\delta$, or at least that any such concerns will be egalitarian and pluralistic:

> “Nor will a stable association consist of narcissistic persons competing for primacy along the same dimensions. Rather, it will contain a diversity of persons, with a diversity of excellences and talents, each benefiting from living with the others, each being of great use to or delight to the others, complementing them. And each person prefers being surrounded by a galaxy of persons of diverse excellence

\(^1\)Moving forward, I will use ‘minarchism’ as a shorthand for ‘minarchist libertarianism’. It is of course conceptually possible to have a non-libertarian minarchism, but considering the philosophical and political history we are engaged with, we can regard the minarchist as a specific kind of libertarian.

\(^2\)ASU pp. 297-306.
and talent equal to his own to the alternative of being the only shining light in a pool of relative mediocrity. All admire each other’s individuality, basking in the full development in others of aspects and potentialities of themselves left relatively undeveloped.\textsuperscript{3}

Admirable as this vision may be, if (1) is true, it is unrealistic to suppose that most people can rise above the desire to rank themselves in comparison to others. Even if they could—even if they are willing to tolerate inequality in order to pursue diverse forms of self-development, as Nozick envisions—pervasive inequality will still inhibit the development of this utopia. Only those who enjoy certain forms of good fortune, either in the earliest phases of any arrangement, or by inheritance, will be the ones that receive the vast majority of the opportunities for “full development” of “excellences and talents”. And as I will explain below, this means that the desire to reach their full potential will cause the less fortunate to pursue their libertarian rights in a manner that undermines, rather than preserves, the stability of libertarian arrangements.

### 3.1 The basic problem

No society can please everyone. This is strictly impossible if people have strong positional preferences to hold a status above others, including others that share the same preference. It simply isn’t possible for everyone to be “top dog”. According to Nozick and other minarchists, dissatisfaction is not in itself an indicator that anyone’s rights have been violated, and under a libertarian understanding of rights this is a very plausible claim.

Yet we can also consider what dissatisfied members are likely to do in exercising their libertarian rights in a world of libertarian societies and cost-free movement. And if we focus on

\textsuperscript{3}ASU p. 306.
what those most frustrated in their status preferences are likely to do, we can see that the minarchist has a difficulty in securing stable cooperation—at least not without surrendering one of her elementary principles of justice.

Consider those in the least advantageous positions within a socioeconomic arrangement $A1$. Let us suppose that they have some preference for higher social status, which they understand primarily in terms of relative income. This need not be an especially strong preference. It could be such that a certain level of inequality is entirely acceptable in exchange for a high standard of societal goods such as highway infrastructure and a good system of first responders. But if differences in income persist, the rich will get richer, and the poor will get poorer relative to their rich neighbors. In time, a substantial proportion of $A1$’s members will become dissatisfied, once this expanding inequality reaches a certain pitch.

So even if arrangement $A1$ is obviously acceptable in the thin sense of being initially preferable to the state of nature, those in the lowest positions would still prefer to have the same social contract in an arrangement where their status is higher. That preference will become stronger over time as inequality rises. Now notice that feature $\delta$ includes a certain amount of arbitrariness—many those who have ended up poor worked just as hard at productive activities as those who are rich, and perhaps their parents and grandparents did as well. They have good reason to think that if they started over in a new place, things would go better.\footnote{This is not an abstract ambition, but a familiar theme is history and literature, and has often been thought of as the characteristic \textit{zeitgeist} of 19th century America, the shared spirit of immigrants and pioneers. Unfortunately, the realization of such ambitions required finding places that seemed to qualify as “new”, as lacking an established, elite economic class. This was often accomplished by the violent displacement of an indigenous population. But the mythos surrounding these movements was one of abandoning one arrangement in favor of another that offered greater opportunity.}

If a sufficient percentage of the members of $A1$ are dissatisfied enough to have such a preference, let us assume that there is no reason why they can’t obtain improved status simply
by leaving and forming a new arrangement using the same social contract. They can indeed start anew, together, without becoming unacceptably poor in absolute terms. Suppose the lowest 30% are sufficiently dissatisfied to leave, and they do so. Now many of them are in the top 50% or better of a new arrangement \( A_2 \). Perhaps the best positions in \( A_2 \) are not quite as good, in absolute terms, as the best positions in \( A_1 \). But they needn’t be. They just have to be somewhat better than the worst 30% of positions in \( A_1 \), and the members of the new agreement have to each believe that they have a reasonable chance of ending up in these better positions.

Now this of course means that those who were receiving the fourth worst decile (31 – 40%) of packages of goods in \( A_1 \) are now on the very bottom. They are likely to consider making the same choice, forming arrangement \( A_3 \) for the same reasons, as long as they can find a way to do that doesn’t leave them radically worse off in absolute terms. In fact, even the new arrangement won’t be terribly stable. Once it is established which members of that arrangement will be in the lowest 30%, they will probably want to strike out on their own and form arrangement \( A_4 \) . . . and so on. If absolute prospects are roughly comparable, and there are no costs of movement, socioeconomic arrangements will proliferate uncontrollably.

The libertarian principle of free association requires this proliferation be permitted. Any measures that abridge the right of a person to leave any arrangement she is part of at any non-exploitative time are, on libertarian terms, a failure of justice. So we cannot suppose that an arrangement can justly retain membership by force. For the libertarian to argue that minarchist socioeconomic arrangements can be stable, then, she will have to defend a form of association that never becomes inequitable enough to alienate even the least well-off in relative terms of its members.
I have focused on status concerns as the cause of dissatisfaction leading to proliferation of arrangements, and this might seem to suggest that inequality will only create such problems if status preferences are the strongest elements of the preference set for a significant number of people in disadvantaged positions. But this is not at all the case, for at least two reasons. First, inequality can provoke significant dissatisfaction even if status is only one among many elements of an economic preference set, and even if it is not the most heavily weighted. I might be most concerned with (a) making sure that I avoid devastating poverty, and then also fairly concerned with (b) maximizing my absolute welfare. Preference (c), maximizing my status, might be present only as a trailing third concern. Now suppose that I am in a socioeconomic arrangement that grows by 5% annually, but my income only grows by 4%, because my status is middling to low. Nonetheless, that income is enough for me to put aside savings. Note that my top two preferences are being met: I have some surplus to save, so I am unlikely to fall into abject poverty, and my absolute income is growing. But a minority of people with specific economic advantages are growing very wealthy, for the same reason that growth in my income lags behind overall economic growth—because that overall growth is not evenly distributed. Perhaps there is a reasonable libertarian justification for this; perhaps the advantaged economic class is responsible for a disproportionate amount of the economic expansion. But I am still dissatisfied, because of (c). We can easily imagine that there are others who share my preference set, and are of lower status and see even less income growth, and so are even more dissatisfied.

Now suppose that some of those even more dissatisfied people come to me and says “We’d like you to go with us to new arrangement. It will be smaller than your present one, and it will lack some of our highly productive civic leaders. So it will be slightly less efficient, with growth of only 4% per year. But that growth will be evenly distributed.” (Also assume that inflation is not a consideration, and that I can trust this proposal, etc.) Now, the only
thing that would differentiate these two arrangements in my eyes is (c). But even if I am initially reluctant, I will eventually agree to the proposal, because my present arrangement will only make me more and more dissatisfied where (c) is concerned. The small gap in income growth will compound over time, until I am no longer remotely satisfied with my standard of living in relative terms. I might even accept less absolute income growth, once things got bad enough. Even if (b) is more important to me than (c), I might prefer a mild decline in (b) to a severe decline in (c), and a severe decline in (c) is inevitable in a libertarian arrangement. The preference for status isn’t special because it is necessarily the strongest preference. It is special because it is likely to be somewhere in almost everyone’s preference set, and certain to be increasingly unsatisfiable over time for an increasing number of members of any libertarian arrangement.

The second reason to think that proliferation problems will arise, even if status preferences are not the most urgent preferences for many members of an arrangement, was implicitly raised toward the end of the last chapter. We saw that not all positional preferences need be pure positional preferences. They might be secondary effects of some other preference. If I see a pattern of rising inequality, I might worry that my children will not have sufficient access to positional goods, and this would be a threat to their absolute as well as positional welfare. Alternately, they might only be able to enjoy the same standard of living I enjoyed by taking on a great deal of debt, in order to own a home or pay for higher education. If avoiding financial risk features prominently in my preference set, this will generate a status preference. Put more directly: I didn’t mind being middle class in an arrangement with a very wealthy upper class, until simply retaining a middle class position began to entail carrying a lot of debt.
3.1.1 Compounding inequality and the severity of proliferation problems

Here it might be objected that status preferences, even if ubiquitous, will hardly ever be strong enough to create real proliferation problems. After all, leaving an arrangement will always be costly in both economic and personal terms, and remaining near economically successful participants will increase the chances of profitable employment with those who have the means to offer it. There may be other practical problems as well. Some of the economic advantages of political society are most powerful at large scales, so a splinter group would have to be a certain size to retain full economic efficiency, and this can happen only a limited number of times. We will return to these sorts of objections, and related ones, throughout the rest of this chapter. We can begin, though, by posing the question that they are all variations of: how could escaping the relatively mild dissatisfaction created by inequality be worth the varied and frequently profound costs of leaving?

Even the status-conscious will consider emigration an excessive measure as long as they suppose that inequality accrues due to differences in ability, effort, and/or productivity, perhaps within a generation, or in a slow, incremental increase across generation. Rising inequality will seem less troubling if prospects rise at a roughly linear rate, which is constrained to some limit, a limit that the marginal cost of leaving might exceed. And surely, it may be said, under real economic conditions, such considerations will often justify staying put.

But while many real societies share some of the same classical liberal principles that libertarianism has inherited, none of them are truly minarchist. The maintenance of stable patterns of commerce and the protection of individual rights in property are commonly understood to be among the central aims of socioeconomic institutions, but Nozick demands something more. By his way of thinking, the maintaining commerce is nearly reducible to and cer-
tainly dependent on protecting rights in contract and property. And protecting his favored class of individual, libertarian rights in property entails protecting the exponential, not linear, growth of inequality. The conditions that a truly minarchist state would create would be amplified versions of the already profound inequalities present in high-growth capitalist nation-states.

In cases where transfers of property between generations are stably husbanded for centuries, for example, staggering inequality can develop. The reasons for this are not speculative or theoretical, but in fact quite familiar. Those who do well in initial economic cycles will have surplus goods to invest. In some cases this will mean investments in forms of education and innovation that actually increase the productive capacity of those who have them. Other investments, such as the acquisition of property that yields rents, may increase inequality without actually increasing anyone’s productive output. At least one common economic practice, the charging of compound interest, increases economic inequality at a dramatically accelerated rate regardless of whether it facilitates any actual economic growth. But more importantly, any increased welfare these practices do confer is itself extremely unevenly distributed. Even in the best-case scenarios, those involving strict and substantial Pareto improvements, inequality and the dissatisfaction it brings increases.

In the last chapter, I discussed the difference between a “pure positional” preference—such as wanting to be higher rather than lower in an ordered list of wealth—and a “complete status” preference, such as caring about the size of the gaps in wealth between those in different positions (at least from one’s own). The more common kind of preference is the complete status preference. But this is precisely the form of preference violated by unbounded expan-

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5Nozick goes so far as to suggest that the capacity of the state to protect the rights of individuals is self-legitimating, that is, a protective agency that comes to be dominant in a given region is entitled to operate in virtue of its own success, as long as it does not overstep and begin violating libertarian rights. He derives this from Locke’s argument that each person has a right to self-defense, including exacting compensation for harms, which is best realized in the formation of a protective civil organization. See ASU pp. 137-142.
sion of inequality. If the gaps in goods between members of an arrangement increase over time, dissatisfaction among the less well-off will also increase, monotonically if not strictly proportionately. Therefore, in any arrangement that respects the second libertarian claim and (for that reason) does not include redistributive measures, inequality will eventually rise to the point where it counts severely against the value of the arrangement for a significant number of its members. To suggest, then, that there are pragmatic factors that prevent the fracturing of arrangements into the proliferation sketched in the last section is only to say that the pot has a tight lid. If the pressure inside will increase rapidly and without bound, a tight lid is not a solution, but a dangerous complication of the problem.

Theoretical analyses of this kind are hardly needed to demonstrate that inequality increases in severity throughout the most prosperous and stable periods in the history of almost any society. In particular, we now know as an empirical matter that in contemporary societies, the inequalities of mothers and fathers fall incredibly heavily upon sons and daughters.\(^6\) The compounding of these effects across generations can be, and historically has been, positively staggering.\(^7\) We might suppose—and indeed many have—that these are failures of policy or symptoms of corruption. This might lead us to assume that more apt policy choices and more effective administration of institutions are the best way to address systematic inequality. Yet from the perspective of minarchist socioeconomic systems, this is not an accidental feature or flaw in implementation. As I will explain in chapter 5, accelerating expansion of inequality is an intrinsic consequence of a capitalist economy that respects basic libertarian rights. And if

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\(^6\) The literature confirming this point as an empirical matter is quite extensive. Bowles et al. (2009) and Arrow et al. (2000) cover a substantial amount of the relevant data and explore some of the most important policy implications associated with it. Stiglitz (2012) provides a broad overview of the evidence for negative impacts of inequality, particularly across generations. Moreover, there are no dissenting views on this point backed by credible empirical data. The numbers are unequivocal; economic inequality propagates across generations, creating devastating disparities in health, education, and every other factor correlated with future economic success.

\(^7\) The fullest account of this process has emerged from the research program of Thomas Piketty and his collaborators, culminating in the celebrated Piketty (2014). See also Piketty & Saez (2001), Piketty & Saez (2006), and Atkinson et al. (2011).
this is something that can be expected, we can add that an adequately informed population, each concerned for his or her relative position, would not accept a minarchist libertarian society even at the very outset, at least not before the vagaries of luck and talent had taken their toll.

3.1.2 Epistemic regress, consent, and the recursivity of proliferation problems

In the real world, transaction costs will nearly always have some effect on the stability of arrangements. Leaving will be quite expensive in many cases. Moreover, the requirement that people have the option to leave a social contract does not imply that other members of the contract have to subsidize their doing so. No reasonable version of AP—the libertarian principle that specifies that making and breaking associations is a fundamental right—will require that all transactions costs and other inefficiencies be eliminated, or that individuals be compensated for all such costs. It might be prohibitively expensive to do so, in some cases, or even entirely impossible. Even where it is feasible, it would impose an unjust externality on the other members of the arrangement.\textsuperscript{8} So transaction costs will slow down proliferation. They raise the level of dissatisfaction members have to reach before they have compelling reason to leave. The new level of dissatisfaction will have to exceed not only any absolute utility they sacrifice, but the sum of that utility and any transaction costs.

I noted above that any threshold set will eventually be reached, in principle. The models I will outline in chapter 5 clarify why very familiar economic practices cause inequality to rise rapidly and with no upper bound. Thus natural barriers to proliferation are, in theory,

\textsuperscript{8}Unless, of course, the social contract includes (perhaps through legislation or as a matter of widely accepted policy) provisions for assisting those who wish to leave. But would those who wish to stay agree to this? They would have to do so voluntarily, paying costs not only in absolute terms, but also relative position if they are more successful than those electing to leave.
temporary. What is temporary in theory may take a long while in practice, of course, but the gap between the two is much narrower if we consider it the light of expectation. More informed participants may actually choose to leave an arrangement sooner if they are worried about avoiding transaction costs that will be greater if they stay. After all, the considerations presented above are entirely foreseeable. If I am considering participation in an arrangement, and I am aware that the social contract for that arrangement is of a libertarian kind and will include no redistributive component, I can foresee that some people in the arrangement will become dissatisfied with it at some point. In fact, I can produce a fairly good estimate of how likely I am to become dissatisfied with my status (or to estimate such a likelihood for my children or grandchildren, as I should be able to calculate the approximate rate at which inequality will accelerate). If I know where I am located in the distribution of reward-inducing qualities (i.e. talents, education, etc.), I can predict very roughly both what my package of goods will be and approximately where it will be on the overall distribution of such packages. I can also determine how approximately—the degree of variance—given an account of how much of my position is determinate and how much is accounted for by some stochastic element.

So I can get a predictive sense of whether my position will eventually be so disadvantaged as a matter of status that the arrangement will no longer be acceptable to me, and how long that will take. Of course I cannot predict this with perfect accuracy, and especially not in the short term. In each economic cycle, some aspects of my circumstances will always be contingent. But as long as each person is entitled to strict libertarian protections for the entire sum of whatever goods she and her progenitors have accumulated in previous economic cycles, the expansion of inequality will not only accelerate, but will decline in stochasticity. From a statistical point of view, the dynamics of the arrangement will decline in variance, perhaps not to a deterministic form, but to the point where it is clear that the
most disadvantaged have very little chance of upward mobility. It may be worth waiting for a temporary ebb in transaction costs, but they should be willing to pay a very high cost to get out.

But what if transaction costs are so high that they are completely out of reach of the most dissatisfied people? If this is even a remote possibility for some arrangement, no-one will want to join. In fact, any libertarian arrangement that is expensive to leave is one no rational person will join. It will not be rational for me to join an arrangement that I will either (a) probably eventually wish to leave due to increasing dissatisfaction, and at great expense, or (b) never in fact be able to afford to leave at all, despite wishing to. If I am fully informed, and I am not likely to end up in a favorable part of the distribution, it is better for me not to join at all. If I have a reasonable chance at a favorable position early on, it might be worth joining an arrangement somewhat speculatively. Perhaps my fortunes in the first few rounds will tell me a great deal about my expectations over the long run, so if my ventures go poorly early on, I will know that my expectation is greater in a fresh arrangement than in seeing one through that has started poorly for me. But if it will be costly to get information about the early rounds—either because it will be costly to get in, or because it will be costly to get out—then this speculative association is also ruled out.

It may help to think of this as analogous to deciding whether to enter a casino where certain tables offer favorable odds, but you don’t know which ones. Eventually you will be able to tell, but by that time, if you didn’t pick the right tables you probably can no longer afford them. After all, once there are indications of which tables are the good ones, those who won in early rounds—either because they were at the good tables initially, or were especially lucky even at the bad ones—will move to the best tables they can find, and then proceed to raise the stakes, re-buy when they are momentarily unlucky, and surreptitiously tip the pit boss very handsomely indeed. They will preserve their positions at the best tables, and seek
to improve their status. The stakes, and therefore the scale of fixed costs for entry,\(^9\) are set by the most prosperous bidders, so it matters how successful the most successful gamblers are.

Those who have strong status preferences but were not among the winners in the early rounds will already be experiencing considerable dissatisfaction, and any status preferences at all\(^{10}\) will be amplified further and further by the increasingly staggering inequality that is a necessary feature of the casino arrangement. All the considerations above are foreseeable, so a fully informed and rational person would not enter the casino at all, knowing that it is overwhelmingly likely that she will eventually desperately wish to leave. This is all the more true if it will cost her a great deal to leave—why enter if you will probably want to leave, and it will cost you a lot to do so? The objection under consideration is this: What if the transaction costs for leaving are so high that it takes considerable time for the rising level of dis-utility from dissatisfaction to exceed them? My response is: Because they are foreseeable, and status dissatisfaction is also foreseeable, no-one would enter an arrangement in which they risked being trapped between them, any more than they would enter a casino set up so that a few early winners would aggregate an ever-increasing share of the chips.

Here the analogy between the casino and real-world cases might seem to become especially fraught, because we don’t (in typical cases) choose to enter our socioeconomic arrangements. We are born into them, and many determinants of our starting position are in place long before we are empowered or informed enough to make significant political and economic decisions. But this isn’t really a problem, given the purpose of the thought experiment. I take “never entering” to just be the limit case of “leaving as early as possible”. Put another

\(^9\)In actual casino games these costs are given fixed structures as antes, blinds, minimum bets, and the like. But it is not my intention here to consider too closely the details of any particular games, or the specific practices of actual gambling businesses.

\(^{10}\)I am ignoring the special case where a person prefers lower status, which may be logically possible but does not meaningfully impact real-world arrangements.
way: Assume maximum possible foresight on the part of the residents of the casino, who were born there but have a protected libertarian right to leave. Because all but a lucky few will eventually want to leave, all but a lucky few will want to leave as soon as possible, or as soon as they have enough information to know that they are not among the elect. The transaction cost is an artifact of being born into a casino that is expensive to leave, but will eventually be even more expensive (in the aggregate disutility of status dissatisfaction) to stay in. And if the transaction cost is constant across time, it is irrelevant to the decision about when to leave. Everyone will eventually choose to pay it, so they might as well all pay it up front and start recouping it as soon as possible, in an arrangement where they aren’t experiencing constantly increasing status dissatisfaction.

3.1.3 “Casino Libertarianism”

One purpose of the casino thought experiment was to show that the size of a transaction cost for leaving won’t really delay the choice most people will make to leave. That isn’t the only thing it illustrates about proliferation problems, though. It is also a scenario in which the distinction between position and status is very crisp. Position is a matter of which table you sit at, while status is a matter of the differences between the conditions at different tables. We can really get at why the libertarian is ill-equipped to solve proliferation problems if we consider in more detail just what it is that most of the inhabitants of the casino are so dissatisfied with, because then we can see why a libertarian casino manager can’t appease them.

Recall that my very first premise was that every libertarian is committed to the two basic principles: the association principle, or AP, and the property principle, or PP. The libertarian state cannot curb early disparities in welfare and resources with redistributive taxation (this
would violate PP). In the libertarian casino, that doesn’t only mean that management can’t redistribute chips. It also can’t reassign rights to chairs. It certainly can’t neglect to enforce voluntary contracts—most libertarians regard this as not only an obligation of the state, but its *raison d’être*, and in fact such enforcement is required by both PP and AP. Protecting inheritance, as well, is an obligation of the state, under PP and perhaps AP as well (on a certain understanding of a “Last Will and Testament”).

In addition, here are a few things that have become very clear to the occupants of the casino:

1. The most important determinant of your basic income in the casino is the table at which you sit (and perhaps your position at that table, depending on how fine-grained we make the experiment). Moreover, the differences between tables are large. The better tables not only pay out larger sums, they do so more reliably.

2. In fact, positions at the best tables allow you to extract value even from tables where you are not even gambling—where you take no risks, make no efforts, and exercise no skills. You can do this by employing others to occupy a profitable seat that you have property rights in, and claiming a share of their winnings.

3. Yet those sitting at the best tables do so, for the most part, because they were fortunate in early rounds, or inherited their seats from others who were.

Let us suppose that the basic facts about position, point (1) in this list, are what are often called “natural facts”. For our purposes the casino is simply an environment that has an irregularly distributed yield, much as resources in the real world are irregularly distributed. Point (2), then, can best be understood in contrast to this, as describing the consequences of the arrangement under which the casino is run. Some enforcement agency protects the rights of the inhabitants of the casino, and that agency recognizes something like rights in
seating—a kind of property rights wherein the holder of a given seat is entitled to continue to hold that seat as long as she can continue to make bets, or perhaps even in perpetuity once ownership is established. Presumably rights in seating include an entitlement to bequeath and receive bequests of seating, the basis for inheritance in the casino. In addition, the agency presumably recognizes contracts, perhaps something like “Party A will vacate seat 24s2 on a temporary basis, while retaining the same rights as if continuing to occupy the seat. Party B will occupy the vacated seat, but this entails no rights other than those required by casino policy or explicitly specified herein. Party B will be entitled to play table games, but must surrender 40% of all winnings to Party A.” And of course there will be protections for currency reserves and authorized transfers as well. Point (3) simply emphasizes that the consequences of (1) and (2) are visited on individuals in a somewhat arbitrary way, that is, that it is highly contingent whether a given individual was at one of the right tables, in the crucial early rounds, with just enough luck to have access to a superior position. It may well be that success in early rounds also required making disciplined, intelligent choices, putting in long hours at the tables, etc. But even if these qualities were necessary, they could not have been sufficient. Many hard-working, smart inhabitants of the casino found themselves at poor tables where even diligent and optimal efforts yielded poor results.

