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Property without Government

by

Knox Ridley

Under the Direction of Andrew I. Cohen

ABSTRACT

This thesis presents a two part criticism to Liam Murphy and Thomas Nagel's book, *The Myth of Ownership*, in which they attempt to argue that it is logically impossible that one can have any entitlement to their pretax income. The first criticism addresses their claim that based on a politically charged understanding of human nature you cannot have property without government. Through the fields of psychology, biology and anthropology, an overlap is found that presents human nature in such a way that presents a serious hurdle to the Murphy and Nagel position. The second criticism addresses their failure to define the scope of government in their book. In light of cultures that have a strong conception of property, Murphy and Nagel are charged with equivocating on the definition of government in order to make their argument hold. The conclusion reached is that based on current research pertaining to human nature and a brief anthropological study, the existence of government is not needed in order to have property within a community.

INDEX WORDS: Property, Murphy, Thomas Nagel, Liam Murphy, Human Nature, Philosophy of Property

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By

Knox Ridley

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I. Introduction

Can property successfully exist in a society with little or no government? Being a part of society that was founded on upholding a strong conception of private property, our intuitions seem to answer with the affirmative. For example, imagine two people (Al and Bill) are shipwrecked on an island. Al takes a branch from a tree and spends the day carving it into a spear for catching fish. Bill then walks over to Al, takes the spear, and begins to walk away with it. It seems that in this scenario Bill, even without living in a legal society at the moment of the action, was wrong for taking the spear that Al labored to make. The intuition against Bill taking the spear that Al made helps support the claim that property is a natural right that has meaning regardless of any legal conventions to define its boundaries. In short, entitlement to exclude others from an external object can be established without a government.[1] This was the position John Locke posited in the 17th century, and it remains widely accepted to this day.

However, the appearance of a right being sacred doesn't in fact make it so. Thomas Nagel and Liam Murphy claim that property rights, like many other rights, appear to be natural because of how pervasive they are in a society. They go on to claim that property has no meaning or existence prior to a political society and it is *only* through the existence of a government that the concept of property can have any practical meaning and application (Murphy, Nagel 8-9). From this conception, it follows that we are not morally entitled to any earnings we acquire in a political society through our

[1] Regardless of how strong the intuition that supports the Lockean position is, in light of the vast criticisms against natural property rights, there must be more involved in defending a natural rights position on property than mere intuitions. I do not intend to defend it in light of the many criticisms it faces. I simply intend to set the stage of the popular debate found in the philosophy of property so that I may present an alternative.

labor, because without a government, which depends on taxes to exist, there would be no unified currency, no police force, no legal system, and most importantly to this essay, no property rights. In light of this view, if Bill is wrong in taking the spear Al made, it is only because the readers are projecting this socially engrained and legally established conception of property onto the situation.

It is the purpose of this essay to provide two criticisms of Murphy and Nagel's position about the necessary role of government, specifically in regards to their claim that property has no meaning outside the legal conventions defined by a government. The first criticism will address their claim that a world without government would be a Hobbesian nightmare. Their view of apolitical humanity lays the groundwork for their argument, that government is necessary for stable property rights in any functioning society. I argue that Murphy and Nagel fail to justify their Hobbesian view of human nature. I draw on observations in anthropology, biology and psychology to show not only that Murphy and Nagel's position is unfounded, but also that the best evidence casts human nature as sufficiently elastic as to allow for the existence of property without government. My second criticism addresses Murphy and Nagel's failure to define the scope of what they mean by "government." By focusing on numerous accounts of pre-colonial Native American tribes that had a strong sense of property rights with little or no government, I show that Murphy and Nagel's position is too bold and must be restated[2].

[2] I am grateful to Andrew Jason Cohen for suggesting this point.

II. The Murphy and Nagel Position

Strictly speaking, "property" is a general concept used to define the rules governing access to and control of external resources. There are various types of property: e.g., collective property, which is the property of a collective in so far as a consensus must be found in regards to decisions about the use of the group's property. Another type of property is public property, which is property that is open to any member of a society. And yet another form of property is private property, which establishes ownership of a resource in one member (or a group).

