

## A Libertarian Response to Macleod 2012: “If You’re a Libertarian, How Come You’re So Rich?”<sup>1</sup>

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(As the text indicates in various places, a version of this essay is now a chapter in a book: Lester, J. C. 2014. *Explaining Libertarianism: Some Philosophical Arguments*. Buckingham: The University of Buckingham Press.)

### Abstract

*This is a response to Macleod 2012’s argument that the history of unjust property acquisitions requires rich libertarians to give away everything in excess of equality. At first, problematic questions are raised. How much property is usually inherited or illegitimate? Why should legitimate inheritance be affected? What of the burden of proof and court cases? A counterfactual problem is addressed. Three important cases are considered: great earned wealth; American slavery; land usurpation. All are argued to be problematic for Macleod 2012’s thesis. Various problems are explained concerning using the Nozickian argument to decide the alleged excess that rich libertarians own. The essay’s main error is the presupposition that free markets do not help the worst-off. The majority of unjust holdings today are not the result of historical injustices but arise through continuing transfers enabled by taxation and state-regulation. More study of libertarian contributions to the social sciences and philosophy would appear to be desirable “personal behavior” among socialists.*

### Introduction

Unlike Macleod 2012, this response is not going to discuss “the ‘rich egalitarian problem’ posed by G.A. Cohen and then consider a variant of this problem called the ‘rich socialist problem’” (68). This is because a “rich socialist” is not a significant theoretical problem for socialism even if it is a “personal behavior” problem, which is unlikely. For to advocate a social ideology is not thereby to commit oneself to trying to live by it personally. That would, at least sometimes, be as absurd as trying to play bridge when one’s partners are playing poker, just because one advocates bridge as the better game. The two big theoretical problems for socialism are how the abolition of money (or, if some version of ‘market socialism’, then extreme economic interventions) can avoid, first, destroying society-wide economic calculation (and thereby the economy), as well as, second, destroying overall liberty and welfare. These problems make socialism a non-starter.<sup>2</sup> With the concern about “personal behavior”, socialists appear to be “Ye blind guides, which strain at a gnat, and swallow a camel.”<sup>3</sup>

The concern here is where Macleod 2012 says it will “explain the ‘rich libertarian problem’ and explain why, perhaps somewhat surprisingly, it is more intractable than the rich socialist problem.” This is important because, as will be explained, this does in principle pose a significant theoretical

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<sup>1</sup> Thanks are due to Mark Brady, David Goldstone, and David McDonagh for invaluable critical comments on this essay.

<sup>2</sup> On these topics see, for instance, Steele 1992 regarding the economics and Lester 2012 regarding the philosophy.

<sup>3</sup> *King James Bible*, Matthew 23:24.

problem that goes beyond any “personal behavior” issues. Indeed, if sound, Macleod 2012’s argument would make libertarianism a non-starter. The general idea is that the ubiquity of historically illegitimate property-holdings transitively undermines all property-holdings in excess of equality; now and possibly forever. This is a version of a popular criticism that is often thought to have some force. In Chapter 4 there is a brief reply in response to Vallentyne 2010 on this issue. But Macleod 2012 takes the point further, and with more relevant argument, than many critics of libertarianism. That merits a more detailed response. However, the relevant portion of that essay is only a couple of thousand words long. And this reply will not be very much longer. A great deal has been written on some of the issues arising (theoretical and empirical), to which this response cannot hope to do justice (or even to fully disentangle) in such a short space. Consequently, what follows is quite tentative and speculative. But some reply seemed better than none, and perhaps this is only a first stab at some of the issues.

### **The Problem and Problems with It**

The essay begins to set up the problem: we are told that “The rich libertarian professes allegiance to Robert Nozick’s version of libertarianism” (77). He might, but it ought to be understood that there are many other options. Nozick’s principles are cited, which don’t need to be rehearsed or criticised here. It is then concluded that, given the history of manifestly illegitimate acquisitions, “the rich libertarian is highly confident that the current distribution of property is tainted and morally suspect” (78). And, admittedly, to varying degrees this may well be so. However, it is immediately relevant to raise several issues.

