

## **The Libertarian Error**

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### **I. Introduction**

As Congress gears up for another round of massive tax cuts whose benefits will primarily go to the wealthiest, it might be worthwhile to consider the underlying rationale for these cuts.

In general, there are two arguments presented in justification for such cuts. The first is a utilitarian argument. The claim is that tax cuts for the wealthy will stimulate the economy and make things generally better for everyone. There are many good reasons to think that this is not true, but I am going to leave this claim aside for now as it is largely a practical question concerning how a capitalist system functions.

The more fundamental, and more philosophical, justification comes from the libertarians. The libertarian claim is that taxation for any other purpose than the defense of liberty is illegitimate, indeed, a kind of theft. According to the libertarians, the government simply has no right to impose taxes for such services as public education, aid to the poor, health care, social security, or any other service that does not involve a direct protection from those who might threaten our liberty (e.g., criminals or foreign invaders).

This libertarian idea has gained a lot of traction in recent decades, even among many who would not identify as libertarian. It provides the ideological foundation for the hostility toward government fostered by the radical right. I believe it is deeply flawed. The following is my attempt to say why.

## II. The Libertarian Argument

Libertarianism is based in the principle that each person has a right to do what he or she likes so long as it doesn't interfere with the right of others to do the same.

This sounds reasonable enough when one first hears it, which is one reason libertarianism has something of an intuitive appeal. Nevertheless, when applied as the libertarians apply it, it has alarming, indeed draconian, consequences.

Our right to do as we please extends to how we distribute our property, according to the libertarians. We all have a right to do just what we like with our property, share it or not as we like, and no one has the right to compel us to do with it what we do not choose.

This, according to the libertarians, is an implication of the right to liberty.

The sole role of government, in this view, is to protect this right to liberty. Government as such always poses something of a threat to liberty insofar as it employs coercive power to enforce its laws. Its *right* to do so, say the libertarians, is strictly limited by its role as guarantor of liberty. In other words, government only has the right to use coercion to defend against those who would themselves use coercion to impede liberty. This is the extent of government's right to coerce. This means that taxation for any other purpose (e.g., to fund public education, health care, aid to the poor, etc.) is illegitimate, for it *compels* the taxpayer to fund services the taxpayer may not wish to fund. Such compelled taxation, say the libertarians, is an affront to liberty and amounts to a kind of theft.

What is wrong with this argument?

### **III. The Libertarian Flaw**

The fundamental flaw in libertarian thinking is its failure to take into account the interdependent nature of social life and, in particular, how property is acquired, and must be acquired, in a settled society.

We are all born propertyless.

This is as true for the person who eventually becomes a billionaire as it is for the impoverished. The only way to acquire property in a settled society, where all the natural resources have been divvied up and are already owned by someone, is to acquire it from those who already have it. Those who cannot acquire property from those who own it will die.

If we now say that property owners have the right to do whatever they like with their property – share it or not, hire people or not – this is as much as to say that they have the right to determine, at their sole discretion, who, among those who do not yet have property, shall live and who shall die, who shall prosper and who shall founder, who shall have the opportunity to fulfill their potentialities and whose potentialities shall be quashed. In effect, it is to say that property owners have a right to establish a tyranny over everyone else.

In other words, to grant that people have the property rights that libertarians claim is to grant that some (the propertied) have the right to deprive others of the very things libertarians themselves generally claim we all have a right to – life, liberty, and property.

But this amounts to a contradiction. By definition, no one can have a right to deprive others of those things they have a right to.

It follows that there must be a flaw in the libertarian understanding of the right to property – and indeed there is. Wherein lies this flaw? To answer this we need to take a closer look at what the ‘right to property’ really means.

#### IV. The Right to Property

What is ‘property,’ and what can it mean to say that we have a *right* to it?

Perhaps the first thing to point out is that the idea of property is itself a *legal* concept. This can be made clear by distinguishing property from possession. If I steal your car I come into possession of it, but it does not thereby become my property. It remains your property even though it is no longer in your possession. To say that one has property in something is to say, precisely, that he or she has certain rights in respect to it. The right to property, in other words, is a right to a certain set of rights.

What, then, is a ‘right’? A right, again, is a legal concept. To say that we have a right to something is to say that, by law, we have certain entitlements with respect to it; we are permitted, by law, to do this or that with regard to it, and others are not permitted to interfere.

Given that the idea of a ‘right’ is a legal concept, were we to understand law itself to be strictly a political construct, we would have to say that the right to property is just whatever the law declares it to be. On this ground, it would be meaningless to declare any kind of taxation illegitimate. Insofar as taxation is law, it would, by definition, be legitimate.

But this is not how libertarians view law. According to classical liberalism, to which libertarians generally appeal, there is a *natural law* that grants us *natural rights*. When the Declaration of Independence declares that “all men are created equal and are endowed by their Creator with certain *inalienable* rights,” it is to this idea of *natural law* and *natural rights* that it appeals. Natural law takes precedence over political law. Political law is itself legitimate or not to the extent that it conforms to natural law.

Thus, libertarians base their claims, not in a *political* right to property but in a *natural* right to property. In order to understand just what the natural right to property is, however, we must first understand the *natural law* from which it is said to arise.

What is natural law and what sanctions it?

This is an involved philosophical question around which there might be much debate. But if we restrict ourselves to the tradition of classical liberalism we find that, according to this tradition, natural law is rooted in the principle that all human beings are of equal, fundamental, worth and have a basic responsibility to respect each other as such. All *natural rights* arise from this principle.

The natural right to property, then, must be understood as rooted in this principle as well. According to John Locke, perhaps the foremost proponent of classical liberalism, the natural right to property has its basis in the *need* we all have for the property required for a satisfactory life. As Locke presents it, the earth must be thought of as originally belonging to all humankind in common. But individual human beings must be supposed to have a natural right to extract property from the earth, for such property is required in order to live. Were there no such right of appropriation, writes Locke, “man had starved, notwithstanding the plenty God had given him.”<sup>1</sup>

Thus, the natural right to property is, at its base, the right to have *access* to the property needed for a decent life. As such, it is a right as applicable to the propertyless as to the propertied.

But, as Locke himself notes, this implies that there must be a limit to the amount of property any individual – or group of individuals – has a right to do with as they please. Otherwise someone, or some group of people, could amass all the available property and deprive everyone else of access to it, turning everyone else into their slaves.

Thus, the libertarian understanding of the right to property proves to be gravely flawed; indeed, it is itself a threat to liberty. Libertarianism, taken to its logical conclusion, leads to plutocracy and tyranny, not liberty.

#### **IV. Conclusion: The Role of Government**

In a settled society, then, where all the property is already owned, the right to property must be understood as entailing the right of those *without* property to have sufficient access to the property they need to live well. Given this, the government's responsibility to protect our rights implies its responsibility to so order the economy as to ensure that *everyone* has access to a decent livelihood.

Where the free market fails to accomplish this, the government has not only a right, but a positive obligation, to tax the propertied so as to provide programs and services that will ensure that everyone in society will have sufficient access to the property they need for a satisfactory life.

*This* is what the right to property implies, and, indeed, what a free society demands.

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<sup>1</sup> John Locke, *Second Treatise of Government*, editor, C. B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), sec. 28.