Within each branch of property just defined, there is a congruent concept that acts as the fundamental basis for any and all types of property. To better understand what this basis is, it will be helpful to compare property in light of mere "holdings." A resource can be defined as one's holdings simply in virtue of what one is currently and literally holding. In other words, a resource is the holding of, say, Al in so far as Al can physically maintain position of it. However, if Bill comes along and takes the resource either through brute force or surreptitiousness, then the resources taken from Al become the holdings of Bill. Now, if Al was said to have property in the resource that Bill also wants, then Bill's behavior of forcefully taking the resource is deemed immoral and illegal.[3] With property rights in a resource one maintains control of that resource without having to physically hold it.

There appears to be a conceptually necessary condition present in any and all types of property, which is not present in mere holdings: property in a resource entitles

[3] This term is used very loosely and is contextually defined based on the society in question. Some societies have strictly defined laws that outline the legal parameters of a lawful citizen's behavior, while other tribal societies have more of an informal understanding of what is acceptable behavior.

the owner(s) of that resource exclusionary rights from any and all non-owners. The limit and degree of the exclusionary rights can and do differ depending on the society; however, regardless of the specific differences among various societies, where property is found, the power to exclude non-owners must be present. How one acquires these exclusionary rights in external objects and what is sufficient for the protection of these rights is the primary source of debate within the philosophy of property.

Murphy and Nagel defend a position that requires them to add a further necessary requirement to the definition of property: there can be no property without government, and there can be no government without taxes. In light of this claim, one of the fundamental aims of their book, *The Myth of Ownership*, is to prove that it is "logically impossible that people should have any kind of entitlement to their pretax income" (Murphy/Nagel, 32). The target of their book is the popular mentality that pervades most capitalist societies, which they deem "everyday libertarianism." On this view, people believe—without any argument beyond a watered down version of a Lockean proviso—that they have a valid moral claim to their pretax income. Their theory directly challenges the strong intuitions that we have some degree of moral right to the income which our labor creates. However, according to Murphy and Nagel, without a government, which can only exist through a tax system, we could not have an income. Therefore, to claim any entitlement beyond the legal conventions that define property within a given society is not only both audacious and incorrect, it is a "logical impossibility" (Murphy/Nagel, 32). This means that any moral intuitions we might have that our labor warrants even a fraction of entitlement to that which we create or produce – even if it is the promise of trading one's labor for currency or items of interest – is greatly

misguided. Instead, this common belief is the projection of a social convention beyond the sphere in which it was created and properly applied.

When Murphy and Nagel claim it is logically impossible that one can have any kind of entitlement to pretax income, they are basing this position on the idea that the concept of property is logically dependent on the existence of government. According to their argument, to prove that property can exist without governments would be like trying to prove that bachelors can exist without the existence of men. In using such language, Murphy and Nagel must show a logical contradiction involved with using the idea of personal entitlement and pretax income.

The first step in their argument – *there can be no property without government* – is the focus of this paper, for it is the most crucial, controversial and interesting piece of their argument. Murphy and Nagel state that "there are no property rights antecedent to the tax structure." Property laws are the product of a set of laws and conventions, of which the tax system forms a part" (Murphy/Nagel, 74). They further claim that it is "logically impossible that people should have any kind of entitlement to their pretax income." In other words, not only is there no fraction of moral entitlement involved in that which we use our labor to acquire, but it is conceptually impossible to imagine a world in which we are entitled to our income without a government to establish the legal convention of property rights and thus what allows for the possibility of an income.