1) It is worth noting that most people tend to consume most of what they earn in their own lifetimes. So how significant are any inherited resources with respect to “the current distribution of property”? It seems plausible that inherited resources are for most people somewhat less than a few per cent, and often vanishingly small. 2) Whatever the actual percentage of inherited resources, the illegitimate percentage (state transfers and privileges aside, for the time being) is likely to be another quite small percentage of that. So what about rich libertarians? Hardly any of them will be rich through illegitimate inheritance (more on this below). 3) The illegitimate percentage does not somehow infect the legitimate remainder like the proverbial rotten apple in a barrel. Even if as much as 25% of what you possess were to be historically illegitimate property, then why should you lose more than that 25%? 4) There is also the matter of the burden of proof. Any existing property ought first to be shown beyond reasonable doubt to be illegitimate, the degree to which this is so, and who the wronged parties are. To opt instead, for instance, for an indefinitely continuing general redistribution on the basis of mere plausible but untestable speculation is bound to undermine justice, liberty, and welfare far more than it promotes them. 5) Suppose I invest illegitimate inherited gains and turn those gains into far greater gains. The value of the original inheritance might be owed as compensation, but not everything else even though I would have nothing at all without the original illegitimate inheritance. To take an extreme example, if I am fed nothing but stolen food until I am fully grown, then the value of the food (plus interest and any damages) just *might* be owed by me in compensation to any victims (at least, if the thief cannot be caught and somehow be made to repay).<sup>4</sup> But my body itself or anything I have earned by using it would not be owed as compensation. *Mutatis mutandis*, the same would seem to apply if I unknowingly used an illegitimate inherited sum of money to start a business that subsequently grew to be successful.

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<sup>4</sup> It is “might” because it is not clear that even this is correct: an innocent beneficiary of originally stolen resources is not always clearly liable to return them or their value – a shopkeeper who unwittingly receives stolen money in payment, for instance (although stolen goods are usually treated differently).

The essay continues that “It’s quite possible that he has a greater share of resources than he would have had there not been a long history of violations of the historical entitlement theory of justice” (78). Strictly speaking, were history to have been even slightly different than it actually was before we were born, then we would not exist (because of the famous “butterfly effect” of chaos theory). Our parents – if even they existed – would not have met, or not have conceived us (as a particular egg fertilized by a particular sperm). Therefore, everyone has a greater share of resources simply by being brought into existence by causal connections that include past injustices. The general point and this immediate reply are both known in the relevant literature. It seems best to assume that we can put that counterfactual issue aside and deal with where the resources are now compared to where they ought to be from the viewpoint of any genetic descendants or other likely types of inheritors. There are various problems and issues that arise concerning past wrongs and their potential rectification. And while this response will touch on a few of them, it will mainly focus on the problem posed as having “a greater share of resources” due to “a long history of violations of the historical entitlement theory of justice”. And concerning this, there appear to be two key questions. First, how large is that “greater share of resources” likely to be? And, second, what is the best way to rectify this? Answers will be attempted by briefly considering three important cases: 1) the possession of great earned wealth; 2) American slavery; and 3) land usurpation.

1) Most of the wealth that an extremely wealthy businessman possesses (political privileges and patronage aside, for the moment) is not *usually* due to any historical injustice that has benefitted him in particular, but, rather, due to his entrepreneurial skills, hard work, and good luck. And if a tiny percentage were due to historical injustice, then that would usually be the same for most people in that society. So any rectifying between him and fellow citizens, at least, would not seem to be significant.

2) Consider the case of American slavery, which Macleod 2012 mentions (78). It is, perhaps, first worth realising that, given the global history of slavery, it is likely that virtually everyone is descended from a slave and a slave-owner too (and possibly cannibals as well, for that matter). Yet now we are all largely dispersed around the world and all suffering from a loss of potential capital accumulation. For slavery is not only a great evil, it is also a great inefficiency as it cannot be as productive as a free market in labour – whereby people tend to receive returns in proportion to their productivity and both parties gain in all transactions. Are matters very different if we focus on the historically recent slavery in the Americas? Is it relevant that many or most of the people who are descended from American slaves will also have been descended from (still historically recent) slave-owners and slaves, because slavery was endemic to Africa? To some extent might this make any claims to compensation today complicated and compromised? For instance, what if the likely alternative to slavery in America was slavery, or slave-ownership, in Africa or elsewhere?