At this point, we have level of detail that brings us back to the more general model, and we can dispense with the casino metaphors. “Seats” are just class positions in a libertarian socioeconomic arrangement. But we can retain “casino libertarianism” as a term emphasizing the crucial role of points 1-3 in clarifying what is increasingly objectionable about life in the casino. The only prospects for preventing those with poor (or even middling) positions from developing a level of dissatisfaction that grows without bound lie with altering the circumstances described in these three points. But there are fairly severe constraints on these points. Point (1) is by definition intractable if we suppose that individuals can only
secure their welfare by extracting from the casino tables (resources and factors of production) to which they have entitled access. After all, the yield of each resource is a fixed deliverance of nature. If we allow for explicitly redistributive measures in a socioeconomic arrangement, (1) can be altered, but if casino libertarianism is a Nozick-style conception of justice, it surely will not allow such measures. Certainly real world minarchist libertarians would not concede that natural facts about the fertility of certain land, the luck of weather, and so forth constitute grounds for diverting resources from those who have gathered much to those who have gathered little.

Point (2) might seem more tractable. After all, why must there be protections for contracts that allow the best-off to claim some of the value that others extract? Presumably the casino libertarian will take a similar position to the one Nozick himself defends: a history of voluntary transactions establishes contemporary rights in property, which the casino state has a duty to protect. The occupants of what is now rental property accepted the arrangement in order to have access to better resources, and it may have been an attractive arrangement in the short term. Owners of rental property may have improved it, making it capable of supporting more profitable ventures. Such improvements would strengthen claims in property on a libertarian account, under principles received from John Locke at a foundational moment in the minarchist tradition. It is no more permissible to withhold protection for rights in property and voluntary contracts, under such a view, than it is to engage in enforced re-distributive taxation.

The third point begins from an intractable basis—some differences in fortune are unavoidable. But the effects of those differences may be limited to the individuals who experience them directly, or they may be propagated into future economic cycles and even across generations. It will be clear by now that strict protection of property rights, understood in the libertarian manner as including rights to make and receive bequests and inheritances, is the mechanism
of propagation we are concerned with. Like rights in seating in the casino, bequest and inheritance are deeply entrenched in the conception of justice we get from Nozick, and indeed any libertarian who claims participation in the Lockean tradition would probably be committed to seeing these rights as fundamental.

Casino libertarianism isn’t really a special case. These difficulties will arise in any socioeconomic arrangement in which inequalities in economic advantage—unavoidably created by differences in the resources and capacities of individuals—are protected, propagated and amplified by the institutions and practices established by the arrangement. And casino libertarianism is only one toy example of a view that is intrinsically committed to these sorts of institutions and practices. We will see in more detail in chapter 5 that the conception of protected rights in property common to contemporary libertarians, and indeed underwriting much of our existing socioeconomic custom, leads to rapidly accelerating inequality if left undisturbed. A libertarian state is simply not permitted to do anything to avert the increasing dissatisfaction of the less well-off. In fact, such a state is required to protect and institutionalize the practices that accelerate economic inequality. A market structure that is of greater efficiency according to libertarian principles will also expand inequality and provoke discontent more quickly as an analytically demonstrable consequence of that efficiency. And as we have already noted, the association principle requires that when this process runs its course, and some significant portion of the population does wish to leave, they be allowed to do so.

3.2 Can the problem be escaped?

My conjecture and supporting arguments have now been presented in considerable detail, which means that we can also examine some of the most important libertarian responses in
more depth. There are several routes the minarchist might take in seeking to escape our problem. For the remainder of the chapter, I will consider several of the most promising of these routes, and explain why each comes at a significant cost. The first two of these have been already addressed to some extent as they naturally arose in our discussion. It will be helpful to quickly review the responses given so far and integrate them with the themes of this chapter.

Earlier we considered:

- A refusal to acknowledge status dissatisfaction as relevant to discussions of libertarian justice, on the grounds such dissatisfaction is irrational and doesn’t appeal to any libertarian criterion for justice.

- An attempt to collapse status preferences into more general utility concepts, while preserving the claim that libertarian arrangements offer adequate opportunity to pursue such utility.

On the first point, as noted last chapter, Nozick explicitly dismisses the dissatisfaction engendered by the systematic generation of inequality as mere “envy,” as a “strange” form of irrationality.\(^\text{11}\) And Nozick would almost certainly dismiss the idea that the dissatisfaction of members of an arrangement with their relative socioeconomic status carries any weight in assessing whether or not the arrangement is just. Not everyone is convinced that Nozick’s charge of irrational envy really sticks.\(^\text{12}\) But even if the charge does stick, it doesn’t actually undermine the force of the instability conjecture. The libertarian right to freedom of association is not held only by the most rational members of an arrangement, or those who are above envy, or those whose self-esteem is independent of relative position. My conjecture is

\(^{11}\)See ASU 239-246, as well as my more detailed discussion in section 2.2.1.

\(^{12}\)see e.g. Nielsen (1984, p. 274).
only based on normative claims about the inalienable nature of rights that Nozick already explicitly accepts, and modest empirical claims about the utility assignments of many people in actual arrangements. Indeed Nozick’s explicitly admits that envy is ineliminable, and this is enough to invite proliferation problems.

As for the second point, while Nozick and other libertarians begin from principles in social contract philosophy, the existence of envious status preferences is not inimical to rational choice theory. Expected utility theory represents all value-laden phenomena—well-being, entertainment, and of course money, among others—in terms of a single quantity generally called “utility”. In the last chapter, we saw that treating the satisfaction or dissatisfaction of status preferences as simply another form of utility or disutility doesn’t allow the libertarian to dismiss them (2.2.3). We later saw that the question of whether a given socioeconomic arrangement is unsatisfactory for some segment of its participants can simply be posed as the question whether whether a deficit in one source of utility (relative welfare, or the expectation of it)can be overcome by gains in another source (absolute welfare created by economic efficiency). Likewise, the foregoing appeals to expectations can be viewed as a matter of expected value or disvalue in terms of expectations of status satisfaction, or the lack thereof. Understood in this way, status dissatisfaction is a perfectly rational ground for rejecting minarchist arrangements (2.3.4).

Thus, as suggested earlier, given firm status preferences, and a limited concern for absolute welfare, the continual increase of inequality in libertarian arrangements and the structural nature of that increase makes any beliefs held by the least advantaged (let’s say the bottom 10% in terms of economic reward) that they might through some level of effort and ingenuity increase their rewards to very high levels (say, within the top 10%), extremely irrational. As inequality intensifies, the chances of significant upward mobility from the worst-off positions becomes negligible. The libertarian can quite coherently assert that this places no duty of
justice on the more advantaged members of an arrangement. But monotonic, accelerating increase in inequality does hurt the minarchist attempt to claim that economic opportunity within libertarian arrangements is unrestricted, or correlated with effort and ingenuity. At the limit, such a claim comes to appear fraudulent, or at best deeply disingenuous. Moreover, status dissatisfaction now appears to be fully rational, not only because it is a legitimate form of disutility in its own right, but also because it seems to reflect foresight about an individual’s expectations for absolute welfare. Much of what follows will be a diagnosis of why the quest for opportunity, a central endeavor of human political life that the libertarian explicitly claims to support, is inevitably undermined by intrinsic features of minarchist libertarian socioeconomic systems.

### 3.2.1 Libertarian proliferation: “Going Galt”

There are other ways a minarchist might seek to evade the instability conjecture. Many libertarians make the very strong empirical claim that the best-off are in fact super-producers without whom the superior efficiency of effective socioeconomic arrangements could not be achieved.\(^{13}\) On this view, it is the super-producers who will experience the most severe status dissatisfaction when the fruits of their labors are redistributed to the less productive. They thus pursue the novelist Ayn Rand’s hyper-capitalist fantasy of “Going Galt”: taking their superior productive capacity to a Utopian enclave where they don’t have to share. History shows a conspicuous dearth of elites deciding to remove their superior productivity from an ungrateful society and flee to a remote utopia. Certainly it is common for high-income individuals to move to jurisdictions where they will pay lower taxes or enjoy other

\(^{13}\)A distinct but closely related claim about the relationship between compensation and productivity goes something like this: the promise of achieving very high levels of compensation is what drives people to their greatest productivity. This suggests that a tier of highly compensated members in a socioeconomic arrangement provide a benefit to the arrangement precisely *because* they are envied.
advantages, but these can virtually always be explained in terms of the pursuit of absolute welfare. Still, we might wonder whether status dissatisfaction cuts both ways.

Even more interesting is the claim that the less advantaged can’t leave. This is not a point about the transactional barriers discussed elsewhere in this chapter, but rather, a claim that the participation of the highly ranked is necessary for the arrangement to reach an acceptable level of efficiency. The typical full articulation of this position is that without the innovation, expertise, and greater productive effort of its elites, a society will rapidly decline into chaos.

There are several problems with this sort of claim. First of all, the fantasy as Rand relates it simply conflates necessary and sufficient conditions. Even if it is necessary for an arrangement to reach some important target of productivity that it include certain members, and a higher level of compensation is afforded those members in light of their powerful contribution, it does not follow that the presence of those members is sufficient to bring an arrangement to a high level of productivity. That is, if these “super-producers” leave, while they may indeed be depriving the arrangement they left of a much-needed pool of talent, they will not necessarily be able to build a successful arrangement on their own (let alone a super-successful utopia). Certainly they will not if every member insists on occupying the highest-ranked positions. In that case they will have a slightly different proliferation problem in which members continually leave in order to strike out on their own and reap ever-greater rewards. If everyone sees themselves as John Galt, anarchism is inevitable.

It is also worth noticing that the argument for this claim must begin with the dubious proposition that the best compensated members of an arrangement are the most productive. This claim will be undermined if the best compensated owe their superior position largely to factors such as inheritances and rents, which do not correlate in any direct way with productivity. I will argue in chapter 6 that the most consistent way of interpreting the property
principle in fact restricts strong property rights to rewards that are actually correlated with ongoing productivity, and that this interpretation also allows for more stable arrangements than a more expansive notion of property rights possibly can.

Moreover, it isn’t at all clear that there is such a thing as the socioeconomically necessary super-producer. Most increases in the productive capacity of human societies have been the result of reproducible technologies. In fact, this is necessarily so, even if widely reproducible technologies are less efficient on a unit-by-unit basis than those that require special skills or talents. It will always be more effective to make 10,000 people 10% more efficient than to rely on one John Galt being 1,000% more efficient. In fact, the former effect will be orders of magnitude more powerful. Thus, the formation of a new arrangement using reproducible technologies is much more likely to succeed than one that relies on the great productivity of a handful of irreplaceable individuals.

Finally, even the most productive members of society owe their productive potential partially to developmental and infrastructure benefits they received from that society. Education and other developmental requirements are one crucial collection of relevant benefits. Transportation and energy infrastructure also form a collection of benefits essential for honing productive capacity. Even the most talented entrepreneur must not have to literally reinvent the wheel. Different arrangements presumably offer different sets of benefits, and all presumably offer more than the state of nature. This is important, because the one restriction built into the first libertarian claim is that an individual’s withdrawal from an arrangement be non-exploitative. Those individuals with the most profound productive capacities, then, have benefited most from their opportunities to develop them. This is just to say that the most capable persons are most likely to be leaving their arrangement in an exploitative manner, if they choose to withdraw after receiving necessary benefits but before providing a commensurate contribution to their arrangement’s economic growth. “Going Galt” is much
more likely to be fundamentally unjust, even on libertarian grounds, than leaving a position of comparative economic disadvantage.

In the end, the fantasy of “Going Galt” primarily appeals to the dissatisfaction of those who feel entitled to high status given the qualities they believe themselves to possess. What this means, then, is that “Going Galt” is a rhetorical appeal to a status preference! It is particularly implausible because it posits that these supposed titans could, in some location remote enough so as to remain unclaimed, recreate all of the infrastructure needed to develop a new socioeconomic arrangement at a high level of efficiency.

A somewhat more convincing invocation of the status preferences of the highly productive might be this: if another, competing arrangement with comparable infrastructure offers them higher relative status, they will move there. This will prevent their former arrangement from operating at peak efficiency, destabilizing it. This scenario, though, supports my conjecture rather than challenging it. I do not claim that allowing those in highly productive positions to become extremely wealthy makes an arrangement less efficient, only that it makes it less stable. Countering that not allowing them to become extremely wealthy also makes the arrangement less stable is not a satisfactory objection to my conjecture, though it may suggest that the “hard-line” libertarian is inevitably an anarchist via a sort of catch-22 or proof by cases: either we allow the best-off to become the best-off by a fantastic margin, or we don’t, and we are beset by instability in either case.

### 3.2.2 Exit costs

Perhaps the minarchist will attempt to appeal to especially difficult barriers to proliferation, in order to reject my argument that libertarian arrangements are unstable without having to directly undermine any of its premises. For example, ineliminable transaction costs might
make it prohibitively expensive for someone to leave an existing arrangement. No matter how much she wants to go, a person in an economically disadvantageous position might not be able to gather the required resources. Alternately, there might not be any alternatives available, and it might be too costly to form a new arrangement. This would not, it might be argued, be an injustice, but simply a natural barrier to the proliferation of arrangements. The other members of the arrangement would not be responsible for these transaction costs and paucities of choice, so the dissatisfied person is not the victim of any injustice as far as the libertarian is concerned; her rights have not been violated. If her situation is common—and we might take it as plausible that it is—then perhaps these transaction costs and other natural barriers suffice to stabilize arrangements without violating minarchist libertarian principles.

My earlier claim was that the unbounded intensification of inequality will eventually produce severe enough dissatisfaction to overcome any such barrier, and that because this can be foreseen, it will encourage the less advantaged to get out of an arrangement sooner rather than later. But that reply leans especially heavily on a very strong version of the conjecture, especially where scale of emergent inequality is concerned, the rate of its advance, and the severity of the dissatisfaction it may provoke. It also assumes that those who wish to leave can find some way to overcome any cost or obstacle if they are sufficiently motivated. Perhaps the libertarian can challenge whether such strong assumptions are plausible. Suppose that we weaken these claims, such that we allow that inequality might be less inevitably rampant, or the dissatisfaction it produces less motivating, or even adequate motivation might be stifled by incapacity. Now we must concede that even if the worst-off members of an arrangement would prefer to leave it, even they might not be quite willing to pay the costs that would require, or might entirely lack the means to do so. If these weaker forms of
the claims supporting the conjecture are taken as more plausible, does the conjecture itself fail altogether?

It does not. The libertarian is committed to the uncompromising protection of specific kinds of rights, and that commitment prohibits the state from engaging in practices that take advantage of natural barriers to the dissolution of contracts. This means that no libertarian social contract will be valid if it guarantees the emergence of insurmountable natural barriers to leaving an arrangement. There are probably many variations on this theme, but I will consider three that are especially pressing.

Bureaucracy and Opportunism  While it is true that some inefficiencies are best thought of as unavoidable externalities, it is important to distinguish such costs from fees that pass administrative overhead on to arrangement members, or worse, that are designed to exploit the desire of members to exercise their libertarian rights by charging them fees to do so. In general, any transaction cost imposed on the exercise of libertarian rights must be regarded as a violation of those rights. Even to suggest that an individual wishing to leave an arrangement is generating an externality, and is therefore responsible for compensating the remaining members of the arrangement, is to mistake the very point of libertarian socio-economic arrangements, which is to protect libertarian rights. If we build a highway together using tax revenue, and I subsequently drive on it, I am not creating an externality by using a resource that is a basic part of the common project. Immigration and emigration services must similarly be seen as basic infrastructure, and all the more so considering that voluntary participation in arrangements is more fundamental to libertarian justice than something like transportation infrastructure.
Logistics and Opportunism  Even in cases where transaction costs for leaving an arrangement are entirely attributable to naturally emergent logistical factors, such as the cost of moving from one geographic area to another, there will often be ways to mitigate such costs. A central example would be requiring an institution within the arrangement to purchase the real estate of departing members in cases where no private buyer was readily available. This would not impose a meaningful cost on the remaining members of the arrangement; the property so acquired would simply be an asset held in common until some other member of the arrangement elected to purchase it.

The existence of such an institution would simply be an acknowledgment that the interest of the state or other arrangement in preserving territorial continuity must not be allowed to impose a prohibitive cost on those wishing to leave it. This is because for any arrangement to leave unnecessary transaction costs in place amounts to taking opportunistic advantage of those costs to restrict the liberties of the arrangement’s members. An arrangement without provisions for “buying out” dissatisfied members would be a trap, a sort of property snare. So while some transaction costs or other inefficiencies may be irreducible, arrangements must take all reasonable measures to reduce them as far as possible. Some further account of “reasonable measures” may be required for this requirement to be fully articulated, but in addition the to the provisions just recommended for real estate, such measures might also include legal forms that combine declaring bankruptcy with a kind of formal expatriation in cases where a person’s position in an arrangement offers them no reasonable strategy for getting out of debt.

Disruption  Transaction costs will not always create conditions favorable to the best-off members of an arrangement. In cases where costs impede emigration, those in disadvantaged positions within an arrangement will have stronger incentives to engage in political activity
aimed at altering the terms of the arrangement. They will also be willing to disrupt existing
institutions in ways that those in more desirable positions will not; if impeding the efficiency
of some aspects of the arrangement is more costly for those who receive more from the ar-
angement, as it often will be, those who receive less will use that asymmetry as a way of
leveling the playing field and putting pressure on those with the most at stake. Strikes and
other economically destabilizing activity are analogous to guerrilla warfare, aimed at exact-
ing costs that will bring the strong to the bargaining table along with the weak, and on more
balanced terms. There will be costs to the strikers, to be sure, but if emigration is massively
costly then non-participation may be worth a try. In most cases, withholding participation
is an activity protected by strong libertarian rights. It is fully permissible to disrupt an
arrangement by refusing to participate in it, and impermissible to force participation. Other
forms of political activity are even more directly protected by rights the libertarian acknowl-
edges, rights to freedom of expression, unimpeded political franchise, equal eligibility for
public office, etc. So this isn’t something that a minarchist arrangement can prohibit by
force.

The best-off in a given arrangement would most profit from a situation where the worst-
off are prevented from leaving by high transaction costs, but unable to effect change from
within, and so must accept very high levels of inequality. But these two kinds of conditions
are at odds with one another. Dissatisfaction will have the greatest politically impact when
emigration is impractical, and emigration will be attractive even at very high cost if, as I
noted in the above discussion of revolution, minarchist commitments keep certain options
for the social contract off the table. The minarchist libertarian may be able to trade one
of these forms of instability for another. Forcing people to exist between two intractable
barrier to their own economic satisfaction in order to create stability, however, will end up
violating their rights on both fronts.
3.2.3 Instability and the disposition to leave

The preceding considerations show that even if some of my original assumptions are relaxed, the libertarian cannot rely on natural barriers to stabilize socioeconomic arrangements indefinitely. Thus far, however, we have focused on natural barriers to actual emigration. This doesn’t really capture the full extent of proliferation problems, which analytically express the disposition to leave whether or not exit is a real possibility. We can describe further forms of instability which suggest that the disposition to leave a social contract may still jeopardize the stability of a state from within, on the same territory.

Moving forward, I will take *emigration* to mean leaving a socioeconomic arrangement by leaving the jurisdictional territory (generally geographic) claimed by the institutions that enforce the arrangement. But one can also “leave a social contract” while staying exactly where one is. For example:

- A proper subset of members withdraw from an arrangement and claim the territory comprised of their collective holdings as the jurisdiction of institutions under a new arrangement—hereafter, *secession*.

- A set of members has enough power of whatever kind to cause the entire territory governed by their arrangement to be governed by a new arrangement—hereafter, *revolution*.

- A set of members chooses to leave one arrangement and enter another, taking their territorial holdings with them—hereafter, *voluntary annexation*.\(^\text{14}\)

\(^{14}\)This form of leaving, while not unprecedented historically, is relatively rare and raises complexities I will not be able to resolve here. I mention it primarily for the sake of completeness and will not discuss it in detail.
• A significant proportion of members wish to leave, but find the costs prohibitive, and therefore go through the motions of civic life while tacitly undermining the stability of the arrangement—hereafter, *disaffection*.

All of these scenarios have been instantiated in a number of specific historical cases, at least some of which are taken to have been legitimate exercises of rights to self-determination. If the minarchist wishes to claim that emigration is the only protected manner of leaving an arrangement, then some further account must be given of what sets it apart. This would have to be a claim that secession and other forms of withdrawal from arrangements that involve territory categorically involve violations of the libertarian rights of some parties, because nothing short of a categorical violation of such rights could serve as a counter-claim to AP, itself a fundamental libertarian right.

One argument for such a claim might be that the disruption that accompanies altering the jurisdiction of enforcement institutions (for Nozick, “protective agencies”) inevitably does harm to someone in a manner that violates their libertarian rights. Certainly it would be easy to come up with various plausible hypothetical circumstances under which processes of this kind lead to violations of rights, but it would be difficult to show that this will *necessarily* be the case. And while on the one hand, these processes need not intrinsically involve rights violations, on the other hand, limiting them for any reason other than to protect libertarian rights is intrinsically a violation of AP (in that it would require someone to continue participating in an arrangement against their will) or PP (in that it would strip them of property as a consequence of leaving the arrangement).

It will help make this point clearer if we note that the libertarian believes that a person’s property is inextricably associated with that person, a part of her in a political and legal
Any institution that claims to have jurisdiction over a person must behave justly toward that person’s property, primarily by protecting her rights in it and ensuring that she is not interfered with in her pursuit of whatever goods she can extract from it (without violating the parallel right of her fellow citizens, of course). This yield may include rents, factors of production, availability for exchange or consumption, etc. Put another way: you might think that a person’s property is not one of the factors that should be accounted for in determining whether her fundamental freedoms are being adequately protected. But if you are thinking that way, you are not thinking like a libertarian. If you can’t do what you want with your property, including taking it with you to another socioeconomic arrangement, your libertarian rights are not being protected, and if your libertarian rights are not being protected, you never had any reason to enter the arrangement in the first place. So the only legitimate socioeconomic arrangements will be those that protect your ability to leave them, and take your property with you when you do so.