Conceiving of a state of nature wherein a group of humans exist among each other with a tacit convention of property is of course logically possible. There is no contradiction in this occurrence both conceptually or, as I intend to prove in later sections, historically. To use language in order to argue that this is a conceptual/analytic

contradiction can only find merit in its rhetorical value, not in its truth. However, just because it is logically possible that when I release the grip I have on, say, my pen it will ascend to the sky instead of falling to the ground, this does not mean that it would be wise to place a bet on the occurrence of this logical possibility. For if my entire perception on reality included logical possibilities as explanations for what I perceive, my life would truly be tortuous and nearly impossible to live. And just as it is logically possible that I am a brain in vat, or that my pen will fly when I release my grip on it, or that the entire universe sprung into existence 15 minutes ago, so is it logically possible that property can exist without government.

In respecting the rules of logic, Murphy and Nagel must concede that it is logically possible to have property without government, yet they can assert that the probability of this occurrence is so minute, that it is practically impossible. In other words, just as it is logically possible that my pen will fly when I release my grip on it, or that the universe is only 15 minutes old, it is logically possible to have property without government. However the question still remains whether the probability of property without government is just as minute as my pen flying. In other words, is the probability of a society with a working practice of property rights yet without government practically impossible? I use the term practically possible for ideas that are logically possible, but so remote in their possibility that it would be unwise to bet on their occurrence in reality.

Because property without government is not logically impossible, Murphy and Nagel will be forced to both acknowledge and thus redefine their view on what constitutes the necessary requirements of property, for government is not a necessary requirement for its existence. However, they can fall back on the weaker, yet still very

threatening position that property without government is practically impossible. They could then assert the very convincing position that if we want to look at a practical theory about the world in which we live, we can acknowledge the logical possibilities for the philosophers, but we must work with our practical possibilities in order to get a better understanding of our world. And in our practical world, it is improbable that we will find an occurrence of property without government, and to argue that we can, is like the philosopher trying to convince the medical doctor that he really doesn't know that someone's test results reveal cancer because he doesn't know that he is not dreaming right now. Though such a revised position would not be as strong, it would still hold as much practical weight as their prior argument. In other words, just because it is a logical possibility that my pen will fly when I let go of it, it would be immensely unwise for anyone to bet that this logical possibility will actually occur (and I, as anyone with a practical sense, would and should apply this standard every time this bet is confronted). Thus, though their claim about the logical requirements of property is obviously wrong, it still presents serious practical concerns.

Weakening Murphy and Nagel's argument to a practical level still leaves it vulnerable to important challenges. Murphy and Nagel defend the practical impossibility of property is through their conception of human nature. They advocate a Hobbesian conception of human nature – one that lets them posit with confidence that there can be no guarantee of property without government.

In this Hobbesian state-of-nature-story, our self-interested natures drive us to fearsome and aggressive behaviors so vile there would be unimaginable chaos. Furthermore, anyone desiring control over an object created she created through her labor

would have to fight off many rivals. On this account, one can thus have possessions in a state of nature, but without the legal system to define property, settle disputes and back up each decision with sufficient coercive power, property would be practically impossible.[4] With such a conception of human nature the existence of a government is necessary to have not only property but also a peaceful coexistence (Murphy, Nagel 16-17). And if their position on human nature is in fact correct then they have a very strong case.

The second step in their argument claims that *there can be no government without taxes* (Murphy, Nagel 58, 74). Murphy and Nagel believe that taxes are a necessary part of the definition of property:

> Since there are no property rights independent of the tax system, taxes cannot violate those rights. There is no prima facie objection to be overcome, and the tax structure, which forms part of the definition of property rights, along with laws governing contract, gift, inheritance, and so forth, must be evaluated by reference to its effectiveness in promoting legitimate societal goals… (Murphy and Nagel, 58)

For them, property can only exist within a government based society with the coercive power to guarantee property rights. This power, according to Murphy and Nagel, needs taxes to pay for the necessary costs needed to guarantee the possibility and use of property. However, once again, it is logically possible that a government could fulfill many of its functions without taxes, yet the probability of this scenario, if our conception of government is limited to a market economy, seems practically impossible as well. In order to function effectively, any large government needs resources to enact its authority

[4] Hobbes is the extreme example of thinkers who hold a similar position on property rights. However, this argument applies to any thinker whose theory of human nature may be more optimistic, yet still pessimistic enough to disallow for the possibility of property in a state of nature. The classic example, which will be discussed briefly, is David Hume.

and allow for public goods. Property being a legal right, like any legal right, is guaranteed publicly with resources paid for from the public purse.