It might be assumed that Africa would have been much better off now if slaves had not once been removed in such huge numbers. That seems unlikely. The continuing problems in Africa relate far more to current politics there than to previous slavery (and, in any case, the alternative to post-conflict slavery was death). So a related point is that most black Americans are significantly better off as a result of their ancestors having been brought to the USA as slaves. Most of Africa is no paradise today, and even slavery persists there in various forms. And that is one reason that very few black Americans want to go to live there. However, perhaps this contingent good fortune (assuming it is such) of one’s ancestors being taken to America should not be allowed in the balance, just because it is unrelated to any damages owed. For instance, if you steal my car and crash it due to brake failure, then you still owe me for the car you stole despite having saved me from a potentially fatal accident. There seems some force in this point as regards damages. However, those damages were owed to the victims by the perpetrators, and it is not clear how that situation could be ‘inherited’ by the descendants of both groups (and, in any event, most whites and many blacks too are descendants of people who immigrated since slavery was abolished). More relevant to the case in hand, Macleod

2012 is not about calculating such damages (although they do seem important with respect to libertarianism and justice) but only the undeserved gains of rich libertarians. And, in that case, there remains the question as to whether any white Americans have received a significant and continuing inherited advantage from black chattel slavery.

Many of the poorest whites in the U.S. are as poor as the poorest blacks. Is the ordinary white American, at least, any richer as a result of past black slavery? More recent capital accumulation, new technology, greater division of labour, and – again – their own skills, hard work, and luck would seem to be overwhelmingly what made them as well off as they are (any government corruption aside).<sup>5</sup> Of course, if there were some way of calculating and demonstrating any remaining ill-gotten inherited white gains and black losses (with identifiable property and identifiable people, at least), then compensation would be due (although Macleod 2012 itself is – partly due to its socialist outlook? – only concerned about illegitimate gains in excess of equality). But it is not obvious that such gains will be significant or that they must exist at all. On the contrary, it is entirely possible that, unlike the blacks themselves, virtually all whites are no better off today as a result of black slavery (and quite possibly worse off due to the additional crime and general conflict, all at least exacerbated by political interventions).

3) If land was stolen from one genetic group by another genetic group, so to speak, then this is a more plausible example of where compensation for continuing gains might be due. The descendants of the land-usurpers are benefitting greatly today from the original usurpation. But any compensation is best dealt with in the law courts by some reasonable calculation of the loss, not by some endless general redistribution process (which must itself become unjust at some point, and probably immediately). Moreover, in this land-usurpation example, there are several factors that might often significantly reduce an apparently huge initial compensation claim. i) Aboriginals cannot reasonably claim to own, for instance, a whole continent – or even hundreds of square miles – just because they are itinerant. They did not create the land and they were not using it all. The amount should be more like that required for individual homesteads. ii) After all the free-market development, the criterion of proximate loss should probably not be the current market-price of the land or the land itself (despite what existing statist laws might say). Rather, it should be what it was worth to the aboriginal owners at the time on the assumption that they would have sold it for something like that amount. And this is likely to be relatively modest.<sup>6</sup> iii) What about the potentially huge compound interest on the debt? This is sometimes cited as being a far larger problem. Clearly, no new immigrant who just bought the land could be responsible for that debt. What about an inheriting genetic descendant? It is hard to see how even he could be personally liable for such a debt. If that debt is regarded as attached to the land, then he might have to cede the land. But why should a current landowner owe that compound-interest debt any more than a similar unpaid debt from historical unpaid damages not related to land? Why should land be special? Only the particular people or organizations that were responsible can be liable for the interest on their unpaid damages. Such debts cannot be forced onto later innocent parties. They should be regarded as void, just as with any so-called ‘national debt’. iv) Without going into the, often controversial, details of each case, archaeological evidence indicates that many so-called aboriginals might themselves have been earlier usurpers. If so, their claims to compensation are thereby possibly weakened to some degree. Why return stolen land, or its full value, if it was only stolen from earlier thieves? v) To what extent, if at all, are the descendants of the various alleged aboriginals really worse off now as a result of the usurpation? They typically seem to enjoy many of the products of the free market. And most of those products would not be there if the descendants of the original usurpers

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<sup>5</sup> Under competitive conditions, at least, slavery would be no more profitable than any other enterprise.

<sup>6</sup> If they would not have sold this natural resource, then a forced sale for a reasonable sum could also be libertarian (first-user property claims can sometimes proactively impose on later people).

were not also there. This might seem to be muddling rights (or entitlements) and benefits. But what benefits we have received can affect what we are rightfully due: it can sometimes affect a claim for damages (at least the full amount due) that one is no worse off, in fact considerably better off, as a result of some admittedly illegitimate imposition. However, although this sometimes or to some extent ought to matter with respect to libertarianism and justice, Macleod 2012 is, *ex hypothesi*, only concerned with any illegitimate wealth among rich libertarians.