Thus emigration on libertarian terms must take one of two forms: either the person who wishes to leave voluntarily transfers (presumably by sale in the most standard cases) all real estate and any other property she cannot take with her, converting it to a more portable form (currency, portable commodities, highly liquid credit, etc.), or she conducts a kind of “miniature secession”. Locke favors the former, and indeed sees it as the single necessary and sufficient condition for removing one’s self from under the authority of the state:

“But since the government has a direct jurisdiction only over the land, and reaches the possessor of it, (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that; the obligation any one is under, by virtue of such enjoyment, to submit to the government, begins and ends with the

\[15\] See Locke’s Second Treatise of Government §28 for the historical wellspring of these property rights, which begin with labor and then propagate via a kind of transitivity in which goods arising from other property are assigned to the owner of the originary property. Also see ASU 271-278 for Nozick’s discussion of why no stable social contract could treat property rights, or any other rights, via a mechanism other than uniform association with individuals based on history and Lockean transitivity.
enjoyment; so that whenever the owner, who has given nothing but such a tacit consent to the government, will, by donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other commonwealth; or to agree with others to begin a new one, in *vacuis locis*, in any part of the world, they can find free and unpossessed...¹⁶

Yet some place must be made for the latter, or any holdings that cannot easily be moved from one arrangement to another become a means of holding members of arrangements hostage. In fact, in even considering the costs of emigration in this light, we have anticipated the argument that the right to emigration entails some form of a right to secession. Allen Buchanan has pointed out¹⁷ that the considerations that ground (and restrict) a right to emigration must also provide for a right to secession, as it may be seen as something like group emigration. As my conjecture suggests that there will always emerge an identifiable group, an economic class in a certain position, that is likely to experience severe dissatisfaction, it seems likely that such a group will wish to emigrate collectively. They will also wish to reserve certain territory for their new endeavors, and if it is territory in which they have invested collectively as communities, perhaps they will be entitled to. Unfortunately, Buchanan’s work is virtually the only robust treatment of these issues, and it is not within the scope of the present discussion to extend or amend it with adequate precision and detail.

Revolution may be the most important form of leaving we consider here. It is essential to note that the term ‘revolution’ should not in any way be taken to specify a violent uprising, or even the dissolution of the institutions created pursuant to a socioeconomic arrangement.

¹⁶STG ch. VIII, §121. Note, however, the remainder of this section: “whereas he, that has once, by actual agreement, and any express declaration, given his consent to be of any commonwealth, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it.” This unrestricted perpetual claim by the government over an individual, predicated on a single declaration of consent, would probably not be accepted by the contemporary libertarian or indeed any modern contract theorist. Even an account as foundational as Locke’s will have to be amended in some respects.

¹⁷See Buchanan (1993), in particular p. 31.
Revolution should be understood as the changing of the terms of an arrangement in a manner so dramatic that they amount to its dissolution, and simultaneously, the establishment of a new contract. This may be accomplished in a democratic manner, and without the use of unjust force, as long as some implicit or explicit agreement exists among the members of the old arrangement as to what will make the new arrangement authoritative. Providing a common understanding of this authority is an important goal of the entire social contract tradition, and emerges in practice wherever the rule of law is understood to evolve without losing its authority, as in the accretion of common law or the amendment process for the U.S. Constitution. The availability of such an understanding reduces the trauma and destruction often associated with political upheaval, but just as importantly, a revolution that lacks such an understanding cannot proceed to the formation of a new agreement unless there is a shared vision of how the agreement is to be legitimized and enforced.\(^\text{18}\)

In cases where powerful democratic mechanisms exist for revision of the terms of a socio-economic agreement, we would expect to see proliferation problems manifest in political activity that seeks to renegotiate the terms of any minarchist social contract. Leaving an arrangement might really amount to resigning membership in a political party, participating in acts of civil disobedience, or participating in a general strike. These activities all signal the withdrawal of certain members’ support for the institutions of an arrangement, and on some level, the terms of the arrangement itself. It then becomes incumbent upon the leadership of the arrangement to take measures that restore the faith and support of the dissatisfied members, revising the terms of the arrangement using the accepted mechanisms in ways that reduce the dissatisfaction of the members who have withdrawn. In this sort of splitting scenario, the minarchist understanding of PP simply prohibits the fundamental changes that are required, so the society is now split into participating and non-participating or opposing

\(^{18}\)I am indebted to Arendt (1990) for this general line of thought.
members. In some cases, opposition will involve forming voting blocks to elect opposition legislators and hold up vital services, rather than attempting to obstruct economic activity directly. Whatever the form, the non-participation of some reduces the amount of goods and services available to others, who become dissatisfied and engage in political measures of their own. Before long, the utility of the arrangement is dramatically reduced across the board. Only when policy terms are offered that provide adequate incentive for everyone to participate can the arrangement be restored to effective and efficient functioning as a stable state economy, as libertarians often assume. So if the minarchist is prohibited from offering such terms by the property principle, she will lack the tools to peacefully and democratically resolve revolutionary moments in the history of an arrangement.

3.2.4 The invisible fist argument for the legitimacy of the state

In light of all the forms of instability just considered, the minarchist might simply argue that an existing configuration of jurisdiction is in every case more legitimate for the libertarian than a prospective one. This is not an argument that claims priority for a given arrangement and enforcement institution in virtue of its existence “qua existence”, so to speak, but rather an argument that the existence of some particular protective agency is evidence that it has proven more effective at protecting the libertarian rights of an arrangement’s members. Some version of the argument is implicit in a great many libertarian accounts of the legitimacy of the minimal state, but in chapters 2 and 5 of *Anarchy, State, and Utopia*, Nozick gives a particularly well-developed theoretical treatment.

Nozick, following Locke, argues that giving up the freedom of the state of nature is worthwhile because no efficient and reliable means is available in that state for protecting one’s libertarian rights. In the absence of a political state, two parties that have a conflict will
resolve it in terms not of legitimate claims about whose rights have been violated, but in
terms of who has more resources with which to force concessions from the other. The es-
tablishment of enforcement agencies to prevent the strong from oppressing the weak may
appear to be a step toward addressing this problem, but if two parties to a conflict support
and are protected by different agencies, and resolving the conflict comes down to establishing
which agency is more powerful. In addition, conflicts between agencies have greater potential
for collateral damage within the community. The real benefits of collective enforcement are
only obtained if a dominant protective agency arises that can eliminate the expense and fear
produced by conflict between rival protective agencies.

If such an agency does arise, it dramatically increases the capacity of everyone in its ju-
risdiction to reliably exercise protected rights in person and property. Hobbes claims that
rational self-interest compels people to accept an all powerful “Leviathan”, an authoritarian
government,\textsuperscript{19} even at seeming cost to their liberties. But it is unclear that Hobbes manages
to successfully make that case,\textsuperscript{20} and even if he does, his concept of the state\textsuperscript{21} and analysis
of contracts\textsuperscript{22} are incommensurable with Lockean libertarian commitments. Nozick wants to
show that we need not abandon our freedom to the Leviathan in order to arrive at a single
institution with a monopoly on the legitimate use of force.\textsuperscript{23} He suggests that the market for
protective services will naturally tend toward consolidation of authority, because increased
consolidation will always provide improvements in the effectiveness and efficiency with which
agencies (and eventually a single agency) can protect the rights of citizens. Under this ac-
tcount the state emerges from something closer to commerce than conquest. Because such a


\textsuperscript{20}For a discussion of how we might reconstruct the argument Hobbes should have made for the unique
capacity of the sovereign to protect our interests, Kavka (1986), especially ch. 5.

\textsuperscript{21}The intensely autocratic picture Hobbes has of even democratic government can best be seen in chapter

\textsuperscript{22}See Hobbes (1994), chapter XIV.

\textsuperscript{23}Max Weber (1968) coined this now celebrated phrase in an essay observing that earlier societies some-
times gave non-state actors jurisdiction and authority to punish in specific arenas of action or geography.
theory suggests that jurisdictions are naturally optimized in much the same way that Adam Smith suggests markets are optimized by the “invisible hand” of free economic activity, I will refer to Nozick’s account as the “ invisible fist.”

This is a process of incremental shifts in support toward those protective agencies that are successful at defending the rights of those who subscribe to them. If my protective agency doesn’t seem to be doing as good a job as yours, I’ll switch, just as I would in pursuit of the best available version of any service. This particular structure has two key features that are interesting for our purposes:

- Because all changes of services are voluntary and in pursuit of individual self-interest, the process is just in libertarian terms.

- Because agencies are likely to be more effective when they draw resources from more subscribers, the process will accelerate and a single agency will eventually come to dominate the provision of protection for libertarian rights.

The invisible fist justification for a governmental monopoly on violence is at least prima facie plausible, and I won’t be offering a critique of it here. What I will do is point out what its two key features establish, and what they do not. The overall project of Anarchy, State, and Utopia is not an effort to show that justice itself demands a minarchist government. Instead, it is an effort to show that a minarchist government does not violate the rights of its citizens, while any more extensive arrangement does. Nozick’s arguments are all to the effect that any society that arises out of a history of just transactions cannot be deemed unjust. The invisible fist is no exception; it is simply another account of voluntary transactions, exercises of libertarian rights, leading over time to a particular kind of outcome. But the just nature of the scenario inheres in the first point I listed above, the fact that the transactions in favor
of a particular agency are voluntary. While Nozick argues for the second point, that such transactions could theoretically converge on near-total support for a single protective agency that may as well become an institution, this is actually a rather naturalistic claim about how a society of people committed to Lockean principles would develop. If this naturalistic claim turned out to be false in a particular socioeconomic arrangement established under libertarian principles—if some members of such a society freely chose to remove their support from a government that among other things administrated the dominant protective agency—no conceptual connection would remain between the agency and libertarian justice.

I am arguing that some members will always eventually so choose. They will do this because in relative terms, any libertarian protective agency will comprehensively fail to protect the self-interest of an ever-expanding portion of the membership of the socioeconomic arrangement that institutionalized it. If the share of property that one has to protect is negligible in light of relative socioeconomic conditions, and this inequality is itself a source of disutility that expands without limit, then no marginal utility is preserved by continuing to support institutions to protect one’s pittance. Nozick gives arguments for why “independents” cannot be allowed to opt-out of the jurisdiction of the dominant protective agency, and why it is not a violation of their rights to oblige them to comply and contribute, and in cases concerning a small number of dissatisfied people, these arguments are plausible. But there must be some maximal threshold for the percentage of the population that can justly be compelled simply in the name of preserving the efficiency of the dominant agency, and whatever the threshold may be, the percentage of the population dissatisfied with low status will eventually rise to meet it.

Equilibrium concepts are not normative. So we must understand Nozick’s claim that the existence of a dominant protective agency is not unjust as standing apart from his claim that it is stable. Nozick considers an arrangement just at time $t$ if its history up to that time does
not involve systematic injustice. But even if we accept that account of justice—and I happily stipulate to its correctness for present purposes—we will have learned nothing on that basis about how stable an arrangement that satisfies it is. And because there is no intrinsic connection between the stability of an arrangement (including its protective institutions) and its justness, disrupting the stability of an arrangement is not in any intrinsic sense a violation of the rights of its members. Thus we may observe that the behaviors that create proliferation problems do not violate libertarian demands of justice simply because they fracture arrangements, and in fact in that respect they are protected exercises of libertarian rights.

Proliferation problems are unavoidable under the circumstances I have described. I have suggested why they create an irresolvable problem for a standard form of libertarianism, but my argument turns on several assumptions, and these will require further defense. The following two chapters seek to sustain my instability conjecture in this way. First and foremost, at this point we should confirm that a standard kind of libertarian is indeed committed to AP and PP in a form that gives rise to our problem. This is the subject of the next chapter. Second, since our argument turns on tendencies toward increasing inequality, we should consider further why this is to be expected under libertarian arrangements. This is the topic of chapter 5.
Chapter 4

Libertarianism

“Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own Consent. The only way whereby any one divests himself of his Natural Liberty, and puts on the bonds of Civil Society is by agreeing with other Men to join and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it.”

–John Locke (STG ch. IV, §95)

The views of writers who identify their positions as libertarian can differ rather widely in their details, so I will begin by specifying just what it is that I will mean when I use the term. My usage should be fairly consistent with the majority of libertarian views, and is specifically designed to engage with certain established philosophical libertarian accounts including (though hardly limited to) Robert Nozick’s *Anarchy, State, and Utopia* and Jan Narveson’s *The Libertarian Idea.* This is not an artificial or “straw man” libertarian view; the prin-

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1 Please also note that in my main argument I am not going to be engaging with the “left libertarian” views of philosophers such as Michael Otsuka or Hillel Steiner. I will address the left libertarian position in chapter 6, but as an alternative to the classical libertarian view, not as a version of it. My use of the term ‘libertarian’ should in general be understood as referring to “right libertarian” views exclusively.
cles I identify as libertarian are represented in influential literature in the mainstream of contemporary libertarian thought.

Still, the following remarks are intended more to clarify my use of the term than to make claims about what all libertarians think, if such a thing could even be coherently attempted. No doubt there are those who identify as libertarian but do not adopt precisely the claims I discuss below. I can only say that I will be less engaged with them, and that I am confident that the vast majority of libertarian thinkers do in fact make the claims I describe. Put another way: the kind of thinker that I shall refer to as “libertarian” is the kind that makes some sort of claims that at least bear a very close “family resemblance”, in a Wittgensteinian sense, to the two kinds of claims I will describe.

The first kind are about the permissibility of associations, and I will treat them as variations on what I call the

**Association Principle (AP):** You have a strict right to engage in whatever sort of enterprises, associations, contracts, etc. you like on a voluntary basis. In particular, you may leave any such arrangement at any time, as long as you do not have an outstanding debt or unfulfilled obligation that you agreed to at some point during the formation or duration of the arrangement. Stated more fully:

Every adult person with unimpaired faculties of reason of has the right to freely choose which associations, contracts or other binding arrangements she engages in. Every such choice is “strictly” protected in the sense that it creates strict, all-things-considered duties of non-interference: no institution, individual, or group may permissibly compel her engagement in a particular arrangement, or prevent her engagement in a particular arrangement. The right to freedom of associations and arrangements is not merely promoted or maximized, and is
prior to any rights and obligations arising from arrangements. It therefore constrains what may be part of the terms of a valid arrangement. An institution, individual or group may act to compel her participation in an arrangement she has previously engaged in only in order to protect the rights of other members of the arrangement in a case where her withdrawal from it would violate them.

The second kind of claims are about the relationship between labor and future rights in property, or the

**Property Principle (PP):** You have rights of property that strictly preclude non-voluntary redistribution. Or, more fully stated: every adult person with unimpaired faculties of reason has the right to freely choose how her private property is to be used, and under what terms it might be transferred. Such rights imply strict, all-things-considered duties of non-interference, including a duty not to levy coercively enforced taxes, or otherwise regulate, for the sake of redistributing property holdings.

Elaborations of PP often begin with some kind claim about how self-ownership, autonomy, or some other grounding concept connects labor to property rights, and go on to explain why those rights preclude redistribution. Usually this includes extensive rights to control the products of your labor and enterprise, especially those from the associative arrangements discussed above. The property principle has historically been regarded as the most distinctive central or foundational libertarian principles. The seminal and for many most canonical version of the property principle comes from Locke:
“Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.” (STG ch. V, §27)

Yet we will see that further elaboration of this principle of just acquisitions, and of the particular list of rights it is thought to ground, is somewhat more complex and contentious than the libertarian sometimes supposes. Contemporary minarchist libertarians tend to avoid giving explicit lists of just what kinds of control of property are entailed by mixing it with your labor, receiving it in a just transaction, or the like. Nozick, for example, is disappointingly vague on this point, and while Narveson aptly characterizes the general notion of A’s property rights in x as “A has the right to determine the disposition of x”, he allows that the details admit of endless variation.\(^2\) I will presume that the minarchists with whom I am engage mean to lean on the common received practices with regard to property that can be observed in Europe and the United States, that is, in the economies and cultures that form the background for discussions of property in the social contract tradition. In particular, I will assume that the default version of PP includes the right to collect rents on temporary uses of one’s property, the right to make bequests of one's property, and the right to receive bequests as though they have the same force as a just transaction with a living individual.

In all that follows, I will assume that any view that is recognizable as libertarian makes a claim that is essentially a restatement of the association principle, and a claim that is a restatement of the property principle (often with some detailed elaboration and enumeration of specific rights in property). I also take this to be a pretty straightforward assumption. Yet each of these kinds of claims requires some further discussion.

\(^2\)See Narveson (1988).
The first category of claim aims to establish that we have a right to at any time enter into cooperative enterprise, economic exchange, public affiliation, or other forms of shared activity with whatever collections of people we choose. This kind of claim will also imply that we cannot justly be coerced to engage in these shared activities, either as a very plausible secondary point, or as a direct implication of the main claim and the obvious fact that we have limited time and resources. If I coerce you to commit forty hours of your labor this week to a project with me, I infringe on your right to voluntarily commit that labor to a project with Sara, with whom you would prefer to work during that time. I may, of course, also be violating your rights in other ways as well.

The association principle, for the libertarian, extends all the way up to the level of the state. The state is simply conceived of as the socioeconomic arrangement of the most maximal scope in extent and authority, particularly where the use of force is concerned. Locke, for example, does not exempt the state from the requirement that we must voluntarily accede to participation in it; rather, he seeks to demonstrate that we implicitly already have. I will follow the libertarian in considering contracts to be a form of arrangement that is protected by AP, and thinking of the social contract as a special case of this very general concept. The question then arises as to what obligations our implicit consent to the social contract can reasonably be thought to entail.

AP is of central concern to this discussion because one intuitive response to the splitting scenarios described in the last chapter, and the proliferation problems they engender, might be to simply prevent them by fiat. That is, it would be tempting to simply say that dissatisfied citizens are not allowed to leave, or that they have to pay a prohibitive exit fee, perhaps on the grounds that the damage they do to the arrangement constitutes a negative
externality, a harm to their fellow citizens. The libertarian will be among the first and most emphatic in pointing out that this is a violation of very basic rights. This is one of the reasons why libertarianism is particularly vulnerable to proliferation problems, so we will want to examine the association principle in some detail.

4.1.1 General limitations on contracts

The libertarian thinks of the social contract as a specific application of the general concept of a contract. There are some limits on what a valid contract can demand, and the social contract is no different. We cannot sell ourselves into slavery, because no contract that abrogates basic rights to self-determination is valid (hence, such rights are often described as “inalienable”). A less dramatic implication of the same general principle is that all contracts must be limited in at least two of three senses. The first, and usually simplest, sense is that of a natural limit: a span of time that must pass, a condition that must be met, etc. When this limiting circumstance is reached, the contract is fulfilled, exhausted, voided. This kind of limit is not a necessary feature of a just contract; some contracts operate in perpetuity. But if a contract is not limited in this first sense, the libertarian must demand that it be limited in the second.

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3Provisions against things like slavery are sometimes built into specific versions of AP, but they need not be, because they can generally be derived through an appeal to common legal understanding of what makes an enforceable contract. Consider this example from Rothbard: “Suppose that Smith makes the following agreement with the Jones Corporation: Smith, for the rest of his life, will obey all orders, under whatever conditions, that the Jones Corporation wishes to lay down. Now, in libertarian theory there is nothing to prevent Smith from making this agreement, and from serving the Jones Corporation and from obeying the latter’s orders indefinitely. The problem comes when, at some later date, Smith changes his mind and decides to leave. Shall he be held to his former voluntary promise? Our contention—and one that is fortunately upheld under present law—is that Smith’s promise was not a valid (i.e., not an enforceable) contract. There is no transfer of title in Smith’s agreement, because Smith’s control over his own body and will are inalienable. Since that control cannot be alienated, the agreement was not a valid contract, and therefore should not be enforceable. Smith’s agreement was a mere promise, which it might be held he is morally obligated to keep, but which should not be legally obligatory.” (Rothbard, 1982, pp. 135-136)
The second sense of a limit is a set of specific consequences for voluntary dissolution of some or all of the remaining terms of a contract. On the one hand, contracts are not “come what may” agreements, and it is not uncommon that, for whatever reason, one or both parties should need or want to revisit terms or even chuck the whole arrangement. On the other hand, contracts are useless unless they have some binding force, so the conditions under which a contract may be altered or dissolved should be restricted and clearly articulated. In fact, in contemporary legal practice, it may be reasonably claimed that contract attorneys devote the majority of their time and effort to establishing how and when a contract may be renegotiated, and precisely what will happen if one party is found to be in breach. If one cannot reasonably fulfill one’s obligations under some contract, it is often prudent to inform the other party. This indicates that the breach is one of incapacity, not bad faith, and that one accepts the specified consequences of failing to hold up one end of the deal.

A valid contract must include either a natural end point or a restricted set of consequences for breach. A contract that remained in effect in perpetuity and was enforceable at any cost would necessarily endanger some of the rights the libertarian sees as inviolate. If I have contracted to provide you with an apple a day, every day for all time (or at least as long as we both shall live), and I become unable to obtain more apples, there must be some bound to the consequences I suffer. The state (or whatever authority enforces the contract) is surely not entitled to show up at my door every day for the rest of my life and threaten me with force unless I fulfill my obligation. This would make me a “slave to the apple” (more precisely, though less poetically, a slave to the task of apple delivery). If apples have become very hard to obtain, this necessitate such efforts on my part that I would not longer retain my basic rights over my own labor and resources. Thus, all contracts must include some limited conditions of termination, whether the termination is based on a natural circumstance or a voluntary piece of practical reasoning about consequences.
The third sense in which contracts must be limited is a restriction on the scope or the original terms of a contract. I may only contract with you for some enumerated (or at least sufficiently well described) collection of goods and services. I cannot lease a comprehensive command of you and your rights and possessions, even for a limited time. Moreover, there are certain specific parts of you, such as parts of your body, that I cannot legitimately contract to purchase at all. Perhaps I can lease them as a collection, in the forms of your labor, but even then I must specify what kind of labor I am purchasing (as well as for how long). All contracts are limited in this third sense.

When we look at specific ways in which libertarian accounts apply these intuitive limits on contractual obligations to an understanding of the social contract, we can see that discussion of the relationship between individuals and the state has improved as our theoretical picture of contracts has improved. Locke’s account of the obligation individuals have to the government is curiously bifurcated, for example, and raises special problems. On the one hand, he is clear that consent is a requirement of civic obligation and the rights of a government to enforce participation in political life. On the other hand, his account of the impact of express consent is surprisingly strict, and in fact so strongly binding that contemporary libertarians would surely reject it:

“...Whereas he, that has once, by actual Agreement, and any express Declaration, given his Consent to be of any Commonweal, is perpetually and indispensably obliged to be and remain unalterably a Subject to it, and can never be again in the liberty of the state of Nature; unless, by any Calamity, the Government, he was under, comes to be dissolved; or else by some publick Act cuts him off from being any longer a Member of it.”

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4 STG chapter VIII §95.
5 ibid. ch. XIII, §121.
This form of contract would surely be unacceptable to the libertarian (and in fact to many other kinds of liberal thinkers as well) in any socioeconomic context, for all of the reasons discussed above, and there is no reason why the social contract should bind any agent without any exit conditions other than discretionary and public release by the government, or dissolution of that government. But this line of thought about membership in a commonwealth probably need not trouble us unduly, as contemporary democratic nations largely operate on the assumption of tacit consent to membership, for which Locke lists entirely different conditions.

Locke ties being a tacit subject of a government to enjoying its services and protections. Because the protections most distinctive to his account are those for private property, the most persistent factor binding an individual to a particular governmental authority is such property the individual owns as falls under the jurisdiction of that government. Divesting herself of that property, then, is sufficient to release her from the role of a subject of the state, dissolving both her obligations to it and its authority over her in one stroke. We saw in the previous chapter that some forms of leaving an arrangement will fail to conform to this straightforward Lockean account, but it is notable as a theoretical and historical precedent for how AP is thought to impact concrete economic and political practices. The property rights described by PP are among the most fundamental of libertarian rights, and so the exact articulation of PP will have substantial implications for AP in any case where leaving an arrangement also means giving up the protection for libertarian rights that arrangement provides.