Third (and therefore), *citizens in a political community are not entitled to any of their earnings* (Murphy, Nagel 74). Entitlement outside of government is an empty notion. Now, one could argue, as Locke did, that we have a moral right to the fruits of our labor. Yet, in a state of nature, one might hold a Rousseauian conception of rights, or, even worse, a Hobbesian conception of rights. Locke may be correct: we may actually be morally entitled to the fruits of our labor, but if our moral property is constantly in peril, the practical possibility of property is in doubt. However, I think Murphy and Nagel would argue that we do not have a pre-political moral right to our property, because government is a precondition of property. They seem to hold that entitlement is a function of the law. Since it is a legal convention, our earnings do not become our property in virtue of our labor, but only in virtue of government guarantees and only after the public purse has left us some share it designates as private property. A portion of income is needed to maintain the government, which in turn allows for protected life, occupation, financial security, etc. Thus, according to Murphy and Nagel, the moral story entitling one to the fruits of one's labor is not, as Locke claimed, "natural" or pre-political; it is instead contingent on the political background of a community and justified by efficiency (Murphy/Nagel, 73-74).

Although they do not believe this is the most efficient overall system, the government, according to Murphy and Nagel, is entitled to 100% of one's income if it is proven to lead to the most efficient system (Murphy/Nagel, 72-74).[5] Murphy and Nagel do not think that this tax system would ever be justified, due to its inevitable inefficiency.

[5] This point developed out of a conversation with Dr. Andrew Jason Cohen.

However, it is important to note that they arrive at a justification for the general economic system the majority of people in a capitalist society believe, yet through drastically different means. Most people – everyday libertarians being the extreme example – believe that they are morally entitled to some fraction of their pretax income, and believe that the value of commodities should be a function of capitalist markets where people freely exchange the goods to which they are entitled. Murphy and Nagel arrive at this system through the mere fact that it is the most efficient society. Unlike the everyday libertarians that would abhor the idea of a government that demands 100% of one's income based on the immoral nature of unjustified coercion, Murphy and Nagel would allow for its existence if it can be proven to be the most efficient system.

To simplify their position, Murphy and Nagel present three claims when arguing that property is logically dependent on the existence of government: (1a) Our income is a form of property, (1b) there can be no property without government; (2) There can be no government without taxes; (3) No one is (morally) entitled to their pretax income beyond the scope of the government that creates and enforces a system of property.

The following section of this paper will confront their position about human nature in the claim of their argument – there can be no property without government. Although Murphy and Nagel do not make a direct claim about human nature as such, they seem to presuppose that it innately tends toward conflict, so that without a government to police our natural impulses to create chaos, we would invariably exist in a vicious Hobbesian state of nature. Even though it has been shown that the existence of government is not a logical requirement for the conception of property, it can be argued that it is practically necessary in order to have property. It is through a pejorative account

of human nature that this position can be asserted with confidence. In pulling from various fields on what can be known about human nature, I intend to raise serious doubts about the primary premise needed by Murphy and Nagel to argue that it is practically impossible to have property without government. I will show that property is logically independent from government by showing that property can be practically independent of government.

III. Human Nature

The focus of this section will be the fundamental premise used to conclude that there cannot be property without government. - i.e., "the no-government world is Hobbes's state of nature" (Murphy/Nagel, 16). That premise, in one way or another, asserts a specific account of human nature which renders null the possibility of property without an overarching power structure. Furthermore, I will argue that those who uphold such a position overestimate the austerity of human nature, and ultimately makes the error of assuming that the average individual in their society (or in societies like their own) is the average individual for all societies. I will argue that human nature is more malleable than Murphy and Nagel seem to suppose. I intend to show that human nature is so adaptive that we are, for the most part, the products of our social environment. If Murphy and Nagel are seemingly right in their premise that there can be no property without government, it cannot be justified by the nature of all human beings constituted in such a way that it renders this occurrence practically impossible. Instead, all they can claim to show is that in some societies, people are socialized in such a way to believe that

the role of government is needed in order to have property rights. But I show that certain societies by the same token can and do respect property rights with little or no government.