So how plausible is the thesis that a rich man “certainly cannot establish that the property he currently controls is justly his” (78)? It is undoubtedly *predominantly* justly his, if acquired via recent exchanges that did not violate liberty; rather than working for the state, for instance, or enjoying state privileges. In fact, any recent state transfers and privileges will be far and away the main sources of illegitimacy – not injustices generations ago.

### **The Main Answer to the Main Argument**

Now we reach the main argument: “the rich libertarian can identify, with reasonable determinacy, an excess. He thinks Nozick provides a reasonable way of identifying this”:

lacking much historical information, and assuming (1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in society have the highest probability of being the (descendants) of victims of the most serious injustice who are owed compensation by those who benefitted from the injustices (assumed to be those better off, though sometimes the perpetrators will be others in the worst-off group), then a rough rule of rectifying the injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up least well-off in the society (Nozick 1974, 231). (78)

As already explained, we could dispute this argument on the basis that the alleged discrepancy due to past injustice is nugatory. Moreover, time and again we see propertyless, non-English-speaking, immigrants arrive and achieve above-average wealth within a generation or so – despite suffering from government taxation, regulation, schooling, welfare, and even conscription. So it seems unlikely that the past is what is significantly holding back the groups of least-well-off natives (i.e., those born there). And it is also relevant that, in the given quotation, Nozick appeared to be at a theoretical loss from a libertarian viewpoint and so simply reached for Rawls’s maximin rule to patch up the problem. However, we do not need to press any of these points. For the correct response here is the same as it is to Rawls himself: if you want to “maximize the position of whatever group ends up least well-off in the society”, then that is what libertarian private-property anarchy will do. The compound growth in prosperity that the free market brings will give the least-well-off group more than they could have under any other known system.

This argument might fail to convince socialists (unless they think about it seriously, at least). But that is not really the point. The point is that Macleod 2012 offers a philosophical argument where the key assumption is really an empirical presupposition that free markets keep the poor impoverished. And yet, *ceteris paribus*, the world appears to have less poverty wherever, and to the extent that, it has freer markets. Consider the essay’s conclusion, that “The perhaps surprising implication of a libertarian principle of rectification of this sort is that material inequalities in our world are presumptively unjust” (78). The correct libertarian reply is that not only is there no such implication, but, on the contrary, it is only to the extent that “material inequalities” on a libertarian basis in our world are tolerated that the conditions of the “least well-off group” are maximally improved.

Even if this response's historical and pro-market interpretations are substantially mistaken, it is still an absurd overestimate to suggest that "a reasonable approximation of the rich libertarian's excess, is the amount of resources he has above what he would have if resources were equally distributed". That assumes, without any clear explanation, that possessing anything more than complete equality is an illegitimate "excess". This leaves no room at all for just acquisition above equality, and no room at all for a functioning economy.

What is the amount of "influence historical injustice has had on current property holdings" (79)? Regarding ancient history, almost none (the butterfly effect aside). So how can we "find a way in which [the] ugly legacy of historical injustice can be neutralized"? Regarding recent history, we might usefully start by making state-employed or state-regulated academics take honest jobs and pay back the extorted money on which they live, and by depoliticizing the organizations with state privileges and extorted funding that pass themselves off as universities. It is certainly not true that the best way that "The rich libertarian ... can materially improve the lot of the worst-off" in the long term is to give them his "excess", i.e., anything above equality. This is because – even as an unenforced social norm – equality completely undermines capital accumulation and thereby rising wages and growing prosperity.

In footnote 6, Macleod 2012 admits that "we might discover that the maintenance of some inequalities works to the benefit of the worst-off" (78). However, it then says, "But we can suppose that the principle of rectification presumptively favours distributive equality". Nothing that Macleod 2012 has said appears to make this supposition plausible. There are unjust unequal holdings (and unjust equal ones too, if we are really interested in justice), and these ought to be rectified as far as this is practical. But the vastly overwhelming majority of unjust unequal holdings (and unjust holdings generally) relate not to ancient illegitimacies but to modern and daily state-institutionalized transfers and privileges. Moreover, these illegitimate transfers and privileges predominantly punish productivity, reward folly, and result in a compound loss of prosperity that most harms the least well-off.

## Conclusion

There is no "rich libertarian problem". But there is a confused-socialist problem. Consequently, the "personal behavior" that socialists mainly need to engage in is the study of libertarian contributions to the social sciences and philosophy.

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