This includes certain limitations on PP as well. Any socioeconomic arrangement will have to respect the control a member exercises over her property, but that does not mean protecting that value of that property. Suppose, for example, that August and Julian are both members of an arrangement, and August is dissatisfied enough to leave, but Julian is not. By AP,
August has a strictly protected right to leave. But what if his leaving imposes a severe externality on Julian? Perhaps August simply chooses to abandon a property filled with hazardous waste, bordering on Julian’s farm. This is entirely acceptable, in libertarian terms. Similarly, the fact that a group of dissatisfied members leaving an arrangement *en masse* will make others less satisfied with it, and perhaps even reduce the territorial claims the arrangement can make, is not grounds for abridging AP and preventing the dissatisfied group from emigrating or seceding.

These limits give us a way of understanding how even a libertarian who accepts Locke’s claim that we implicitly consent to an arrangement for governance will still claim that we are free to leave such an arrangement. While a contract of citizenship does not generally have a limited duration or explicit condition for termination, it surely must include an account of the terms under which it can be dissolved and the limits to the demands it can place. Locke in fact explicitly discusses how individuals might be entitled to annul their contract with the state, but contemporary libertarian have been less explicit on this point. In the previous chapter, I suggested that a consistent regard for both AP and PP will entail rights to secession, or to a renegotiation of the social contract so comprehensive that it may be regarded as a kind of revolution, and we can now see more fully how this suggestion is grounded in basic libertarian commitments.

### 4.1.2 Non-exploitation, nonaggression, and the duties of the individual

Even on the libertarian view, the individual does not have a completely unrestricted right to unilaterally terminate a contract. If I have contracted with you to provide me with regular shipments of apples, and paid you in advance, you cannot simply indicate that you wish
to leave the contract because it no longer meets your needs. Even returning my payment may not release you from your obligation, for a number of reasons (I may have taken on obligations to resell those apples that would in turn be costly to break, and at the least, you will have effectively borrowed money from me interest-free in a manner that I have not agreed to). The general idea here is that you are violating my rights if you exploit me by forming a contract and then breaking it without following through, regardless of your reasons. You might be willing to pay some (hopefully pre-arranged) price to get out of the contract, or you might appeal to me to voluntarily release you from it. These are non-exploitative measures. But you cannot justly leave without either fulfilling your end of the bargain or obtaining my consent.

The social contract shares this feature. A socioeconomic arrangement, generally a state or municipal authority, provides certain services that are (to a great extent) paid for with annual taxes. If an member of an arrangement uses the services the arrangement provides but does not pay into the fund for their maintenance, this constitutes exploitation of the other members of the arrangement who are contributing. An individual who does this continually is usually referred to as a “free rider”, but we are concerned more with those who leave an arrangement without having paid for the value they have received, and this might be seen as more comparable to “dining and dashing” (i.e. leaving without paying) at a restaurant.

Yet if we take accepting government services as analogous to dining, it will seem difficult to ascertain when leaving a social contract could be non-exploitative. Many of the services associated with a contemporary socioeconomic arrangement such as a state are ubiquitous and only implicitly accepted (roads, national defense, emergency response services, etc.). The costs and choices involved in providing such services are frequently resented; an argument can

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6Tariffs, fines, and other sources of revenue are of less relevance to our present concerns because they are collected on a transactional basis and do not involve extended usage of services paid for by periodic charges.
be made that in some cases they are even involuntarily received.\(^7\) No-one reaches adulthood without having dined extensively, so to speak, at the state’s table.

Fortunately, we can make certain useful distinctions even within the scope of the analogy. If one orders food at a restaurant, this not only implies that one will pay for it, but places one in the position of having initiating a transaction with a roughly understood contractual form. But there are many contexts in which one is given food, or even elects to take food, where no contract is implied. One might be too young to have agency in contracts, or have no real choice but to accept as a matter of survival, or be completely uninformed about the expectations or obligations that accepting supposedly entails. And for similar reasons, the social contract will not necessarily entail standing debts or risks of violating the requirement of non-exploitation. The “casino libertarianism” thought experiment featured in the previous chapter targets similar considerations. The fact that people are born into the casino means that they have \textit{at most} implicitly accepted its terms, and I have argued that even this implicit acceptance would suspect in libertarian arrangements, where the emergence profound dissatisfaction is only a matter of time and fairly easy to predict for many individuals.

The association principle does not entail the right to engage in absolutely any activity as long as it is performed as a group. In particular, any activities that specifically impinge upon the rights of others are illegitimate. This isn’t really a point that is specific to AP, but rather the application of a certain aspect of the libertarian concept of a right to the particular domain of government policy.

\(^7\)Such arguments in fact are frequently made, not only as general points in libertarian literature, but in specific legal claims by individuals who have received government services they later regarded as an unwanted intrusion or expense. The broad observation that we get no opportunity to deny our government consent for its programs goes back at least as far as Hume: “My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any. I only pretend, that it has very seldom had place in any degree, and never almost in its full extent; and that, therefore, some other foundation of government must also be admitted.” [Hume (1748)] Hume notes in the same work that a defense of implicit consent is found as early as Plato’s \textit{Crito}, but seems unimpressed with the argument Socrates gives therein.
of collective action. There can be no libertarian right to violate the rights of others, so there can be no right to form or join a group for that purpose. The traditional libertarian will focus on the illegitimacy of any group explicitly formed for the purpose of coercing or defrauding others, but we can imagine other intrinsically objectionable associations that the libertarian will recognize as undeserving of protection. Any group whose explicit purpose, or clearly predictable secondary of said purpose, is to cause harm to others, is not to be protected even if the threatened harm is not a coercive means to some deliberate end. Any group whose activities are sure to expose others to an externality that violates their rights will similarly be outside the protections of this first libertarian principle. It is also important to recognize, however, that simply because a group’s activities produce (or are highly likely to produce) harms, this is not sufficient to abridge that group’s right to associate. A group devoted to a risky sport, for example, does not necessarily violate the rights of anyone external to the group, despite creating a risk of harm to the members of the group. The participation (and perhaps subsequent abstention) of each individual member thus remains a protected individual choice; no member may be forcibly obliged to participate or prevented from doing so.

4.1.3 A Complex Association: Libertarians and John Stuart Mill

My central concern in articulating the association principle is to broadly clarify a number of points that I believe most if not all contemporary libertarians accept, or even insist on. While I have presented some specific claims and arguments from within the libertarian literature, these are intended to serve as representative examples rather than a broad survey either of recent work or the philosophical canon. But a couple of the most important aspects of the

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8Libertarians will agree that deliberately causing someone else harm violates their rights, but they give somewhat distinct arguments as to why that is, just what kind of right is being violated. But this issue is really outside the scope of our present concerns.
first libertarian claim are specifically and perspicuously treated by a thinker who is seminal to the libertarian tradition without being representative of it. This is J.S. Mill, whose ideas about freedom of association, along with other principles about the role of personal autonomy in political life, have had a tremendous effect on libertarian thought. Mill cannot, in a general sense, plausibly be called a libertarian. His sweeping proposals for social reform, including broad welfare programs, put him entirely at odds with minarchist principles. Even without those specific commitments, his central role in the rise of Utilitarianism would put him at odds with Nozick or Narveson or Mack. Yet many of the best and most broadly deployed arguments that the first duty of the state is to protect the autonomy of the individual come straight from his 1859 essay On Liberty.

Mill regards “freedom to unite for any purpose not involving harm to others” and various closely related liberties to be preconditions for the basic autonomy and self-direction of any person.\(^9\) This is particularly important because it ties the first libertarian principle to the same fundamental ground that we will shortly see underlies the second libertarian principle: the belief that every person has an intrinsic self-command which natural law forbids other persons, as individuals or as representatives of institutions, groups or contracts, from violating. This self-command does not license action that results in direct harm to others, and Mill’s detailed discussion of what represents harm, and how direct it need be for the state to be authorized to intervene, is justly famous. But the very purpose of establishing the boundaries of harm is to emphasize that whatever projects are outside those boundaries, whatever life goals and pursuit of personal values can be embarked on without violating the rights of others, are not only permitted but protected by the most basic of natural laws.

\(^9\) Mill (1859) ch I, p. 12.
4.2 Autonomy and Property

The second libertarian claim, the PP, has to do with the right to control the disposition of one’s own property, a right usually derived from a fundamental claim about self-command or self-ownership. This is often thought to be the central feature of a traditional libertarian view, though in fact it is more fully understood as derivative of self-command or self-ownership in the same manner as the association principle. Certainly virtually every contemporary libertarian states a version of the property principle explicitly at some point.\(^\text{10}\) Articulating and grounding this principle must begin with a claim such as “All people have a strict natural right to use and otherwise control those goods which are the product of their own labor.” But the details and features of this right might vary between accounts, and we will see that the differences matter a great deal.

The association principle prevents the libertarian from trying to control splitting scenarios using the power of the state. Yet the property principle is perhaps even more central to our present concerns; it requires the libertarian to actively court splitting scenarios and proliferation problems. In order to illustrate this more fully, I will give special attention to three particular features of PP, almost always specified in libertarian accounts of property. We have already seen outlines of some of the entailments of these three features, and we’ll return to them in the next chapter in order to take note of some especially pointed consequences.

\(^{10}\)See e.g. Narveson (1988, pp. 63-68, p. 175), Mack (1990, p. 519). Rothbard makes the even stronger claim that *all* rights are reducible to property rights\[(Rothbard, 1982, pp. 135-136)\], while Nozick develops a view as to how the entitlement of person to their property may be established in ASU pp. 150-153, and then emphasizes that institutions are just inasmuch as they serve to protect the property to which individuals are so entitled.
4.2.1 Justice in initial acquisitions

The libertarian account of property, which in many aspects is still inherited almost directly from Locke, focuses largely on transactional justice. That is, property is assumed to be justly held as long as it never changed hands unjustly, e.g., via theft or under coercive threat of harm.\(^\text{11}\) Of course, all property has to come from somewhere originally, so in order for this transaction-based view to be adequate, it has to begin with an account of justice in initial acquisitions; that is, we require an account of how the very first owner of some piece of property came to have a right to it, so that we know why that owner was in a position to participate in just transactions regarding it. The libertarian supposes, fairly intuitively, that property that owes its existence almost entirely to the labor of a single individual therefore belongs to that individual. It isn’t quite clear how often this is true in a complex economy, but libertarians tend to take individual creation and ownership as their basic model of acquisition in the absence of exchange, and we will take on that commitment for now in order to see what develops from it \textit{ex hypothesi}. Eventually, of course, we will need some further explanation for property that isn’t really the result of anyone’s labor, such as unimproved land or unprocessed minerals, as well as for the portion of the value of developed property that was original to it, the portion not dependent on any development the property underwent by way of human effort.

Locke (or anyone who follows his account) asserts that property of natural origin begins in a state of common ownership, under which every member of humankind has some share in it.\(^\text{12}\) Justly assuming a right to private holding of such property requires the celebrated mixing of it with one’s labor so that the products of labor, to which one has a natural right, are inseparably entangled with it and one acquires rights in it on the basis of that

\(^{11}\) Nozick has given a particularly developed defense of this picture of justice in holdings, as mentioned \textit{ibid}.  
\(^{12}\) STG ch. V §25.
entanglement.\textsuperscript{13} Notably, the rights acquired in this fashion are in effect unrestricted and continue in perpetuity, just as if the entire value of the property were derived from one’s labor, instead of only part. Locke places some limits on the extent and duration of property rights from initial acquisitions, as we shall see shortly, but as we shall also see, those limits are fairly easily manipulated or circumvented altogether by the barest measures of economic forethought.

Still, it is clear that the potential for abuse of this notion of entitlement to land and natural resources does not escape Locke’s attention. He discusses two provisos that limit the scope of what acquisitions are to be considered just. The first proviso is generally ignored by contemporary readers; it simply revokes entitlement to any goods that an agent will be unable to use before they can be expected to spoil or otherwise become unusable (the “spoilage limitation”, following Macpherson\textsuperscript{14}). The second proviso is considered by most commentators to present the more relevant limitation.\textsuperscript{15} It requires that in order to justly assume ownership of goods that have heretofore gone unclaimed, an agent leave “enough, and as good”\textsuperscript{16} for whoever else might need some part of that resource (the “sufficiency limitation”, again following Macpherson\textsuperscript{17}). In Locke’s own time this probably seemed like a fully adequate measure for heading off a malicious or simply negligent acquisitiveness. The proviso as given negates the claims of any who might simply try to accumulate rights to all available land and other resources in order to develop a monopoly interest based in the co-option of common property. But the second proviso, and in fact Locke’s entire account of justice in initial acquisitions, allows for

\textsuperscript{13}\textit{ibid.} ch. V §27.
\textsuperscript{14}McPherson (1962, p. 204).
\textsuperscript{15}One notable exception is Waldron (1979), wherein Jeremy Waldron argues that the spoilage limitation is not actually a strict restriction on acquisition in the same manner as the spoilage limitation, but a historical observation that Locke himself considers to have been obsoleted by the widespread adoption of money. We’ll consider Waldron’s argument in more detail in chapter 6.
\textsuperscript{16}STG ch. V, §33.
\textsuperscript{17}McPherson (1962, p. 211).
some potentially undesirable effects if it is understood to simply initiate unrestricted rights in certain packages of property.

One of these concerns was first examined by Nozick, under the heading of the “zipper problem”, with the aim of demonstrating that the sufficiency limitation must not be read too strictly:

“Consider the first person Z for whom there is not enough and as good left to appropriate. The last person Y to appropriate left Z without his previous liberty to act on an object, and so worsened Z’s situation. So Y’s appropriation is not allowed under Locke’s proviso. Therefore the next to last person X to appropriate left Y in a worse position, for X’s act ended permissible appropriation. Therefore X’s appropriation wasn’t permissible. But then the appropriator two from last, W, ended permissible appropriation and so, since it worsened X’s position, W’s appropriation wasn’t permissible. And so on back to the first person A to appropriate a permanent property right.”

Nozick supposes that the proper response to this problem is to conclude that we cannot afford to interpret the restriction in such a rigid way. But in fact he cannot dismiss so easily the concern he has raised. The zipper problem is an unavoidable consequence of the sufficiency limitation in a world of finite resources, if either of two conditions is met. The first of these, the one that gives rise to the simplest case of the zipper problem, occurs when the human population continues to grow until all finite durable resources have been parceled out. This is less pressing for our purposes, however, than the second case, which obtains when the property rights entailed by once mixing land, etc. with labor continue in perpetuity, allowing certain people (often through inheritance or other forms of gift) to aggregate land that has satisfied the sufficiency limitation at some point in the past, even if that condition is no longer satisfied. Eventually all land will aggregate to some finite group of people and

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18ASU p. 176.
others will not have enough and as good available. The limitation will be violated, but this will not seem to be an injustice under the libertarian account as we have understood it thus far.¹⁹

Locke does not believe that either of these conditions were plausible in the absence of money, and his argument to that effect seems reasonably persuasive. He believes that the natural limits on what human labor can enrich and maintain would, in the absence of a durable medium for aggregating value, keep economic ambitions in check.²⁰ Yet while he does seem to understand that money alters the balance of these capacities and resources, he gives no clear account of how to resolve the zipper problem, the problem of recursive prohibition on seizing the last piece of any finite resource. In the next section, I will consider why rents make a strict understanding of the second proviso necessary if we are to take seriously the libertarian claim to value the connection between productivity and reward. In the next chapter, I will have a good deal to say about why the zipper problem is inevitable, under most conventional interpretations of the second libertarian claim. But we have already seen a scenario where this problem would be very pressing indeed: the libertarian casino. Suppose that the libertarian were to claim that no-one can actually leave the casino, though they do have a right under AP to do so. Perhaps transaction cost for leaving are so high that no-one can possibly pay them, or perhaps there are no alternatives, and the conventional wisdom is that life outside of the casino is solitary, poor, nasty, brutish, and short. Under such circumstances, the finite nature of the casino’s resources would mean that libertarian justice in initial acquisitions would be impossible. The sufficiency limitation would be entirely unsatisfiable, in light of the zipper problem. Yet both Locke and Nozick leave the problem essentially unresolved.

¹⁹This will also be a problem for resources that are renewable, but renew more slowly than the population demanding them grows. If the resources depreciate or are consumed, this of course exacerbates the problem. ²⁰STG ch. V §36.
4.2.2 Rents, rent-seeking, and unproductive income

Unrestricted rights in property also raise concerns about the economic role of income that is not tied to any productivity. There are at least two reasons why such income is important to the present discussion. First, there is the motivational role that libertarian property rights are supposed to play in generating economic productivity. Libertarian concerns for rights are frequently joined to support for *laissez faire* theories of how to promote economic growth with the notion that individuals left alone to pursue their self-interest will seek to be very productive because that is the way to achieve the greatest rewards. This would seem to imply that forms of income that are *not* tied to any economic productivity are not to be protected (and indeed libertarians do tend to speak this way when objecting to social welfare programs). Yet we will see in the next chapter that the most common versions of the property principle seem to strongly protect income requiring no productivity at all.

A second, even more compelling reason to worry about these forms of income, and in particular economic rents, is that they drive levels of economic inequality upward at extraordinary rates, both in terms of aggregating disparity in holdings and in terms of increasing disparities in income. We can consider a very simple case: Individual A is highly productive in economic cycle 1, and comes to acquire durable property. Individual B is not particularly productive in this cycle (why this is does not matter for our purposes; it might be for an unchosen reason, such as youth or ill luck, or it may be a lack of effort). Now suppose that individual B requires use of the property owned by A in economic cycles 2 through 100. Further suppose that individual B is highly productive in these cycles, while A is not. A can demand a substantive price, a rent, from B, and enjoy a significant income for all future cycles without contributing any productive effort to the A/B economy whatsoever. Now it appears that A’s productivity in economic cycle 1 is far more valuable than B’s productivity in any subsequent cycle, because it continues to yield income arbitrarily far into the future.
The allocation of aggregate income from a single cycle of economic activity seems to depend heavily on how early in the history of a stable civilization it occurred. This is especially relevant if we understand a “cycle” as relatively short, perhaps one fiscal year in the lifetime of an individual. It is also relevant if we consider a longer cycle, such as a generation, as long as we are also taking inheritance into account, or if we allow for deathless economic actors such as corporations.

It might be argued that B will surely save some resources and seek to acquire durable resources of her own that secure her future productivity. But if the pool of suitable resources is finite, this may not be possible. We can in fact regard A as an entire class of people who did very well in early cycles of production. They may well come to control all available land and resources suitable for some particular purpose, and then engage in rent-seeking behaviors such as price collusion. Nothing yet specified as part of our two libertarian principles forbids this–indeed, such behaviors may even be protected exercises of control over private property. Nor can B necessarily switch to a different industry for which durable resources are still available at reasonable market prices. Even if she has the time, talent, etc. to become proficient at some other enterprise, groups C, D, and E may have occupied the resources needed for other kinds of projects. Those groups, like A, may simply have been successful in early rounds, acquired durable property, and subsequently decided to retire and live off of economic rents.

This is a variation on a sort of concern the classical economists were well-acquainted with. Ricardo’s justly famous Law of Rent arose in the context of a debate with Malthus about whether the supply of labor or the capacity of some factor of production would have the most overwhelming impact on the equilibrium scale of wages. We cannot assume, as Ricardo did, that some land (however undesirable) will always be available on which an

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21 Ricardo (1891, ch. XXXII).
entrepreneur could labor. This means that we must find a way to model the relationship between rents and profits that does not assume the Law of Rent or some closely related principle. Alternately, we could try recover the Ricardian assumption through Locke, by assuming that the sufficiency limitation has been strictly observed and some usable natural resources are always left to be claimed by the industrious. Either way, we will need a version of the property principle that does not protect rent-seeking and does not entail severe injustices for future generations. I will offer a more detailed account in chapter 5 of the consequences of unrestricted titles to rent-yielding properties, and in chapter 6, I will demonstrate how the property principle must be structured if rent-seeking and the unlimited aggregation of resources to “early round” winners (or their beneficiaries) is to be avoided.

4.2.3 Death and inheritance

The structural problems generated by rents and the weighting of early rounds of activity are exacerbated if death does not break the continuity of resource accumulation. The social practice of the last will and testament implies two things about how property principle derived claims are to be understood: first, that an agent’s rights in property extend beyond death; second, that a will (as the name implies) functions as a method of allowing the agent control of her property after she is no longer living. As self-governance—autonomy—is often taken to be the ground of both the right to property and the capacity for control over one’s life, this amount to a strong claim that autonomy extends beyond the end of one’s lifespan.

These assumptions about death and inheritance may be somewhat tenuous if we examine this foundational notion of self-governance rigorously. It is difficult to see how we can suppose someone who is no longer living to be capable of occupying either the role of subject or of object in a relation of self-governance. Such a one, if we can even extend to her the
metaphysical status needed to predicate things of her, does not intuitively seem to be capable of either governing or being governed. No doubt this will be a contentious issue, however, and even settling it by divesting the dead of rights would not settle the matter. Gifts, or legal and financial instruments such as living trusts, would still allow for intergenerational transfers that would regularly keep property structured as ongoing familial accretion. I will therefore not be making any particular argument about what constitutes an intuitive interpretation of property principle derived claims. Instead, I will focus on demonstrating what consequences, as a theoretical matter, certain interpretations would carry. In chapter 5, we will see that preserving postmortem rights in property, along with unrestricted rents and permanent effect deriving from initial or early acquisitions, collectively guarantee that inequality will increase without bound. This might give even the libertarian good reason to reconsider interpreting the property principle as requiring strong protection for these aspects of property rights.

4.3 Important Shared Features of the Two Claims

Before we leave our discussion of these basic libertarian claims, it will be important to pin down certain aspects of what a libertarian right entails and how such rights are structured. The libertarian is not only concerned with what one has a right to, but with a distinctive account of what it is that rights permit and require as normative principles for political institutions. The following features are shared by both the association principle and the property principle (and indeed by all minarchist libertarian statements of rights). This means that they will constrain the measures the libertarian may take in order to address the concerns I will raise.
4.3.1 Rights are to be strictly protected, not maximized

It would be correct to say that libertarian views are not consequentialist, but such a characterization is hardly conceptually complete, nor is it strong enough. The libertarians see a right as a kind of parameter that strictly circumscribes the set of permissible actions for individuals in any given situation, and the possible configurations of just institutions. Rights are not goods to be maximized, but rather boundaries to be scrupulously observed. I will be modeling them as such, and this will be essential to my illustration of what a tight bind the libertarian is really in. For my purposes, the specific justification and full explanation of why rights have this strict nature is inessential. But in order to clarify and emphasize the role and importance for the libertarian picture of this particular concept of a right, I offer brief versions of some of the leading accounts.