One could say that the truth about human nature is the holy grail of political philosophy, and not be far off. If humans are in fact innately constituted in a certain way, from that concrete and universal framework we can conclude how to structure a political system, maximizing the most peaceful and harmonious society. However, this topic has proven to be elusive and vague at best throughout the history of political philosophy. For every theory about human nature, experience and/or history has shown counter examples.

It is with the utmost reluctance and humility that I venture to throw my hat in the ring with those who have followed. However, if the possibility of natural property rights is to be discussed in philosophy, this topic cannot be avoided.

Murphy and Nagel are not the first thinkers to defend the position that property requires government. For centuries this camp has been strongly populated by many brilliant minds, and nearly all of which have appealed to a certain conception of human nature to defend their position. Because a society without a government can logically be conceived to operate with a functioning system of property, those who uphold the Murphy/Nagel position must fall back on human nature to account for the force of their claim. Some philosophers have tried to side step this premise when making a similar stand, but ultimately, when pressed, they had to make an assumption about human nature to guarantee its full support. Thomas Hobbes overtly posited this position in the 17th century, and it is through his distinctly pessimistic declarations about human nature that necessitates a government for a functioning system of property (Hobbes, 78). David

Hume attempted to reach the same conclusion by revealing the lack of a logical connection between people and objects. In other words, there is no intrinsic connection between objects and people that would warrant them the right to convincingly claim that the object is their property. In short, there is nothing natural about human property (Hume, 315). This point reveals the logical disconnect between people and their claim to an external object. There is nothing natural about the relationship between a person and their property. Thus, more is needed in order to create such a relationship. However, for Hume, this "something more" must be a government. We do not need a government to create a convention of property, for any group of people can establish such a convention. We need a government to guarantee this convention. This reason is because of his account of human nature. He argued that the 'contrariety' of our passions and the 'violence of others' means that any situation in which I hold or use a resource is always in danger of disruption (Hume, 313).

In a more recent example, Sustein and Holmes maintain a similar view in their book, *The Cost of Rights.* However, just like those who preceded them, when pressed, they argue that the legal convention of coercive government is required for meaningful property.

> Within its own framework, laissez-faire theory is helpless to explain the basis of civilization, the general renunciation of violence by advantage-seeking individuals and groups. Why do most American entrepreneurs hesitate to threaten and kill their competitors? The theory of free markets, as it is currently taught in American universities, tacitly assumes that the problems of short time horizons and violent competition, characterizing the state of nature, have already been solved. For the most part, in other words, the science of economics tacitly presupposes the existence of an active and reliable system of criminal justice (Sustein and Holmes, 71).

If we are constituted to be a slave to our immediate passions and desires, as Hume argues, or to be innately fearful and egoistic, as Hobbes argues, then the probability of this society would be an impossible utopia, and they would, in fact, be correct in their claim. Like those before them, Murphy and Nagel use human nature to support their position on property. They argue that the idea of property in a state of nature could never be actualized due to the level of chaos that would inevitably be present in a world without the policing presence of a government. Here they seem to fall in line with a Hobbesian account of human nature, which accounts for the unavoidable chaos found in a life without a government.

Let's assume that Murphy and Nagel's position on property is true, and we in fact do need a government to allow for the practical possibility of property. This view presupposes two mutually incompatible theories about human nature. The first position has a Hobbesian tone. It holds that, to some extent, human beings by nature are ill-suited for cooperative behavior. They are inevitably prone to violence and conflict, and this nature is unavoidable and characteristic to human beings as such. This position was first outlined by Thomas Hobbes in the 16th century, and it is this camp that Murphy and Nagel belong. A world without government would then be an environment unsuited for property rights.