Nozick’s side constraints

Robert Nozick argues particularly forcefully against consequentialism as a way of understanding the nature of rights. He begins from the basic Kantian demand that all persons be treated as ends in themselves rather than as mere means to any goal, and stresses that establishing some sort of common pool of rights that could be maximized is not sufficient to meet this demand. Rather, the inviolability of each person is the ground of libertarian rights as Nozick understands them. He refers to this as a “side constraint”; every institution and agreement is strictly constrained by the requirement that we respect the autonomy (or other fundamental ground of moral agency and worth) of each individual. Such autonomy is incommensurable with that of any other individual, and nonexchangeable for any other end.\footnote{See ASU pp. 28-35 and 49-51.}
If Nozick is right that recognizing other people as moral agents entails affording them specifically libertarian rights, this gives both the structure and the ground of the demand for complete rigor. To enter a contract requires that one recognize the agency of the other members of the contract, and on a Kantian view, their autonomy. If a socioeconomic arrangement were to coerce them for the sake of redistribution, by enforced taxation or regulation, it would be effectively denying them that autonomy, and treating them as a means to some other end.

**Narveson’s resolution of assurance problems**

Jan Narveson is critical of Nozick’s account\(^{23}\) on the following grounds, roughly speaking: there is no intrinsic reason why being the sort of entity capable of making rights claims gives you a reason to recognize any *specific* rights claims of others, even if you recognize that they have the same general properties you do, those required for having rights. Let us suppose that autonomy is in fact the predicate that grounds both rights and the possibility of contracts of whatever kind. A person April, fully conversant with the concept of her own autonomy and the sense in which that is the general ground of her own rights-claims, and recognizing that another person Jan must have this same feature of autonomy, does not have necessarily have a reason to respect any particular set of rights-claims Jan might make. She need not, for example, implicitly regard herself as involved in a social contract with Jan. And in the absence of such a contract, or an argument from some other ground for the relevance and force of some given set of rights claims, the recognition of agency may not be sufficient to explain just what April has reason to do, or not do, with respect to Jan.

In order to fill in this gap, and explain why the specific set of rights the Lockean libertarian asserts are the correct ones, Narveson appeals to a specific sort of contractarian reading of

\(^{23}\)More accurately, he is critical of Nozick’s view and at least two somewhat similar views, one advanced by Lawrence Haworth specifically in regards to autonomy, and one advanced by Alan Gewirth regarding the importance of consistency to the coherence of projects and values. See Narveson (1988, 167-172).
Locke. The idea is that an agent will have an incentive to respect the rights asserted by others if she herself can be assured of receiving protection for the set of rights she most values. Because different agents are sure to have different values and projects, the contract that offers rights all people can accept is the one that leaves every individual’s range of activities as open as possible. It may be plausibly claimed that the maximal range of activity that can be offered to and protected for every individual is that range of activity that each can pursue if assured minimal interference with their person and their property. Accepting a social contract, then, is a matter of rationally maximizing one’s own enjoyment of rights, not of recognizing the autonomy of others. Narveson then goes on to develop further libertarian claims of a familiar kind, focused on strong protections for private property rights. The point for our purposes is that there is more than one kind of ground for the association principle and the property principle.

This form of libertarian argument may not initially seem to establish the same kind of uncompromising structure for rights claims that Nozick’s side constraints can ground. But in fact the required protections for liberties are equally strict, for different reasons. On Narveson’s view, the task is to solve an assurance problem. Why restrict your own activities, for example by respecting the rights claims of others, when this may make you vulnerable to exploitation? One might do this in order to guarantee the free exercise of whatever profile of activity you have left, which for Narveson means whatever activity can be pursued through the use of your own labor and property. But this guarantee must be absolute. It will not suffice to say “Agree to have your liberties curtailed, and we will do our best to maximize the liberties you have left.”

Narveson strongly emphasizes that every individual must be given good reasons to participate in the social contract, and this means that if an alternative formulation of that contract offered by a competing arrangement seems to satisfy Lockean rights equally well while also
providing superior satisfaction of other desiderata, individuals must have freedom to switch
to that better deal. Thus we can get a variation of the association principle out of Narveson’s
framework. And it is of course very easy to see how his view requires the property principle,
which he sees as the only possible ground of free and individually chosen pursuit of projects
and values. If we cannot anticipate with confidence that we will be able to retain the fruits of
our productive efforts, we cannot really be said to be free to pursue them. More concretely: if
I work to produce something, knowing that I cannot protect it and you are able and inclined
to take it, I am really working for you and not myself. And this is true even if you insist
that you are no slaver and I insist that I am no slave.

Mack’s self-propriety

Many libertarian authors focus on grounding rights claims in self-ownership. Eric Mack,
for example, considers the distinctive aspect of Locke’s account of natural rights to be that
“private property rights are grounded in—in virtue of arising through the exercise of—each
person’s right to his own labor, which itself is an aspect of each individual’s self-propriety.”
24 This suggests that the Lockean need look no farther than self-propriety to establish at least
prima facie claims to the majority of the rights she cares about. Are these claims sufficient
for a demand of strict protections, similar to those insisted on in other libertarian views? Not
quite, but the further piece required is relatively intuitive. The self-ownership libertarian
also claims a right to non-interference, and simply adds the interpretive assertion that the
substance of non-interference lies largely in respect for private property, to the exclusion of
non-voluntary redistribution. For our purposes, it doesn’t matter so much whether property
rights are derived from autonomy, or whether autonomy is simply supposed to consist of
unhindered exercise of rights in property. Either form of explanation yields similar demands

that rights in property be strictly protected out of recognition for the inviolable moral status of the autonomous individual.

Though the details may vary somewhat, this general structure is extremely important in light of the great popularity of utilitarian and other consequentialist views. The libertarian position is largely characterized by the denial that any collective good can constitute grounds for abridging individual rights (absent, of course, the consent of the rights-holder). Nozick rules out “patterned distributional principles”; Mack states that “rights are not reducible to or founded upon any sort of trans-individual, overall social value.”\(^{25}\) Thus neither the association principle nor the property principle may be moderated by some option to suspend them in cases where some “greater good” might be served. Indeed, this would be internally inconsistent, as each is a \textit{sine qua non} of justice for the Lockean libertarian.

\subsection*{4.3.2 Rights are lexically prior to any specific social contract}

Rights such as the association principle and the property principle are not contingent upon the establishment of a social contract. They have traditionally been expressed as “natural rights”, indicating (among other things) that they precede the existence of any institutions or formalized social relations, explicit or implicit. On some accounts, including the Lockean one, such rights impose some obligations (e.g. non-interference) on others even in the state of nature. One important corollary to his account of these rights that Locke is careful to insist on is this: each person has a right to enforce her rights, and to take such measures as practical reason recommends to make that enforcement effective.\(^{26}\) For the libertarian, the justification for the enforceability of any social contract derives primarily from this specific aspect of a natural right. A socioeconomic arrangement may include provisions that


\(^{26}\)See STG ch. II §6-13 and ch. VII §87-91, as well as virtually all of chapters XIII and IX.
authorize force against its members precisely because that is what is necessary to protect their rights in socioeconomic property.

These rights, then, do not merely prohibit specific injustices, but impose constraints on what kinds of social contracts may be considered valid. Respect for individual autonomy means that each member of an arrangement under a social contract will only participate voluntarily, as the final arbiter of her own self-interest. If she were to be prevented from freely making and revising judgments regarding how best to protect her own property, or prevented from acting accordingly, her control over it would be abridged and her rights violated. In this way, rights to freedom of association are closely connected to rights in property. And once again, it is her right to unilaterally declare a contract with an arrangement that cannot secure her rights in property null and void.

Choice thus has a kind of lexical priority: The right to accept or reject a social contract comes before any rights or duties created by the contract itself.\textsuperscript{27} The libertarian has the right to reject all social contracts as preferable to compromising either AP or PP. And if no social contract can be found that fully and reliably satisfies both, a government cannot force her to accept an arrangement on the paternalistic grounds that it is “for her own good”. I will next consider an intuitive form of concern that calls into question whether \textit{any} social contract can adequately satisfy both AP and PP in a stable, ongoing fashion. So it will be very important to keep in view just how foundational and uncompromising these structures of rights claims really are.

\textsuperscript{27}Lexical priority is a conceptual priority that need not typically (or ever) have a particular temporal ordering. For the libertarian, the social contract can create rights and responsibilities only because it is a means of protecting the lexically prior right to protect one’s self and property. The utility of the contract, and the fact that it is acceptable to its members, grounds any normative effect it may have. Even if everyone implicitly accepts some social contract by being born into it, the authority of that contract can still be undercut if it no longer seems just or effective to members as they become autonomous adults.
I will not be discussing any other libertarian rights in detail. The reason for this is simple: the argument I have presented shows that any libertarian demand that both AP and PP be strictly respected is already untenable as part of a stable socioeconomic arrangement. Put another way: observance of both the association principle and the property principle is already sufficient to produce instability in any socioeconomic arrangement. Adding protections for other liberties cannot address this difficulty (and protecting certain additional liberties might well exacerbate it). The next chapter will illustrate how even just the property principle gives the minarchist quite a bit to worry about.
Chapter 5

Unbounded Inequality

“The initial effect of political equality is a more equal distribution of wealth and power. While population is sparse, unequal distribution of wealth is due mainly to inequality of personal rights. The inequality resulting from private ownership of land shows itself only as material progress advances. Political equality does not, in itself, prevent inequality arising from private ownership of land.”

—Henry George (1884, ch. 42)

The discussion up to this point has presumed that the minimal state recommended by a minarchist libertarian necessarily exhibits economic inequality that grows without bound, and attempted to show that if this is true, it is a deep problem for the minarchist. It may seem that I could have cast my net a little wider. Doesn’t any capitalist economy, bent on growth and committed to private property rights, tend toward inequality?

It is certainly true that a capitalist economy can tend toward rising inequality even in the absence of a libertarian social contract, and as an empirical matter, many do. But I am making stronger claims regarding minarchist socioeconomic arrangements. First, I claim that they have internal commitments that necessarily promote the rapid growth of
inequality, and can therefore be analytically shown to progress steadily and rapidly toward unacceptable income disparity and overwhelming concentration of surplus goods in very few hands. Second, I claim that they systematically undermine any natural barriers that might arise to halt or meaningfully slow the progression of inequality. Third, I will suggest that certain forms of activity that the minarchist assumes to be specifically protected by the property principle in fact violate libertarian principles, and will certainly strike many people as violations of their status preferences. Capitalist arrangements may tend toward inequality, but minarchist libertarian ones are internally driven toward unacceptable inequality at an accelerated pace.

5.1 The method of analysis

5.1.1 Basic Elements

I shall be concerned with the properties of socioeconomic arrangements. Each arrangement will be represented as a set of two elements: a list\(^1\) of participants \(I = \{1, 2, 3 \ldots n\}\), and a social contract \(C\). Each member of the set of participants might have many features that could interest us, but we will begin by considering the aspects of a participant that are specific to her as an individual, independent of the arrangement she participates in, and contributors to her economic productivity. Some examples include talent, luck, (initial) wealth, effort, and judgment. I will not be concerned with which of these qualities the participant is held responsible for, and which are considered deliverances of nature (or something of the kind). That difficult question is outside the scope of this account. Instead, the aspects of an agent

\(^1\)Here I mean an ordered list in the mathematical sense, that is, an \(n\)–tuple. This list will serve a number of purposes, including providing the domain of the implicit indexing function for various other sets I will be introducing as we move forward. All of these sets will have cardinality \(n\), which is to say that each player will have one and only aggregate productive quality number, one and only one reward number, etc.
that contribute to her productivity will be bundled into a single value, designated \( q_i \), and from the set of participants \( I \) we will derive an indexed family of their respective bundles of qualities \( Q = \{q_1, q_2, q_3 \ldots q_n\} \).\(^2\)

A social contract, in my model, is a function over this indexed family of participant qualities, so in what follows I will typically be concerned with \( C(Q) \). This function returns an indexed family of packages of goods, \( R \). The members of this family are understood to represent the productive outputs associated with each participant. Under some political conceptions, this indexed family of productive outputs might then be subject to a further function that serves to redistribute goods. But virtually any version of the property principle would prohibit this, so we will not consider including a second (redistributive) function in social contracts.

I will assume that the members of \( R \) can be ordered according to magnitude to produce a list representing the distribution of goods throughout the arrangement. I will also assume that the traditional “state of nature” can be represented as a default goods function \( D \). We can now say a few things about the fundamental logic of the Lockean libertarian justification for accepting any social contract whatsoever. For \( C(Q) \) to be acceptable to some agent \( i \), under the libertarian way of thinking, that agent’s reward under the social contract \( C(Q) \) must be equal to or greater than her reward under the state of nature function with the same set of participants, that is, \( D(Q) \). Suppose that we designate our arrangement \( A \), where \( A = (I, C) \). We can build the set of participants of \( A \) that actually find it acceptable as follows: \( S = \{i \in I : r_i(C(Q)) > r_i(D(Q))\} \).

\(^2\)What I have here called “qualities” intersect substantially, though imperfectly, with other collections of attributes such as “capabilities” and “opportunities” that contractarian liberals and egalitarians have discussed in extensive and rigorous detail, often as entitlements of some kind. We can therefore see, for example, that Dworkin takes the practice of improving one’s qualities seriously, because he describes conditions under which the social contract would impose a duty on the state to help an individual do so. Cohen engages with Dworkin on this point, as well as discussing in some detail how different productive capacities impact agreements between parties to socioeconomic arrangements. In so doing, he treats such agreements as functions from productive capacities to shares in much the manner I do here. See Dworkin (1981), Cohen (1989), and especially Cohen (1995, pp. 98–105).
This simply says that for an individual \( i \) to be in the set \( S \) of satisfied members of a society, her package of goods (designated \( r_i \)) must be greater under the social contract that her society offers her than it would be in the state of nature. This value \( r_i \) is an “all things considered” or net value, that includes the level and cost of protection for the goods received. Anyone not in \( S \), as far as the libertarian is concerned, has no business continuing to participate in \( A \). This is really just a formalization of the libertarian assumption that the social contract (in my notation, \( C \)) must be constituted so that every member of \( A \) is better off than they would be in the state of nature. This isn’t a further claim about justice, but a pragmatic assumption about what is required as a motivation for people to sign on to an arrangement that (at least \textit{prima facie}) requires them to give up some part of their liberties. Following Hobbes and Locke (and \textit{pace} Rousseau), the typical libertarian assumes that individual self-interest is the dominant and perhaps only motivation for political action.\(^3\) Moreover, self-interest is generally understood in terms of packages of naturalistically described goods like property and safety.

It is essential to recognize that \( C \) takes the entire list of participants, or at least the entire list of their aggregate productivity qualities, as its input, and returns the entire list of rewards as its output. The contract does not operate on an individual’s profile of qualities and give her some share or calculated reward based merely on her productive contribution. This is because the diversity, scale, and other economically salient features of the entire distribution of qualities have to be known in order to really assess what any arrangement based on it can accomplish, what sort of share it might yield for an individual with some given productive capacity. Thus, the correct model is \textit{not}: 

\(^3\)See (Hobbes, 1994, ch. XVII) and STG ch. XIII. Nozick does not acknowledge that he has adopted this view very explicitly, but you can see it as an enthymeme by observing that already on page 20 of ASU he is giving a nod to “invisible hand” explanations that begin from precisely this assumption of naturalistic self-interest as the motivator for participation in contracts.
but rather

\[ Q = \{ q_1, q_2, q_3 \ldots q_n \} \quad C(Q) \quad R = \{ r_1, r_2, r_3 \ldots r_n \} \]

Figure 5.1: \( C(Q) \) as a function from a set of qualities \( Q \) to a set of rewards \( R \).

In order to find an individual’s reward, one must first use the social contract function to generate an \( n \)–tuple of rewards, and only then apply an indexing function to get the reward for some specific participant in an arrangement. This distinction will probably seem relatively obvious to anyone really used to formal methods of this kind. Still, it has not always been obvious to those with libertarian or quasi-libertarian intuitions. This is one of the reasons why Rand’s “going Galt” fantasy, which I discussed in 3.2.1, doesn’t really hold up under game-theoretic analysis; she presumes that there is some direct assessment to be made of a default package of rewards an individual might expect to receive in the absence of any socioeconomic arrangement whatsoever. But such assessments in an economic vacuum are not possible. Even in the absence of any collective institutions whatsoever, individuals impose externalities (positive and negative) on one another. And every adult has already, simply in virtue of having grown to adulthood, received some set of developmental and educational protections and benefits from her community and/or family. So it is hard to identify clearly the basic deliverance of productivity that Rand posits as Galt’s entitlement from individual achievement. If we think of the limit case of John Galt as one person alone in the wilderness, with whatever productive gains he can manage under his own powers, that basic entitlement is immediately understood to be vanishingly small. If we more correctly think of him as a newborn alone in the wilderness, that entitlement dwindles even further,
to a painfully literal understanding of Hobbes’ infamous life in the state of nature: solitary, poor, nasty, brutish, and above all, short.

The social contract function of any modern society is bound to be incredibly, almost unfathomably complex. I will not even begin to try and model the details of actual socioeconomic arrangements. But it is easy to show, even at a fairly great level of abstraction, that certain aspects of their development will, in the aggregate, develop along certain lines. Before we proceed, it will be helpful to point out a few other features that I will assume, primarily because the libertarian demands them in one way or another. These are demands of non-interference and rationality of various kinds, in a typical libertarian mold.

5.1.2 Further assumptions and restrictions

There are a number of restrictions on the form of the social contract function, or put another way, preconditions for just social contracts, that are considered intuitively fundamental not only by the libertarian, but by virtually anyone with intuitions derived from the liberal social contract tradition. I will initially put these in the terms that are most familiar to the libertarian tradition, that is, as requirements of non-interference with processes that are largely seen as natural effects of the intrinsic qualities of persons. But even if we think that this particular presentation is problematic, we can see complementary versions of most of these claims in other political conceptions such as egalitarian or Rawlsian versions of liberalism.

1. **Non-discrimination in** \( C(Q) \): The social contract function may not be deliberately designed to confer either advantage or disadvantage on some particular set of individuals due to economically irrelevant factors such as caste membership, perceived racial
features or related social designations, sex, religion, etc. No patents of nobility or basic rights offered exclusively to some specific social class are to be recognized, protected, or promoted by any institution founded or maintained as part of a socioeconomic arrangement, if that arrangement is to be considered just on libertarian grounds. This is because if advantages are given to certain people that are not justified on libertarian grounds, this devalues the protections that are given for libertarian rights to earned advantages (generally property) in a just social contract.

2. **Non-interference with Q:** The list of profiles of individual productive qualities, \( Q \), must be protected from deliberate or systematic manipulation, except by that individual or with her express consent. Measures or institutions that would interfere deliberately, or even foreseeably, with an individual’s employment or development of her economically productive qualities are an unjust infringement of her rights.

3. **Monotonicity (rewards are predictably ordered):** Vagaries of fortune and individual choices, and perhaps other factors as well, make it impossible in individual cases to predict with great accuracy the rewards agents will receive for their productive efforts. But it should be the case that the overall statistical distribution of rewards strongly correlates with the overall statistical distribution of packages of productive qualities. In particular, profiles of qualities that are greater in the aggregate should correlate strongly with greater economic rewards. Another way of putting this is to observe that while the social contract function \( C \) is an idealization, it should be designed in such a way that unknowns like luck and effort, if they could be completely and comprehensively known, would not only allow for \( C(Q) \) to be strictly defined as a function, but would show that function to be monotonically increasing. This is really a point about how maximally efficient markets are to be created in ideal cases, rather
than about a direct demand of libertarian rights; we’ll return in a moment to why market efficiency is thought by the libertarian to be a sort of implicit desideratum.

Demands of justice grounded directly in the protection of libertarian rights are usually not the only demands made of the social contract by libertarian thinkers. I have noted that for them, the point of engaging in socioeconomic arrangements in the first place is to improve their expectation of reward given their productive qualities. This is a particularly important part of the justification for including enforcement infrastructure in those arrangements; we can think of forcibly preventing theft or destruction (perhaps by forcibly punishing prior theft or destruction) as improving efficiency by maximizing retained reward, or simply net gain. Thus the libertarian (and many others as well) will also insist that we privilege efficient social contracts, which presumably are better than the alternative for everyone involved. Put succinctly: if we could change the social contract in a way that allows me to get more for my labor and does not reduce the rewards anyone else receives for theirs, no-one has the right to refuse me the benefits of this innovation. I’ll call this the “efficiency assumption”.

This is a point that libertarians rarely explicitly argue for. Presumably they think of it as an extension of either duties of non-interference, the Lockean terms for fair initial acquisition of land and other natural resources, or both.\(^4\) If I can receive a greater result by mixing slightly less of my labor with the land, so be it. You may not interfere with my activities if they do not violate your rights, and my labor can be diluted to an arbitrary degree in a manner which

\(^4\)For them to so think is not without ground. Locke sees the improvement of land as the means by which the goods available for human use are increased “an hundred to one”, and if increases in productivity would make it a thousand to one, he would probably assume that this efficiency was equally desirable, and amounted to an improvement in the power of labor. See STG ch. V §37. In fact this assumption conflates two factors of production, land (and other natural resources) and labor, and the consequences of this conflation will become more apparent in the discussion of rent given below.

Some libertarians go farther, and argue that individuals have the right to seek improved economic gain even if it may inflict externalities and hence may not be Pareto efficient. See Rizzo (1979), especially Rothbard’s contribution on pp. 90-95. This position is extreme even in libertarian camps, and I will not be adopting it, but will instead assume that arrangements at least closely approach Pareto efficiency.
only expands my rights in property. Indeed, a just socioeconomic arrangement is understood by libertarians as primarily motivated by the need to protect productive activities. Nozick, for example, follows Locke in suggesting that governments arise in the first instance in order to remedy "inconveniences of the state of nature". This view characterizes the state of nature as an inconvenient circumstance that holds us back from accomplishment and plenty, and the just state as a modest corrective. That is: the libertarian imagines herself sitting in the wilderness on a pile of stuff she has made, trying to figure out how to protect it and herself so that she can get back to making more stuff, and accepting the social contract primarily as an arrangement with the most convenient and effective vendor of the desired protective services.

Rawls notes that an arrangement is not just simply in virtue of offering a gain in goods relative to the standard of the state of nature, because multiple arrangements might offer such without all being equally just. Even Pareto optimality, though a more demanding standard than simply improving on the state of nature, is still not equivalent to optimality in justice. For example, if there is one change to the arrangement that would benefit me at no cost to you, and another change that would benefit you at no cost to me, and these benefits are roughly equal, but we cannot implement both, it seems that we have competing claims that cannot be reconciled purely on grounds of efficiency. Moreover (a second critique goes),

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5See STG ch. II, §13 and ASU pp. 10-12.
6In fact, there is relatively little rigorous discussion of these sorts of assumptions in the libertarian literature, though most libertarians do seem to make them. Consider, for example, Nozick’s claim that “[The Lockean] notion of property helps us to understand why earlier theorists spoke of people as having property in themselves and their labor. They viewed each person as having a right to decide what would become of himself and what he would do, and as having a right to reap the benefits of what he did.”(ASU p. 171) This presumes that such benefits are the direct output of labor; you do some laboring, some benefits manifest, you are entitled to reap them (and keep them). In real cases of collective action, it is not always so clear what slice of the goods produced can be sensibly attributed to each person who has contributed labor. But there is usually some sense of whose labor most improves the productivity of the group as a whole, and presumably the ordering of such productive capacities should guide the ordering of rewards packages, via an extension of the principles Nozick describes.
7See Rawls (1967), §III. It is worth noting that this critique is leveled at least as much against the utilitarian, who is even more expressly committed to efficiency, as the libertarian.
it may not even be possible to arrive at an uncontroversial *assessment* of what arrangements are most efficient—produce the greatest pool of goods overall—because the relative values of various goods will be impossible to fix in the face of diverse preference orderings.\(^8\)

These are problems of *equity*, and in fact proliferation problems can also been seen as problems of equity. The members of an arrangement are not dissatisfied with the size of the pie, but with how it is divided up. A person \(i\) knows that she can’t change her set of qualities \((q_i)\), and so she can’t change her position in the ordered series \(Q = \{q_1, q_2, q_3 \ldots q_n\}\). But she will still care about how she is treated relative to the people above her and below her; she’ll care about the size of the gaps between the members of \(R = \{r_1, r_2, r_3 \ldots r_n\}\). If she has a status preference, she’ll care about things like how far her reward package is below the best one possible \((r_1,\) awarded to the possessor of the most elite quality profile \(q_1)\). If she has a distributional preference, she’ll care about the overall shape of \(R\), and probably talk about it in terms of equity. We’ll return to equity as a theme throughout the rest of the chapter.

The libertarian can respond to these critiques by clarifying the limits of her claim. She values efficiency, in order to maximize \(R\) overall, but does not conflate it with justice, or seek to reduce the latter to economic terms. The points above, and especially (2), should not be interpreted as an assertion that libertarian arrangements must promote some form of economic efficiency at all costs. It is presumed desirable *ceteris paribus*, and may be desirable enough to override some other considerations, but the libertarian will be the first to assert that some concerns (especially certain personal rights) cannot be overridden for economic gains under any circumstances. Thus, to acknowledge Rawls’ point, in this case, is sufficient to answer it. An arrangement is less desirable if it is extremely inefficient, but

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\(^8\)This concern is formally demonstrable via any of a handful of *impossibility theorems*, the most famous of which comes from Arrow (1951). Their details are outside the scope of the present discussion, but a good summary is found in Young (1995, pp. 155-156).
efficiency is not a strict necessary condition of libertarian justice, and even unique efficiency is no guarantee that rights are protected.

To concede that efficiency is not dispositive, however, is to admit that some further mechanism is necessary for deciding between various efficient and nearly-efficient social contract functions. The libertarian would like this mechanism to be guided by the free pursuit of individual self-interest, effectively arriving at certain aspects of the social contract via a market for social arrangements. This suggests a different critique, one that is of even greater interest for our present purposes. Vilfredo Pareto, whose concept of efficiency is often considered definitive, made the following celebrated observation:

“If a certain measure A causes the loss of one lira to each of 1,000 individuals and a gain of 1,000 lire to a single individual, that individual will pursue his course with considerable energy, whereas the 1,000 will defend themselves listlessly; hence it is very likely that in the end success will go to the man who, by means of measure A, aims at appropriating the 1,000 lire.”

This principle will be all the more powerful when the proposed measure concerns how an increase in productivity is to be allocated, such that 1,000 persons are not even being asked to each give up a lira they presently have, but only to lobby less than actively for one they might receive. Thus, even differences in lobbying efforts that violate no rights may be shown to promote the expansion of inequality. Many choices between equally efficient social contracts will become skewed toward those who have the resources to lobby for precisely those improvements to economic efficiency that benefit them the most, which in turn gives them more opportunities to save and invest. So not only can individuals who are receiving greater rewards do more to improve and protect their circumstances, they can devote resources to encouraging the institutions of the arrangement to do things that benefit them.

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9Pareto (2014, Ch. IX, §66).
It may often be the case that there simply is no uniquely efficient social contract. At best we can assume that $C(Q)$ is a Pareto optimal social contract. We must also of course assume that the allocations delivered by $C(Q)$ are possible, that the sum of the rewards allocated to all participants is no more than the net goods that arrangement $A$ can actually produce. Thus, the sum of the indexed reward family $R$ is equal to the net productive output of the society for the cycle in which $R$ is allocated, no more (because we assume it is possible) and no less (because we assume it is efficient). This is another a problem of equity, because distributing the product of this maximally efficient arrangement is analytically a zero-sum exercise, and if there is more than one way to reach an efficient outcome, different ways may distribute costs and rewards along different lines.

Yet despite all of these concerns, there is at least something about efficiency that seems broadly appealing, and the absolute gains provided by more economically efficient societies tend to offset the status dissatisfaction produced by inequality. I will follow the libertarian in assuming that the process of seeking ever-greater efficiency progresses unhindered. Self-interest motivates everyone to be as efficient as they can manage, and libertarian justice prevents others from interfering with them. All available innovations implemented promptly. Social contracts in the models that follow are already Pareto optimal and could not offer more benefits to participants simply by innovations that increase efficiency. So individuals can move between libertarian arrangements and find that because they all push toward efficiency, the variance among them has to do primarily with the members whose qualities they can draw on.

This also assumes, of course, that social contracts are reproducible technologies, so that dissatisfied individuals can start new arrangements that are fairly similar to the ones they left in all ways except for the set of members that compose them. Let us differentiate arrangements in the following natural way, as $A_1, A_2, A_3 \ldots A_z$. Suppose that our set of members
in a given arrangement, $I_1 \in A_1$, has cardinality $n_1$ (that is, the number of participants is designated $n_1$). Further suppose that the members of $A_1$ have some given collection of productive qualities $Q_1$. Any social contract $C(X)$ that can be implemented in $A_1$ can be implemented in any other arrangement $A_x$, and if implemented in an arrangement with a very close $n$ to $n_1$ and $Q$ similar in relevant ways to $Q_1$, it will produce comparable economic gains and rewards distribution, a similar size and shape of $R$. For now we will have to leave somewhat open exactly what satisfies the descriptors “close”, “similar”, and “comparable”. But the basic ideal is that what works in Freedonia should work equally efficiently in Sylvania, as long as the two arrangements are similar in certain economically relevant ways. Of course, just as John Galt cannot take his profile of qualities to an arrangement substantially different in membership and expect to perform just as well, Tom Jefferson cannot take his social contract to an entirely different context and expect the same economic effects. My assumption that contracts are reproducible in turn relies on the further assumption that at least some arrangements share important parameters to within some tractable range of variance.

5.2 Expanding inequality via reinvestment

I am willing to accept a substantial set of the libertarian’s assumptions and arguments because my concern is with the concepts and practices the libertarian endorses, considered on the libertarian’s own terms. The pieces of the model proposed above will aid me in examining two families of practices generally thought of as protected under the property principle, practices that drive socioeconomic inequality upward. In this section, I will consider reinvestment, including bequest. In the next, I’ll examine economic rent, broadly construed. These are both ways of understanding justice in transfers, grounded in Enlightenment conceptions
of property so familiar that we tend to take them for granted. In addition, they can both be shown to systematically generate inequality. Our question is how rapidly the inequality will assume a form and severity that provokes destabilizing status dissatisfaction.

5.2.1 Talent, efficiency, and investment

Concentrations of wealth cause the expansion of inequality to accelerate by turning the rewards from one cycle—in my model, the elements of $R$—into qualities that affect success in the next cycle, elements of $Q$. But because a better $Q$ will in turn map to a better $R$ in the next cycle (and must, by the requirement of monotonicity), this creates a sort of feedback loop in which the collection of large reward packages in earlier cycles contributes powerfully to the collection of large rewards later on. If you have surplus, you can invest it in education and equipment\(^\text{10}\) that increases your productivity, save it to insulate yourself again luck, and so on. You can also pass these advantages on to your children, especially if inheritance is protected by your arrangement.

Recall from 5.1.1, though, that a social contract does not map the individual members of $Q$ to individual members of $R$ in a way that is transitive between arrangements. That is, if the set of participants in an arrangement ($I \in A$), from which $Q$ is derived, changes, the reward offered to a particular member of the new arrangement will often change. Under a different social contract, your productive qualities will potentially yield a different reward, even if the

\(^{10}\) Improvements to $q_i$ that require limited resources raise special problems. When I receive Excalibur from the Lady of the Lake, perhaps I am entitled to improve my productive qualities by adding it to my panoply (let us suppose that I intend to productively employ the sword to chop wood). Now, if the lake is actually the site of an endless well of magical wood-choppers for all who can make the effort to gather them, everyone who acquires such an Excalibur is growing the economy by making themselves more productive. But if there is only one Excalibur, a more complex question arises as to who should have it. Less fancifully, fertile land and mineral resources are important examples of finite resources. In the last chapter, I discussed Locke’s famous restriction on the acquisition of land (STG ch.II, §33), which can be understood as addressing this concern. We will return to Locke and these more complex cases in the next section.
main difference is who else is involved in the contract with you rather than a difference in the terms of the contract itself. This will be true even if you had the same profile of productive qualities in both arrangements. It can help make this clearer to think of it as doing the same job in a different company, one that has identical management practices but different personnel. You would probably expect your compensation to change.

Suppose you are working with more talented people. The firm will do better. Will you do better? Well, if both firms are run in a way that emphasizes profit-sharing, yes. But if both firms are run in a way that emphasizes competition, maybe not; you’re working with more talented people now, you’ll be lower on the ladder.\textsuperscript{11} The third of the fairness-related assumptions (also given in 5.1.2) was this: \( C \) must, given certain idealizations, be a monotonic function that preserves the ordering of the family of qualities. So in a libertarian firm, your more able-coworkers really must be paid more than you.\textsuperscript{12}

Maybe if the firm does very well, your low position will pay even better than your high position at the less successful company. So if you don’t have a status preference, you will consider yourself to have gained. Yet if you do care about the status conferred by your position, you will feel that a small increase in income isn’t enough to compensate for being

\textsuperscript{11}If there were some way to modify \( C \) to increase an individual’s reward in a non-zero-sum fashion, this would simply be a demonstration that the arrangement as previously understood was not Pareto optimal. Of course it would be preferable to move to the more productive social contract, but the question would remain which individuals are to benefit from the improvement. As long as there is some liquidity to the goods being allocated, this question of equity will remain pressing.

\textsuperscript{12}A libertarian conversant with Rawls might avail herself of the argument he gives that the state should protect the “legitimate expectations” of each person to claim a share of the social product, a share commensurate with their performance of actions encouraged under the social contract. This argument can be accepted in isolation even by those who disagree more broadly with the Rawlsian account of distributive justice. See §48 in Rawls (1999). Another argument for insisting that all individuals have a protected right to rewards ordered according to productivity can be given on broadly Scanlonian contractualist grounds (That is, consonant with Scanlon (1998)). A person could reasonably reject any arrangement that does not protect her ranking in the list of rewards for productive enterprise. This is primarily because such enterprise is undertaken with the reasonable expectation of rewards indexed to productive qualities. One need not be a libertarian to support the correlation of rewards with economic productivity, either for prudential reasons, or via a relatively uncontroversial rough account of this one aspect of a just social contract.

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very low in rank. True, this company has more money, but on the libertarian account, you
don’t have a lot to do with that! The libertarian social contract $C$ is constrained to pay you
according to your contribution, understood in a very specific way:

1. We must first assume that the set of productive qualities of employees ($Q$) has an
ordering. Each profile of qualities must be assessed against some standard so that it
can be assigned a numeric value, even if this value only represents a position on an
ordinal scale rather than an interval one.

2. This ordering should reflect economic productivity.$^{13}$

3. Assessing a person’s productivity is difficult to do, as it requires accounting for nu-
erous dynamic factors with complex interrelations. Allowing market forces to assign
rewards, and then protecting the distribution of goods that results, is traditionally
assumed to be the most efficient way of assigning rewards according to productivity. If
an individual finds a way to increase her productivity and bring more or better goods
to market, she will naturally receive greater rewards, and in addition she will increase
the available economic surplus.

These three points, collectively, sketch the libertarian picture of how protecting strong prop-
erty rights in free markets makes everyone better off, but they also show how rigid social

$^{13}$There are a few arguments for this, but they tend to fall into two general categories, each beginning with
the assumption that each individual possesses considerable agency with respect to her economic productivity.
The first kind of argument then proceeds on grounds of libertarian fairness, and has at its heart the claims
that such an individual already owns the products of her labor, that the extent of these products can be
sufficiently identified (by the operations of a market if not by an individual), and that to distribute
anything less then their entirety to her would constitute theft. A second argument suggests that indexing
incentives according to productivity will encourage individuals to maximize their own productivity, producing
a maximally efficient economy. Maximizing economic efficiency isn’t a strict demand of libertarian justice,
but it creates the greatest surplus, which is desirable because it allows for two further economic practices:
saving, which mitigates risks due to unforeseeable misfortune, and investment, which allows for yet grater
productivity and diversity of production.
rank in libertarian arrangements has to be. This is both a picture of libertarian justice—the most productive people getting the greater rewards that they deserve—and a picture of how the efficiency assumption is supposed to be realized. Basic inequality of this kind, then, is intrinsic to libertarian arrangements. It is not a undesirable side effect, but a structural feature required for fairness and efficiency.

This, too, might be acceptable. This particular form of inequality might not be too severe, and your status preferences might be relatively weak. But we’ve only just begun to inventory sources of inequality. Differential compensation for labor creates differential opportunity for saving and investing,\(^\text{14}\) which will both tend to expand inequality in holdings, especially if they are consistently more available to some people than to others. The most effective investments improve an agent’s profile of qualities not only for a single economic cycle, but for several cycles, perhaps indefinitely. And if we keep in mind that these improvements are being made to a profile of qualities that was already generating surplus, we can see how it is inevitable that the rich will get richer. Surplus reinvested to improve productive qualities produces a profile of qualities that generates more surplus, which can in turn be reinvested in productive qualities… surplus devoted to savings insulates against unlucky or simply unforeseen shocks that might reduce productive qualities, keeping the production of further surplus stable.

\(^\text{14}\)These concepts of “surplus”, “saving”, and “investing”, like the “efficiency” that facilitates them, represent economic phenomena that are not valued by the libertarian directly, but are considered prudentially desirable in the economic theories historically connected to minarchist positions. By “surplus” I mean that portion of a person’s economic reward that she does not consume, or at least does not consume during the economic cycle in which she receives it. By “saving” I mean retaining surplus in some relatively liquid currency, such that it can readily be spent at any time, but will not increase (or decrease) in value. For now we will ignore inflation and deflation, and assume that there is some currency available that remains liquid while also holding its value. By “investing” I mean converting surplus into resources that are likely to increase your productive capacity or that of someone else. This is to be understood fairly broadly, and could consist of purchasing capital assets, funding further education, conducting industry research, or any of a number of other things.
Still, there are a lot of reasons to think that even this process, at least as far as the description given in the previous paragraph goes, is a good thing. The continual process of developing greater and greater profiles of productive qualities grows the economy as a whole, not just the rewards of individuals; the accumulation of savings insulates the entire economy against the possibility of extrinsic or intrinsic hazards, not just the fortunes of individuals. And while extreme inequality might be unacceptable for reasons we will soon explore, investment and savings might still constitute important economic practices if they are constrained in ways that prevent the most severe rifts between rich and poor. In order to realize this goal, we would want to ensure two things. First, the practices that drive inequality should also serve the general goods of growing the economy and insulating it from shocks. This is a way to protect the income and holdings of everyone, making both the best- and worst-off less susceptible to recessions and other modern, artificial analogs of crop blights or other natural economic hazards. Second, the inequality generated should tend toward some natural bound, or better yet, retract in the long run once surplus is great enough to maximize the productive qualities of all members of society. If these two conditions can be met, it is likely that while the rich will get richer, the benefits of letting them do so (stability, improvements in everyone’s standard of living) outweigh the costs (which are subject to at least some bound).

Individuals who command a lot of resources, but are seen as doing so in proportion to their superior capacities, are less likely to create status preference driven dissatisfaction. The Zizzo money burning experiments discussed in 2.3.2 got such striking results partially because rewards were allocated based on luck, with no suggestion of merit. Our question now is this: can the libertarian truly claim to be protecting primarily wealth via impressive productivity, or does she also protect something closer to wealth via blind luck? The practices we have considered so far seem to involve complex trade-offs: some systematic rise in inequality, but also gains in efficiency, and all along clearly principled lines. Whether those in less
advantageous positions are likely to resent their lower status enough to give up the absolute gains of participating in hyper-efficient arrangements might reasonably be doubted. We can intensify the conflict between efficiency and equality if we consider economic practices based on transfers of surplus.

5.2.2 Investment in others, exploitation, and bequest

To review: the practices discussed in the last section are relative unlikely to provoke profound dissatisfaction when they create inequality, for two reasons. Surplus earned through labor is invested to increase capacity. The origin of the surplus (labor) makes it deserved, and the prudence and benefit to the arrangement as whole of increasing one’s productivity seems above reproach. The other reason why this kind of reinvestment is acceptable and even admirable is that it is bounded. You can only train yourself in a finite number of skills, to finite levels, and you can only closely manage projects involving some finite amount of resources. So you can get rich, but perhaps not absurdly rich, if you still have to be involved in all the enterprises from which you profit. Your \( r_i \) is still tied to your \( q_i \), within the context of your social contract and how it correlates the two.

Something slightly different happens when you invest in others. Suppose that in each economic cycle I have the opportunity to take some economic surplus that I generated in the previous cycle, or perhaps generated in some even earlier cycle and saved, and invest it in a manner that reliably increases the net total of someone else’s productive qualities in future cycles. In return, they will give part of their rewards to me, because even after doing so they will still end up with more than they would have had if I hadn’t helped them be so productive. If I have some surplus to so invest in some economic cycle \( t_0 \), I will then have more surplus in cycle \( t_1 \) (recall that we assumed that the social contract function was mono-
tonic, so that ceteris paribus if the productive qualities of a person increase her rewards are expected to also increase). I may well choose to continue to re-invest in this manner for several cycles, or even indefinitely. If we assume that return on investment is simply a constant coefficient—for example, that if the rate of return on a dollar is five cents, that the rate of return on one hundred dollars is five dollars—than the return on investment over time will be simply compounded. Even this effect, a commonplace of accounting, is quite powerful.\footnote{Note that the operation of compound interest need not imply usury, that is, the lending of money purely in order to charge interest for its use, with the lender assuming no risk beyond the possibility that the borrower will default on the contract. Usury is a form of rent, and thus will be given a more thorough treatment in the next section. Here we are concerned with investments where some productive enterprise, and perhaps the productive efforts of the investor herself, determine her rate of return.} If my surplus from my first economic cycle is all that I ever invest, and my rate of return is a mere 5%, I will still see that investment multiplied about eleven and a half times of the course of fifty economic cycles.

The level of investment just described is very modest, but still has a substantial effect. I could have invested much more, and gotten much richer, because investing more doesn’t necessarily take up more of my time. So on the one hand, we have now moved toward economic practices that allow for very steep levels of inequality. On the other hand, my surplus resources are probably going to increase someone’s productivity. So if I am a libertarian, I will point out that I am a “job creator”, electing to keep surplus resources in circulation, helping the economy grow. Social unrest surrounding inequality increases during a recession for many reasons, but one of them is a perception that those who have surplus should be using it to keep others productive, i.e. employed.

Note, though, that something importantly different has happened than in previous cases. I didn’t roll part of my \( r_i \) into improving my \( q_i \)... I rolled it into improving someone else’s \( q_j \), and my \( r_i \) improved as a result! So we are still growing \( R \), but we may have drifted away from the libertarian ordering of rewards. If I expand on this process, my reward may surpass
that of someone with greater productive qualities, violating the requirement of monotonicity. The libertarian can reply that my judgment in choosing to invest in productive people is part of my $q_i$, preserving the connection between qualities and rewards, but we’ll see a little later in the chapter that this only goes so far.

The terms of investments also have a great deal to do with whether they are seen as contributing to inequality in status. The rate of interest on a loan is an important matter of equity, to be sure. But other matters can also affect whether a clear difference in position—after all, the investor has more surplus capital and must have been more successful in prior economic activity—becomes an objectionable gap in status. Questions of how much control an investor can exercise over the schedule, strategic focus, and exposure to risk of the people she invests in are essential in drawing the line between partnership and exploitation. Even a Marxist critique does not claim that it is intrinsically impermissible for an investor to exchange capital for a share of the productive output it enables; it is the direct purchase of labor in the form of a wage that is exploitative and alienating, and this is largely because it amplifies differences in status by limiting the wage worker’s control over her own activities.\textsuperscript{16}

Bequest is another economic practice that is implicated in inequality, but does not necessarily provoke massive status dissatisfaction. It has been customary across a tremendous range of civilizations and historical periods to suppose that an essential part of rights in property is the right to choose who inherits one’s goods after one’s death. Even where it is uncommon to record an explicit “last will and testament”, customs securing the transfer of property along lines of family relation are so entrenched they are often taken as beyond question. Even to suggest that primogeniture is sexist, or unjust when compared to partible inheritance, has up until recently been to take a highly progressive position. To go so far as to question the

\textsuperscript{16}I am not here referring specifically to any one of Marx’s writings on this topic; it is a theme for him throughout the mid-1840’s, and reappears in his later work. Marx (1847) is perhaps representative. See also Marx (1906, Volume I, Section III).
wisdom of strict protection for inheritance altogether would be unthinkable even in most contemporary societies.

This is partially because bequest and inheritance are not problems as long as the accumulated surplus of generations is limited by some endogenous factor. In economies where inherited property primarily consists of small parcels of land in active use by the owners, and most forms of property other than unimproved land depreciate without labor for maintenance, the property passed from one generation to another cannot aggregate arbitrarily because the capacity of heirs to maintain its full value is finite. But once durable forms of currency or monetary records come into widespread use, inheritance begins to contribute quite meaningfully to the expansion of inequality. Of course, in real cases there are additional complications, some of which make meaningful contributions to reducing inequality. Inflation alone helps to limit the impact of intergenerational savings in profound ways. The return on capital, which is the central factor in allowing inheritance to overcome considerations such as inflation, has different rates at different scales.\footnote{The most comprehensive datasets and most thorough analysis of the relationship between inflation and return on capital, along with a number of other related issues, is found in Piketty. See esp. Piketty (2014, pp. 209-212).}

In many economic contexts, however, larger fortunes are not merely more significant loci of inequality, places where the effects of differences in rewards become more obvious. They can come to be among the prime drivers of inequality, and have a fundamentally different place in an economy from modest inheritances that serve to insure families against periodic misfortunes, or serve as capital assets for the productive endeavors of family members. The objectionable inheritances are those that allow beneficiaries to disengage from productive activity altogether, yet still enjoy a standard of rewards far beyond those provided to most others in their arrangement, including many who are extremely productive. Note that the increase that an heir sees in $r_1$, either in a single economic cycle, or over several cycles
(in the case of a trust or the like), has no connection to her \( q_i \) whatsoever. This seems to obviously and severely violate the monotonicity requirement given in 5.1.2, and generally lead to violations of the non-discrimination requirement as well. So despite its imprimatur as an aspect of the property principle, bequest can at least sometimes seem rather un-libertarian.

Investment and bequest can create status dissatisfaction, both because they can substantially widen inequality, and because they create status effects with assorted psychological and social ramifications. But they don’t have to, and this often turns on whether they remain connected to the two saving graces of libertarian inequality: productive increase, and an upper bound on the largest fortunes. For this reason, I will refer to inequalities that are driven by differences in productive qualities and subject to natural bounds as *productivity inequalities*.

In the rest of the chapter, I will discuss the contrasting class of inequality, *rent inequalities*, and why economic rent is far more problematic for the stability of libertarian arrangements than any of the economic practices discussed thus far. I will also argue that rent is intrinsically undesirable on libertarian grounds. Rather than meeting the libertarian demand of protecting the individual’s right to her labor, it is in fact redistributive. Rent increases inequality without increasing productivity, so it necessarily takes one person’s productive output and transfers it to another person. Such a form of redistribution runs contrary to at least one plausible interpretation of fundamental libertarian principles, and certainly contrary to the spirit of a familiar argument for libertarian property rights. Moreover, such redistribution is a major factor in the rapid acceleration of economic inequality to uncontroversially unacceptable levels.
5.3 Rent and the Acceleration of Expansion in Inequality

I concede above that modest expansions of inequality that are tied to improving one’s productive qualities, or are in some other ways subject to an endogenous upper bound, are not likely to raise proliferation problems. Yet there are common economic practices that generate inequality, but are not tied to the improvement of productive qualities, and are not naturally constrained by some endogenous upper bound: economic rents. From the point of view of theoretical economics, “rent” holds a definition that is in some ways broader than the ordinary language usage, but the concept is also in some ways rather narrower. One of the earliest clear articulations of this sense of rent came from David Ricardo, who famously defined it as “that portion of the produce of the earth which is paid to the landlord for the use of the original and indestructible powers of the soil.”

The observation that there is some part of the value of land that is “indestructible” is key here. This value is not created by the efforts of people, not does it need to be maintained by them. Ricardo was primarily thinking of the utility of land for planting crops, at least part of which is present before the land is even cleared and (with correct management) persists through an effectively infinite number of growing seasons. More recently, the most familiar example of the indestructible rental value of property is the location of real estate. Whatever purpose a piece of land in Manhattan is put to, it will retain great value simply because of where it is found.

A rent, for our purposes, is a transfer of economic value from person A to person B that derives from B’s property rights but does not diminish the value or extent of B’s holdings. That is, if I rent a piece of land from you, at the conclusion of our contract, you still have the land. We can extend this notion further by observing that if my property is slightly but reparably diminished by your use, and the amount I receive from you is greater than the

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18Ricardo (1891, ch. II).
cost of upkeep or repair, I have collected economic rent. So if I rent you my tractor, and as a result it takes some wear that I pay a cost to address, whatever part of your payment I have left after maintenance is the rent I have actually collected. It is extremely important to distinguish between this technical usage and the more common, colloquial use of the word ‘rent’, which should properly be understood to mean contract rent. In typical economic practice, contract rent payments include both economic rent and the costs of maintenance, administration, and other necessary services. A typical rental property requires various kinds of upkeep, whether it is a backhoe, an apartment building, or a suite of office furniture. Some properties also undergo depreciation that cannot be prevented or remediated. In addition, efficient management of rental properties requires inventory tracking and other staples of basic business practice, not unlike the elements of running a retail firm.

Most things in almost any rental market are rented at payments that significantly exceed the sum of all of the costs just listed. Put simply, whatever is left in the rent check after the costs of upkeep, services performed, etc. is rent in the economic sense. One way of understanding this is to observe that the property owner could pay contractors to do all of the things just listed, and do none of them herself, and still end up with a net gain. In fact, this is not uncommon in real cases. And not only does the property owner receive this payment, but she is left with a property that is still just as valuable as when she began.\footnote{This assumes that the market for this property remain stable. In many cases the product may be more or less in demand at the conclusion of a rental contract than it was at the beginning, but market fluctuations are of little matter to the renter except inasmuch as she may try and obtain a longer lease in order to secure a particular rental rate for as long as possible.}

This has a very important implication: rent of this kind is an ongoing source of reward that is entirely disconnected from $q_i$. Investment management, as a service, may even mean that the investor’s own judgment is not being employed, so no vestige of $q_i$ is involved.
Ricardo thought of rent almost entirely in term of land, but we now have various kinds of property rights beyond landholding that yield rents of a similar kind, rents on the right to use some “indestructible powers” that give the property lasting value. Intellectual property is entirely indestructible as long as the conditions that give it its value do not change; ideas do not depreciate in the way that physical assets do; if I license you to use my design for widgets, when our contracts ends, I still have the full value of my rights over my design. The loaning of money at interest that exceeds inflation, with the protection of adequate collateral, is almost entirely rent in the sense I have specified, at least with regard to its effect on economic inequality.

5.3.1 Consequences of Rent

Rent causes inequality to expand rapidly and without bound, and redistributes goods from the productive to the unproductive. This is a problem for the libertarian specifically, in two ways that I will emphasize.20 First, when a social contract protects and aids in enforcing the collection of rent (or any legally protected practice with the relevant characteristics), the effect is a rapid and unbounded increase in inequality. I have discussed at length in previous chapters why this expanding inequality is problematic. It creates progressive instabilities in socioeconomic arrangements, due to social, economic, and psychological forces which the libertarian is not permitted to constrain.

Second, this inequality is importantly different from that produced by the improvement of some agents’ productive qualities, and that difference calls into question whether rent is consonant with some of the keys arguments libertarians often give for the property principle.

20I will not be examining all theoretical negative consequences of protecting economic rent, but many others have done work in this area. Seminal works include Ricardo (1891) and George (1884) on land rents, Tullock (1967) and Krueger (1974) on the more general case. For an interesting recent discussion of the particular role of IP in creating a disadvantage for developing economies, see James (2012, ch. 9).
This has many implications, but I will begin by identifying some reasons why the collection of rent shouldn’t be thought of as protected libertarian activity:

The right to improve one’s productive qualities does not always apply to acquiring rental properties, to collecting rent, or to rent-seeking. If I buy a piece of property with the sole intention of renting it to others at a rate higher than the aggregate rate of my expenses to manage and maintain it, I am not making any investment in my productive qualities. I do not intend to use the property as a factor of production that will allow me to add value to the economy, but only to divert some extra amount of economic reward to myself. Any form of rent-seeking—finding ways to charge more rent for a property without improving its productive capacity—will be a way of increasing my reward without improving my productive capacities. Thus, the right to improve such qualities does not apply to seeking or collecting economic rents.

The right to collect a reward commensurate with one’s productive qualities does not apply to rent. Economic rent is entirely independent of productive qualities. In the terms of my model, there is no relationship between $q_i$ and the portion of $r_i$ derived from rent, and that portion can in fact dramatically exceed the $q_i$ derived portion. It is not necessary to be economically productive in order to collect rents, and the amount of economic rent collected does not depend on (and need not even be influenced by) productive qualities.\footnote{It is critical to distinguish managing or developing properties from owning them. Only first two activities are tied to production, so rewards from the last are not protected by the right to rewards indexed to productive qualities.}

Next, here are some ways that rent may even violate libertarian principles:
Because economic rent is not tied to production, it has to come from somewhere else where production is happening (rent is redistributive). A person who collects economic rent is receiving economic rewards, but is not necessarily participating in any productive process in order to do so. This means that she is not creating or even helping to create the economic value she is receiving; it must be coming from some other member of her socioeconomic arrangement. Not only does it increase the $r_1$ of person 1 in a way that is independent of $q_1$, but it diminishes the $r_2$ of person 2 relative to what their $q_2$ seems to entitle. Such a process can only be described as redistribution, something that the libertarian claims to be against.

The collection of rent may violate the monotonicity of $C$. One problem with the redistribution just mentioned is this: if protection for collecting rents is built into the social contract $C$, this may cause $C$ to violate the monotonicity requirement. Taking away funds from the more productively capable April, and giving them to the less productively capable Julian on the grounds that Julian is a property holder to whom April owes rent, may cause Julian to receive in total a higher reward than April. This violate the requirement that $C$ must be a monotonic function in which preserves the ordering of qualities in $Q$ by assigning rewards in $R$ according to the same index of members, $I$, and their qualities, $Q$.

Finally, here are some reasons why the libertarian will have special difficulty justifying rent as providing an absolute benefit that outweighs dissatisfaction due to status concerns:

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Some views of property rights suggest that an owner is participating merely by allowing her property to provide a factor of production to some economic process. I would refute this simply by noting that if such an owner, entirely inactive in any other sense, did not exist, and ownership was attributed to some other entity, the productive capacity of enterprises requiring the property would not change in the slightest.
Rent-seeking investment does not grow the economy, and may even hurt it. Because the portion of payments on a lease, license, etc. that constitute economic rent can be collected by an owner who engages in no economically productive activity, resources expended in order to get access to rents often do not grow the overall economy \((R)\) of an arrangement in any way, and may even hurt the economy in important respects.\(^{23}\)

**Inequality created by rent has no endogenous upper bound.** Genuine investments, that actually increase a person’s productive capacity by giving her access to improved skills, necessary capital assets, and so forth, has natural limits. A given individual can only effectively absorb a finite portfolio of skills, or manage a finite array of resources. But as collecting rent does not necessarily require anything from a property owner, the amount of rent a given owner can collect can, in theory, rise to an arbitrary level. This means that the collectors of the greatest aggregates of rental payments in a society can have, far, far greater incomes than those who actually have the greatest productive qualities, let alone those with less than optimal qualities. Rents open up an arrangement to potentially unbounded inequality.

**Rent inequality widens much faster than productivity inequality.** Rent compounds due to the fact that it is a form of income that demands little or no contribution from its owner. Roughly speaking, it is a surplus that generates further surplus automatically, and so it presumably grows at an exponential rate. But as I noted above, it is redistributive, not productive. This means that it also extracts resources from some collection of other members of the arrangement in which it is found, also at an exponentially expanding rate.

\(^{23}\)There is a rich literature on the negative effects of rent-seeking behavior, beginning with Tullock (1967), and much of which is collected in Congleton *et al.* (2008). In fact, we might even take Rognlie (2015) to be somewhat in this vein, though the technical character of his discussion obscures the extent to which it is a discussion of the negative effect of rents on economic growth.
These implications of systematic income that is independent of productive activity show that protecting such income need not be part of the libertarian requirement that arrangements protect basic rights to improve one’s qualities and be rewarded for them. They also shows that such income produces particular forms of inequality that make it objectionable in ways that the productive inequality discussed in the last section is not. Moreover, there are cases of lease rent, the kind of rent we more commonly mean in daily conversation, that are tied to forms of economic productivity. Amortizing the costs of development over a certain rental period, for example, is a matter of recovering costs for productive enterprise, not of collecting economic rents.

These are not purely theoretical concerns, or considerations that might be thought to become pressing in some modest percentage of special cases. Historically, the more reward is disconnected from productivity, the faster inequality grows, along with the threat of social instability it creates. Iconic examples abound: the confrontation between Crassus (the richest man in Roman history) and Spartacus (leader of a rebellion of slaves, people whose productive contribution was directly transferred to reward others); the French Revolution, perhaps the most famous attempt at corrective redistribution in history; and the diverse forms of unrest that precipitated the Russian Revolution and the massive wars of the twentieth century, which were preceded by the amassing of vast property fortunes by a very small oligarchic class.24 Slavery is the most direct way to disconnect productivity from reward, but other customs produce the same effect to a shocking degree, especially over the long run. A serf may be kept in servitude equally well by excessive taxation or by excessive land rent, and under such circumstances, no amount of effort of even excellence is likely to free her, because productivity is no longer the arbiter of reward. The libertarian’s wariness of taxes should also, therefore, extend to rents.

24 For documentation and analysis of the size and nature of these fortunes, see Piketty (2014, pp. 343-345).
5.3.2 Rent Conjoined with Inheritance

The conjunction of ineluctably problematic rental practices with potentially problematic customs of bequest and inheritance produce an unbounded and accelerating pattern of inequality that exceeds the severity of what either would generate in isolation. Inheritances and other unmediated transfers remove the only remaining natural limit on expanding inequality. Death might be thought to limit inequality by releasing the accumulated surplus of individuals. But if the property principles allows for complete control of the terms of transfer of one’s own holdings, even after one’s own death, this limit is virtually always circumvented by gifting and inheritance practices. This allows for patterns of accelerating inequality to develop over generations, rather than resetting upon the deaths of individuals. And inheritance, etc. makes it possible for a person who has never developed or exercised any productive qualities to draw rewards from an arrangement. Owners of rental properties often have them in virtue of at least some past fruitful economic endeavors. The same cannot be said for heirs. 25

Another, subtler problem is the assumption that “all property is owned” built into typical inheritance practices. It is often the case in contemporary legal and social practice that an inheritance will be awarded even without any clear specification of what the intentions or wishes of the deceased might have been. Such an award might be grounded in primogeniture or determined on some other basis, but the essential feature for our purposes is that there is a presumption that for any substantial estate there is a fact about who is entitled to it, and that in the vast majority of cases someone in fact is so entitled.

25 Of course, the right to inherited properties may be defensible in a number of other ways. The most common version of such a defense rests on the rights of the benefactor to transfer her property in whatever manner she sees fit (this is Locke’s claim, for example, at STG ch. II, §72). This is a bit peculiar; can my rights over property actually derive from your right to transfer it to me? But it is a bit hard to see what the most intuitive way to restrict rights to give or bequeath might be. Late in his career, Nozick made some attempt to sort this out. See Nozick (1990, 30-33). A good general critique of inheritance and consideration of reform proposals is found in Lafaye (2008).
Much of the inequality generated by economic rents has a great deal to do with these features of inheritance. Nozick’s zipper problem is driven largely by the idea that the vast majority of the enduring property in the world, primarily land, never passes back into the commons once it is justly claimed as private. If most pieces of property periodically returned to the collective ownership of the members of an arrangement, or to some neutral state of being un-owned, or something similar, they could then be re-assigned as private property in some fashion. This might mean that even if “enough and as good” cannot be immediately satisfied at some particular moment in the history of a socioeconomic arrangement, a queuing or application system of some kind could still secure a legitimate expectation of access to finite resources for late or historically unlucky entrants. In current practice, inheritance laws and customs are designed to assume that even in the absence of a trust or last will and testament, property is rarely returned to any kind of collective ownership or administration. This is one of a number of factors that encourage inefficient use and consequent scarcity of real estate and other forms of property that generate economic rents. The scarcer and less efficiently used such property is, the more severe economic rents and the inequality they generate will be.\(^\text{26}\)

The considerations presented in this chapter override any appeal the libertarian might have made to natural boundaries to inequality. Even if the economy should slow in growth (or contract), such that there is less surplus to divert to those in the best positions, economic rents will continue to redistribute wealth to them, and indeed force more debt on the less well-off. Meanwhile, the slow in growth will make the appeal to an improved absolute standard of living for the least well-off ring hollow. This is the minarchist’s dilemma. Continuous, rapid growth on libertarian terms leads to inequality compounded on itself in every cycle of economic activity, and this produces such severe status dissatisfaction that the worst

\(^{26}\)For a more thorough treatment of these economic phenomena than it is appropriate to engage in here, see Henry George’s justly celebrated *Progress and Poverty* [George (1884)].
off will try their fortunes somewhere else (leading others to become the worst off...). Yet slow economic growth will cause the redistribution of wealth via rents to be all the more onerous. Without steady improvement in absolute rewards to point to, the minarchist have trouble offsetting the dissatisfaction produced by even modest expansion of inequality. Either way, status dissatisfaction will come to outweigh the promise of improved absolute rewards exceptionally quickly in minarchist arrangements, destabilizing them and undermining the practical benefits they promise.
Chapter 6

Embracing the Conjecture

SOCRATES: Can’t we confidently assert, then, that, even where the desires of the profit-loving and honor-loving parts are concerned, those that follow knowledge and argument, and pursue with their help the pleasures that wisdom prescribes, will attain—to the degree that they can attain true pleasure at all—the truest pleasures, because they follow truth, and those that are most their own; if, indeed, what is the best for each thing is also what is most its own?

—Plato, Republic 586d (trans. Reeve)

So now what?

If my conjecture is plausible, it seems that the minarchist libertarian will have to modify either the association principle or the property principle.\(^1\) Alternately, she might consider

\(^1\)It is perhaps plausible that the minarchist might accept my conjecture without conceding that it has any real impact on her basic beliefs. The short version of such a response would be something like “Perhaps the conditions under which a just state could be established and maintained are fairly specific, even rare, and always temporary (or at least fragile). Nonetheless, we still must pursue them wherever there is some possibility they may be achieved.” I will presume that this is a sort of compromise between the traditional minarchist picture and the anarchist libertarianism discussed below. All I have to say about such a view is this: a great deal of destruction and suffering tends to be associated with the fall of governments. The
the interpretation of these principles, and whether they really require absolute protection for all of the rights that the extant libertarian literature commonly associates with them. There are of course many potential strategies for weakening these claims in more or less measured ways, and we will discuss a few specific families of approaches that have both the right conceptual structure and some historical cachet. These approaches generally focus on how we might reconsider aspects of the property principle, and they range from relatively modest conceptions of distributive justice that include some entitlement goods and services provided to individuals, to fairly comprehensive socialist conceptions under which almost all packages of goods are in some sense managed by the state.

For the libertarian completely unwilling to alter even the property principle, the only approach left is to reject the very possibility of a just and stable state (or other overriding socioeconomic arrangement). This is essentially an anarchist position grounded in a claim that while the notion of a just and stable state is not inherently contradictory, such a state is in practice impossible to establish. Thus it is not so much a method for weakening the claims to prevent proliferation problems as a “bullet biting” acceptance of their entailments at full strength.

Either of these positions, as I shall present them, is a rejection of minarchist libertarianism in order to address the instabilities posited in my conjecture. But such a rejection implies that these views truly can address proliferation problems in a way that a libertarian account cannot. This chapter will establish that this is so, and make clear how far each approach suggestion seems to be that libertarian considerations justify ignoring entirely the feasibility (or lack thereof) of establishing a certain kind of socioeconomic arrangement. But I cannot imagine that it is a just or responsible course to deliberately seek to establish a temporary, unstable state. Any argument in favor of such a proposal would presumably be a superset of the anarchist arguments which I will discuss in section 6.2. If such arguments are to be extended in some more powerful way, it will require a reorientation of the usual goals of political philosophy, which tacitly takes as its topic institutions and agreements that are enduring. Such a reorientation might be of interest, but is beyond the scope of our present discussion.
must diverge from the two libertarian principles in order to re-establish the stability that proliferation problems threaten.

6.1 Avoiding proliferation problems with redistribution

Members of the first family of approach allow and often even require the state to alter the distribution of goods to more closely achieve some desired feature or configuration, or at least minimize undesirable developments such as systematically increasing inequality in income and holdings. I will consider three versions of this family, in order to give some idea of which ones can effectively manage concerns about status.

6.1.1 Traditional socialism

The most familiar version of a redistributive political conception would be some form of socialism. Under the most radical forms of socialism, which for many people are the most familiar, all goods produced (or at least all that can be dealt with as commodities) would be gathered under the direct control of the state and parcelled out according to guidelines provided in the social contract regarding what form of distribution is to be taken as optimal. The particular patterns of distribution favored by socialists are most often presented as purely egalitarian, generally by way of a very ambitious program of welfare infrastructure that primarily distributes specific services and commodities directly to participants.

Under any socialist arrangement that is truly so egalitarian, no individual’s qualities would actually greatly impact that individual’s package of goods received, and this would certainly mollify one form of concern about status: a dislike for being below others in a positional
hierarchy. But it would exacerbate another form of status concern, one that insists that statuses be earned, that is, correlated with qualities in some way or other. This latter form of preference is common enough that extreme socialism would probably provoke status dissatisfactions of its own (and historically this has often been the case). So if we concentrate solely on the distribution of goods, and especially goods understood as commodities, socialist arrangements seem immediately unstable. Some socialists respond to this sort of concern by suggesting that the distribution may be modified from an arrangement of completely equal shares to one in which an individual’s contribution is recognized and rewarded accordingly by the institutions that distribute goods. But even this more moderate form of socialism is vulnerable to the libertarian critique that such institutions introduce myriad opportunities for inefficiency and corruption, and in any event are entirely unnecessary. Just let people keep what they produce or trade for, and the market will assign goods without government intervention.

We have seen that the libertarian’s response is not entirely satisfactory. Protections for personal property rights that are thought to include rent and inheritance actually disrupt, rather than facilitating, the realization of this libertarian vision. So our present question is, can the socialist do any better?

In fact, setting the problem up in the way we did just now is a departure from how the classical Marxist socialist sees things. Recall that in our abstract model of an arrangement, the problem is not simply that a certain set of qualities, $q_i$, is rewarded with a certain package of goods, $r_i$. It is that in the next economic cycle, $q_i$ is in turn impacted dramatically by $r_i$, and the ensuing feedback loop drives rapidly accelerating inequality. The Marxist concern with keeping the means of production in the hands of workers can be understood as an attempt to interrupt this feedback loop. If the large capital assets that supply industrial infrastructure are never assigned to any individual’s $q_i$, and accumulating such assets in order
to charge rent for them is not an economic strategy that is supported and protected by the state, it is possible that the expansion of inequality discussed in chapter 3 will be dramatically slowed. It may even be reduced so far as to prevent the development of proliferation problems, given that the impact of inheritance also frequently turns on the ownership of large capital assets of this kind.

Two concerns about this approach immediately arise. The first is that economists differ in their analysis of which assets are truly significant as drivers of inequality. While Pikkety has given a detailed and compelling recent argument\(^2\) for the relationship between the return on capital and the rise of inequality, Matthew Rognlie has suggested\(^3\) that a much narrower category of assets account for almost all of the actual economic returns on wealth that drive inequality: real estate. This would mean that the most urgent concerns of the Marxist may turn less on things like industrial machinery, which depreciates with use, than on the basic value of land and other highly durable property. This issue of what form of assets—for our purposes, what aspect of \(q_i\)—must be held in common in order to curb the rise of inequality is a complex one, but we will bracket it for now, and return to it in the next section when we consider certain libertarian approaches to managing a public commons. It may be that the Marxist has more in common with a certain kind of libertarian than is typically supposed.

The second sort of concern that the socialist must address has to do with where the means of production come from and where they are going: how they might be produced, distributed, held and maintained if they are not the property (and responsibility) of private individuals or corporations. A familiar strand of argument suggests that the promise of extensive rent-yielding properties is the most efficient, effective way to motivate the innovation and effort necessary for the production of industrial infrastructure. Moreover, a related argument holds

\(^2\)Piketty (2014).
\(^3\)Rognlie (2015).
that the concentration of wealth through the protection of traditional property rights is not only acceptable, it is desirable, because only when substantial capital is concentrated under the control of specific individuals or executive bodies can it be directed toward complex and expensive projects such as the development and mass manufacture of new kinds of large equipment, the extraction of extensive mineral resources, or the effective maintenance of industrial-scale agricultural processes.\textsuperscript{4} The socialist tends to respond to these arguments with the observation that it is not the concentration of wealth by accumulation that produces this effect, but the centralization of control that results from it, that matters. And there are other ways to achieve such centralization; democratic management of commonly held resources is a perfectly valid approach for large enterprises. Moreover, workers who feel they have a stake in the products of their labor will be motivated to operate with an efficiency and professionalism that is far more important to overall economic efficiency than the incentives that property rights provide for an elite few.\textsuperscript{5}

These disputes probably turn on very complex questions about the relative efficiency of various methods of administrating resources, questions that are outside the scope of the present discussion. But I can point out that even if some gain in efficiency is provided by the aggregation of capital resources in private hands, that efficiency will inevitably be overridden by the negative effects of status preferences under massive inequality. Because the potential for inequality is unbounded, but the gains in efficiency available through concentration of property are not, the benefits of these conceptions of property are always outweighed in the long run. Even completely optimizing efficiency cannot, in and of itself, forestall proliferation problems. So if socialist measures can stabilize arrangements, even at the expense of efficiency, this is a point in their favor.

\textsuperscript{4}This is a venerable claim that goes back at least to Adam Smith; see the introduction to book II of Smith (1887).

\textsuperscript{5}These issues permeate extensive areas of Capital, but see in particular Marx (1906) ch. XXV §2, ch. XXIV §4.
Of course, even in ideal cases, the socialist approach obviously and aggressively violates PP, the second libertarian claim, by preventing the products of a persons labor from passing directly into her control. It would be greatly preferable if we could modify the libertarian view less radically, retaining protections for intuitively important freedoms that relate to self-ownership and personal property, while still getting most of the stabilizing benefits of retaining some resources for common use. The next view we will consider seeks to do just that.

### 6.1.2 Left libertarianism

A certain kind of view, identified as libertarian by the philosophers who advance it, has recently emerged to challenge the orthodoxy of what I have called the second kind of fundamental libertarian claim. This view is generally called “left libertarianism”. The left libertarian does not completely reject the second claim. Rather, she restricts it in a specific manner in order to preserve its fidelity to Locke’s second proviso, a restriction on how common property may justly pass into the possession of private individuals. I discussed the second proviso briefly in 2.2.1, but here is:

> “Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself. For he that leaves as much as another can make use of does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst. And the case of land and water, where there is enough of both, is perfectly the same.”

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6For a selection of relevant literature, see Vallentyne & Steiner (2000). A very specific and fully developed left-libertarian view is presented in Otsuka (2003).
7STG §33.
The second proviso can be reasonably interpreted to require that certain finite and fundamental resources are allocated in equal shares to every person. If it is so interpreted, then we can immediately see that the stance Locke takes toward enclosure, the recognition of vast parcels of land as protected private property, is importantly historically situated in a time when the New World was believed to contain an arbitrarily large number of parcels of arable land waiting to be claimed. Locke believed that the supply of land far outstripped human needs, and that anyone who wished to improve and enclose land still had ample opportunity to do so. For this reason, he did not see the emergence of the large-scale land rentier as an inherent threat to the freedom of entrepreneurs.

Yet even in Locke’s own time, this view about the availability of land to all may have been naïve, and in our time, it is fairly absurd. The left libertarian holds that obvious limits on the supply of land mean that land cannot possibly satisfy the second proviso, and this may be true of many other resources as well. If we suppose, as pretty much all social contract theorists do, that land and other natural resources begin in the commons, then each person has a sort of share in them. If these resources are finite, then one person’s actions in removing them from the commons and placing them in private hands amount to taking something from everyone else. So if this is to be anything other than theft, the left-libertarian argues, the new proprietor of the privatized resources must compensate the common interest for the reduction it has suffered, by paying for the resources.

This is presumably accomplished with some sort of tax, and indeed many actual left libertarian proposals involve heavily taxing the use of basic resources, especially land, and using those taxes to provide other common goods such as infrastructure and basic services. 8

Unlike taxes on earned income, these taxes are justified because they amount to royalties

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8This position owes a great deal to the land value tax conception pioneered by Henry George. A good discussion of Georgist libertarianism and its relationship to other strains of left-libertarian thought can be found in Vallentyne (2000).
on common pool resources. Moreover, advocates of such a system believe that it can be structured in such a way as to incentivize optimally efficient usage of these key resources. Under this view, and in contrast to the Marxist account, most factors of production remain privately held. But because they are only useful to those who have the land to support them, and that land is so heavily taxed that it is only profitable if it is efficiently leveraged, there is little to no incentive to hoard or speculate on factors of production. Now, of course, land is less comprehensively necessary to production than it once was, but similar proposals could be made for energy, water, or other finite and fundamental resources. The central point is if a resource is both finite and essential to most forms of production, it must remain in the commons. The left libertarian thus shares many objectives with the traditional socialist, but presents solutions of a somewhat more targeted and calculated nature.

This essentially amounts to altering the structure of almost all rents at a very fundamental level, and in this way it would presumably be quite effective for reining in inequality and preventing proliferation problems. The tax proposed on natural resources is similar, in essence, to a form of contract rent in which almost everyone is a renter, but no-one is a rentier, or rather, everyone is equally; everyone benefits from the payments for natural resources that are made as rent to the public commons. Because privately collected rents are among the most important drivers of expanding inequality (see 3.3), and such rents would be all but eliminated, this is theoretically a very effective strategy for preventing (or at least dramatically slowing) proliferation problems. We noted in 6.1.1 that in fact even the contemporary Marxist may have to admit that this is the central concern. But it requires such a radical re-conception of what kinds of personal property are protected by the second libertarian claim that left libertarianism is often dismissed as not being a “proper” libertarianism at all.
The left-libertarian, with her robust conception of self-ownership and control of the products of her labor, has a good argument that her modification of PP remains true to the Lockean spirit while still differentiating land and other natural resources as beyond the reach of libertarian property claims. When we also consider how effective a tax on land and other natural resources could be for restraining the expansion of inequality, this view looks very appealing indeed. But while the view is, under a certain theoretical picture, a form of libertarianism, it nonetheless calls for a tremendous revision of much of our existing practice. The left-libertarian who does not wish to become a revolutionary has a rather substantial “can’t get there from here” problem; allowing or even requiring the state to seize vast quantities of land in the name of restoring the public commons is a severe measure to defend on libertarian grounds.

We might at least consider whether the libertarian could see an old rival as offering a way out of the consequences of the conjecture, a way that while sharply at odds with certain libertarian theoretical ideas may actually be less threatening to many libertarian practices. I am thinking here of the celebrated political conception of John Rawls. The view Rawls presents offers, among other advantages, a picture of how our basic institutions might be reformed and strengthened rather than completely re-imagined. The next section will consider how far from the libertarian view (as I have represented it) he really is, and whether his view involves a state more robust against proliferation problems that its libertarian rival.

6.1.3 Rawlsian liberalism

A democratic liberalism might approach satisfying status preferences in a broad range of ways. This is perhaps because the elements associated with democratic liberalism are more informed by historical precedent and heritage than a specific ideological program with a
limited and explicit set of principles. Nonetheless, there are some rigorous articulations of how one might specify such a liberalism, and none more thoroughly and carefully developed than that of John Rawls. So it is worth asking: How might we model the Rawlsian approach? Is it subject to proliferation or other status concern disruptions?

Rawls takes pains to establish a justificatory structure for the institutions the state establishes and oversees (or, alternately, the institutions that compose it). I will regard these institutions simply as the implementation of the social contract function $C(Q)$. Thus, although Rawls does not speak in terms of such a function, I may consider his account of what kinds of institutions can be justified as implying that only a certain kind of social contract function can be justified. We will presume that $C(Q)$ represents an “all things considered” function which accounts for the costs of maintaining these institutions, but also presumes that they are maximally efficient.\(^9\)

Importantly, not only does Rawls reject an extreme socialism of the kind I have noted above, he rejects any model of the state that uses a directly managed distribution of goods to provide welfare (that is, he rejects the “welfare state”). This is because Rawls is deeply concerned that the maintenance of the social contract involve the meaningful participation of its members.\(^{10}\) Welfare is not the same as meaningful enfranchisement. It is true that the objections he raises to laissez-faire capitalism will largely track status concerns, as advancing economic inequality also undermines equality of political status. But Rawls is clear that a centrally managed state also places an unacceptable amount of control in the hands of a few.\(^{11}\) So in addition to the objections I have already noted to the extreme socialist model, there are Rawlsian reasons not to centrally administer the function from qualities to goods.

\(^{10}\)See Rawls (1999) ch. 4, especially §32.
\(^{11}\)ibid.
In fact, Rawls recognizes that the importance of regulating the social contract function is precisely that it heavily impacts the distribution of \textit{qualities} in the next iteration of economic activity. Of course, many dimensions of a person’s qualities cannot be mitigated by the social contract, even in cases where those dimensions leave a participant in the contract at a significant disadvantage. But taking measures to improve the least advantageous packages of goods, so that they do not result in progressively worsening profiles of qualities, is both possible and fully justified. One aspect of Rawls’ justification of such measures is of particular interest to the present discussion, because it is grounded in the idea that the very thing protected by curbing inequality is the value of our liberties. In this way he is perhaps more sensitive than any other author we have considered, Robert Nozick included, to the importance of the association principle and its significance for social contracts. Rawls recognizes that the value of free participation is only secured if individuals have good opportunities to participate in, and if they are at least somewhat prepared for actual participation. Moreover, his account of distributive justice is not only quite detailed, but specifically targeted at the concerns I raised in chapter 3. He discusses a “distributive branch” of government:

“[The distributive branch] imposes a number of inheritance and gift taxes, and sets restrictions on the rights of bequest. The purpose of these levies and regulations is not to raise revenue (release resources to the government) but gradually and continually to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity. Doing this would encourage the wide dispersal of property which is a necessary condition, it seems, if the fair value of the equal liberties is to be maintained.”\textsuperscript{12}

This approach may be able to prevent proliferation of arrangements even if status preferences are quite strong. Restriction bequest would be one of the most effective ways of slowing the

\textsuperscript{12}Rawls (1999, p. 245).
extent to which the best profiles of qualities are simply composed of massive wealth. If the best positions in $Q$ are best simply because they are occupied by the very rich, inequality will increase without bound, and proliferation will still be inevitable. But if the best positions are seen as consistently the result of natural gifts and deliberate efforts, qualities that genuinely promote higher productive contributions, this will go a long way toward curbing status preferences. This will be particularly true if any measure that places a bound on the growth of inequality can be seen as mitigating the plight of the worst-off.

Of course, this cannot possibly be done in a way that respects the second libertarian claim, so it is of no help to the traditional libertarian. But it is an open question whether a libertarian prepared to moderate her position would be more satisfied by the left-libertarian position described above, or a Rawlsian position that goes to great pains to not only protect those liberties that are sustainable in a social context, but also secure their full value for every participant in an arrangement. We may also note that in the world in which we presently live, the Rawlsian picture also has less revolutionary requirements for the establishment of actual just institutions, which will probably be appealing to many. It is outside the scope of this work to make normative claims about what the “next best” form of justice might be for the libertarian committed to the formation of a stable state, but frustrated by the inevitability of proliferation problems. I have simply illustrated a part of the available conceptual space: the socialist and the left-libertarian are especially sensitive to the effects of rents, while the Rawlsian is especially aware of the compound impact of bequests, and so any of these proposals will have tools for preventing proliferation that a libertarian in the mold of Nozick cannot avail herself of.

Perhaps none of these compromises of PP are acceptable. The libertarian who holds such a position would then be obliged to accept a different consequence, and hold that no state
can be both just and stable. As it happens, libertarians are no strangers to the question of whether any government whatsoever can be just.

6.2 Anarchism as the logical conclusion of a strict libertarian argument

The second family of approaches to proliferation problems more or less just accepts them, assuming that the natural result of adherence to libertarian principles is a series of limited, temporary arrangements for protection and shared enterprise. This is to say that proliferation problems, and other questions about expanding inequality, might be taken to raise a classic issue in the interpretation of libertarianism: where does it truly diverge from anarchism?

6.2.1 Fiat justitia ruat cælum

A central feature of libertarian accounts is an insistence that fundamental demands of justice, understood in terms of rights, are never to be compromised for any other ends. This prevents the libertarian from pursuing stability in socioeconomic arrangements if it comes at any expense to AP or PP, or to any other basic rights. But even if the libertarian must “see justice done, though the heavens may fall”, perhaps it is reasonable to presume that this process takes some time. If the minarchist state can see even a few decades, maybe a century or two, before the skies come tumbling down, isn’t that worth it?
To take such a view would be to distinguish “temporary statism” from anarchism proper. This is, in a very thin conceptual sense, an option for a libertarian in light of my conjecture. Proponents of this view would say something like the following:

“The span in which a state is stable can be limited by all sorts of factors. Presumably a minarchist state can last a couple of generations during initial acquisitions, when everyone still has a reasonable expectation that their families might come to occupy the most favorable positions, and then several more generations before the inequality become onerous enough to justify the risk and expense of switching arrangements or starting a new one. And 150 or 200 years of real libertarian justice is plenty enough to justify establishing the relevant institutions, even knowing that they won’t last.”

Two arguments, however, show that temporary statism isn’t really an attractive option for the libertarian. First, the description given above of the duration of a minarchist arrangement is too optimistic. The lifespan of such an arrangement according to my instability conjecture is not “until it become unacceptable to most people”, but rather “until most people have enough information to anticipate that it is going to become unacceptable to them”. As illustrated in the “casino libertarianism” scenario, I will only be motivated to stay in an arrangement for as long as it takes for me to know whether I am in one of the lucky seats. As soon as I discover that I am not, I will want to get out and start fresh somewhere else, where I still have a chance at one of the better positions. This is because the early rounds of economic activity in a minarchist scheme have a massive effect on all later rounds. It’s better to start over in a new arrangement as soon as possible, rather than follow a bad position through to its overwhelming probable conclusion.

Here one might ask:
“So everyone who *clearly* did poorly in the early rounds will leave. But won’t there be enough middling performers, those who neither did exceptionally well nor exceptionally poorly, to sustain economic productivity?”

Not really, because these considerations are relative, so the middling performers won’t be middling anymore. As soon as a segment leaves, perhaps the bottom third, then the segment above them will be on the bottom. Their lot will become rapidly worse. This is part of the intrinsic structure of proliferation problems. The departure of the dissatisfied in turn accelerates the dissatisfaction of others.

There is also another factor that accelerates dissatisfaction: People care more about their descendants than themselves. Their standard for their children’s lives is higher, not lower. Grocers know that people are disinclined to buy even slightly overripe fruit. This is because their primary concern isn’t for the condition of the fruit at the point in time at which they buy it, but at a future point when they will eat it or offer it to others. They know that it will be unacceptably overripe by that point. They will, however, buy slightly under-ripe fruit, anticipating that same future point when it will be perfect. Similarly, many people will accept low initial status if they have an expectation of upward mobility, and this is partially because the point in time they care about most is the point when their children will enter the job market. In 2.3.1, I noted Solnick and Hemenway’s experimental evidence that positional preferences are particularly strong when they concern survey respondents’ children. Downward trends in family fortunes, such as those created by finding one’s self on the wrong side of widening inequality, are unacceptable. Each generation is likely to reorient itself toward the youngest arrangements, those with the most available opportunity and the least entrenched inequality.

All this means that the lifespan of libertarian arrangements will be measured in decades, not centuries. That shift has a considerable impact; very temporary states are intrinsically
undesirable. To begin with, they lack one of the primary virtues of collective investment: the prospect of establishing large-scale infrastructure development and institutions. These things are usually amortized over several generations, and the participants in a socioeconomic arrangement will only support these kinds of expenditures if they expect generations of their descendants to benefit from them. They also may require the issuance of bonds to fund, and an arrangement that may last no more than fifty years will have trouble selling bonds, especially after the first couple of decades.

A temporary state than can undertake major projects might be even more objectionable. At current levels of technology, the legacy of a defunct nation-state can be extremely dangerous. The dissolution of the Soviet Union has made it very difficult to track exactly what successor entities and private parties have possession of Soviet munitions and military equipment, including nuclear materials. This isn’t only a concern regarding weapons. A temporary state might engage in many enterprises that have ramifications beyond their most profitable phase, such as developing nuclear power, mineral resources, and industrial infrastructure. The risks associated with these become particularly severe if the institutions that secure and maintain them dissolve. This is an argument that can easily be cast in libertarian terms. A proliferating array of socioeconomic arrangements, intrinsically inclined to discount the future because they are expected to be of restricted duration, will surely fail to protect libertarian rights in the long run. They will be unable to guard the long-term interests of their own members, and they will create massive externalities for the members of other arrangements, especially future ones.

It may be for these reasons that nobody actually champions temporary statism in precisely those terms. Positions somewhat like it do have a presence in political philosophy. It could be argued that the scenarios actually described by anarcho-capitalists like Murray Rothbard and David D. Friedman are more like temporary statism than true anarchism, given the
predominantly collectivist history of the latter, and both of those thinkers are identified (and self-identify) as holding a particular position within libertarianism. But the typical minarchist holds anarcho-syndicalist arrangements and other unstable proto-states to be stages in a progression toward a stable minimal state. I claim that the minarchist is mistaken in thinking that this stability is achievable, and the temporary statist is mistaken in thinking that the unstable version is acceptable.

So what positions do libertarians hold regarding the possibility that their convictions entail a true anarchism? I review two representative and fairly contemporary examples.

6.2.2 The case for libertarianism as anarchism: The later Narveson

Jan Narveson’s 2001 book The Libertarian Idea is one of the standard recent articulations of libertarian thinking, and in that work he seems to present a minarchist libertarianism, albeit of a rather more contractarian bent than Nozick’s. But he has a long history of trenchant defenses of anarchism as presenting a credible and important challenge to social contract theory, and in his more recent work, he has begun to question the case for minarchism as the best realization of libertarian principles. His reasons are not immediately connected to my conjecture, but they share a similar form, and it will be useful here to summarize them in order to get at that form and understand clearly why libertarian commitments tend to motivate anarchist conclusions.

Narveson’s approach begins with a challenge to the minarchist that rests on something very like what I call AP:

\[\text{13 Nozick is explicit about this; see virtually all of Part I of ASU, but especially ch. 3 and ch. 5.}\]
\[\text{14 See, for just one example, Narveson (1996).}\]
\[\text{15 See Narveson (2003) and Narveson (2008).}\]
“So now we must ask the Minarchist: granted that you have the right general idea about what you are supposed to be doing, do you in fact have any authority to do it? Of course the answer is obvious: No! That is to say: maybe a lot of people want to be governed, but then there are others who do not, and they count. Not in the democratic sense, of course—one vote among $n$ thousand—but in the contractarian sense, of, do you buy this or don’t you? The point being that if you don’t, then the deal is off.”\footnote{Narveson (2008).}

In fact Narveson doesn’t think that we need to show why some persons would be dissatisfied with some arrangements. It may well be that some would prefer to be part of no arrangement at all. They should, by libertarian lights, have the option to decline protective services and opt out of the social contract more generally. But they do not have a choice about whether to adopt or retain that contract, and the lack of choice itself, Narveson argues, is a failure of justice regardless of the actual preferences of individuals. This suggests that my observations about status dissatisfaction would only strengthen certain convictions that some libertarians already hold. Narveson is not alone in suggesting that libertarianism is in essence a form of argument for anarchism.\footnote{e.g Friedman (1996), Long (2008).}

6.2.3 The case against: Nozick et. al.

Nozick and those who have developed his line of thought suggest that it is in fact anarchism that is unstable, and that the contracting of protective agencies naturally evolves into support for a dominant protective agency that holds a monopoly on force—a minarchist state. In the last chapter we saw the “invisible fist” argument as to how these institutions might arise, and we need not rehearse it again. But we should note that the argument for why people will eventually accept (at least) a minimal state is also the argument for why they reject
anarchy, so I will add a further critique of it, targeted a bit more pointedly at the claim that for the libertarian, minarchism is clearly preferable to anarchism.

The Nozick-style argument relies on the notion that the costs of having multiple protective agencies are so great, particularly in terms of unavoidable violence arising from cases of competing rights claims, that in any given jurisdiction there must emerge a dominant agency capable of securing a monopoly on force while still maintaining a just relation to those governed. This argument seems to be to have one of two kinds of consequences undesirable to the minarchist, which can be illustrated by exploring the following dilemma:

Either negotiation between protective agencies is a viable means of resolving competing rights claims, or it is not. If it is, there is no reason in principle why jurisdiction couldn’t be determined at a very fine-grained level, with both protective services and conflict negotiations provided by firms contracted by individuals (much in the manner of insurance). Adjudication would by default be handled by the agency contracted to protect some given piece of territory. But individuals not on “home turf” would not necessarily be at a disadvantage, if they are also insured with a respected agency, etc. As long as agencies can negotiate, perhaps by a mutual agreement to serve as mediators for disputes where they have no interested clients, they need not have continuous territory. They can cooperate with one another toward common peacekeeping objectives. This is not minarchism, but clearly a form of anarchism.

Perhaps such negotiation on grounds of strict libertarian justice is not possible. In that case, a single dominant agency is indeed the only way to halt the bellum omnium contra omnes. But such an agency would require a truly complete monopoly on the use of force in whatever territory the agency claims to represent. Such a police force can only operate if its territorial jurisdiction is consistent and continuous, and therefore it cannot allow any withdrawals of part of its territory from its jurisdiction. Thus, once a socioeconomic arrangement establishes
such an agency, members of that arrangement can no longer withdraw without giving up any real estate they have within the agency’s jurisdiction.\textsuperscript{18} This holds the demands of the first libertarian claim hostage to a violation of the demands of the second. In order to exercise her right to leave an arrangement, the libertarian would have to allow her rights to retain control over her property to be set aside. This dilemma between anarchistic and cosmopolitan conceptions does not seem to allow for Nozick’s vision of minarchist stability to be realized without the violation of libertarian rights.

In short, on the one hand, if we secure the features that make the dominant protective agency effective, we imperil the rights it is intended to secure. On the other hand, if we understand the two libertarian principles as completely inviolate (and recall that this is how Nozick insists we should understand libertarian rights) then it is not clear that a dominant protective agency can offer a standard of efficiency that is truly out of the reach of the anarcho-syndicalist.

\section*{6.3 Concluding remarks}

Nozick and with most other libertarians firmly reject any attempt to justify abridging rights in order to make an arrangement conform to some particular “pattern” for the distribution of goods. This, I have claimed, includes patterns required for a stable state. Disadvantaged individuals cannot be prevented from leaving society because of AP, but they also cannot be incentivized to stay because of PP. Her hands tied, the minarchist is simply not able to establish stable socioeconomic arrangements.

\textsuperscript{18}Locke was in fact aware of this consequence of the territorial jurisdiction of the state, and did not consider it to be in conflict with natural rights; this is one of many ways in which his conception of rights was actually much less strict and comprehensive than those of contemporary libertarians (STG §121).
I have sketched out the points of entry for satisfying status concerns that are available to the minarchist’s rivals—the socialist, the left-libertarian, the Rawlsian liberal. A libertarian in the cast of Nozick (or Mack, or the early Narveson, etc.), by contrast, is ideologically barred from addressing status concerns in an effective manner, a manner that would really speak to the rational basis of those concerns. I have also noted that there may be, for the libertarian, no just redress of this kind. In that case libertarianism is anarchism, which many may regard as a *reductio ad absurdum*.

Let me close by reiterating what it would be to take the traditions of classical liberalism and social contract theory seriously. People are not rightly expected to explain themselves, their aims and values, to their government. It falls upon the government of a free people to explain to them how its actions best protect and forward their own aims and values. This is the duty that I believe the minarchist libertarian cannot hope to fulfill.
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