The second position on human nature that can ground Murphy and Nagel's view on property, unlike the first, is somewhat suspicious of universal statements about human nature. Instead, it claims that humans are neither good nor bad when born; we have malleable brains, which allow us through early development to easily adapt to our surroundings. Thus, if we are not able to live peacefully in a world without government,

it is not because we are naturally incapable of this feat, like the first theory posits; instead we have been shaped by an environment (society) that has made us incapable of easily making such a transition (if it were to arise). Human nature is plastic enough that features of our social, political and economic environment shape us in significant ways. According to this position, if in fact a world without government would be unfit for the existence of property rights, it is not because our innate nature would give way to such a condition (as the Hobbesian position asserts), it is because our acquired dispositions prevent us from securing property without government.

Through an appeal to empirical sciences it will be shown that the Murphy and Nagel account of human nature is not only untenable, but that the malleable theory of human nature is closer to the truth. This will allow for the strong possibility that a society can exist without a government and still have a working conception of property rights.

On Hobbes's view, the lack of any settled right reason keeps people from living together in peace (Lev I.5, I.13). The only way to achieve any stable peace is by constituting some single right reason as sovereign (Lev I.5, I.17). Furthermore, the laws of nature are principles of right reason that when followed allow for peace. Reason, according to Hobbes, endorses the normative plan of this single right reason (Lev. I.13, I.14), and this single right reason will compensate for the destructive differences of natural right reasons. In other words, since all humans have the same unsavory nature, they will all be in a similar state of nature that is void of peace and stability. The means to achieve peace will be outlined through reason to create a leviathan society.

Now, if human nature is innately constituted in such a way that a world without government would necessarily be a state of unfettered chaos, as Hobbes claims, then this claim must hold for all members of the species homo-sapiens to various yet sufficient enough degrees that a world without government would persist as a state of unsavory chaos. Thus, what we would find is that the standard for the development of human societies around the world would have to be either unadulterated chaos or would be a society that either has or is in the process of developing a strong political structure that is relevantly similar. Anthropological evidence seems to show otherwise, thus providing a snag for those who uphold a similar position on human nature. Because of the multifarious structures of human societies throughout time and geography, some of which were peaceful and had (have) little to no government, the Hobbesian picture of human nature is importantly unsupported.

Unlike Hobbes, we have the luxury of a more enriched field of anthropology. We have mapped the globe and marked the cultures of each region with vigorous scrutiny. It is unlikely that we will exhaust this search for new cultures, for the Earth's history is massive and in many eras uncharted. However, we do have knowledge about enough cultures for the sake of this argument. In short, what we are looking for is more than one culture throughout recorded history that was both (a) stable and secure – i.e., its people were not in constant war with other groups/states/tribes or they did not exhibit a relatively high amount of internal chaos, and (b) did not operate under the leviathan political control of an absolute sovereign or any other form of a strong government. These are the two necessary requirements for arguing successfully against the Hobbesian position about human nature.

One does not have to look far in order to find societies that meet these requirements. In fact, for most acephalous societies (also known as egalitarian or non-stratified societies), the two requirements we are looking for seem to be the standard (Clark, 250-253). At the 1966 "Man the Hunter" conference, which was later transcribed into a book, anthropologists Richard B. Lee and Irven DeVore claimed that egalitarianism was one of several fundamental characteristics of hunting and gathering societies (Lee and DeVore, 3-12).

These egalitarian societies typically portray the shared characteristics of having little or no concept of political, social or economic hierarchies; they rarely operate under permanent leadership, and their population rarely exceeds 100 people. For example, in the Kalahari Desert, the !Kung, who are the oldest living inhabitants in modern Africa (dating back 11,000 years ago[6]), are a peaceful group who hold social stability as the greatest good. They have an intricate system of gift giving and meat sharing that keeps their society cohesive and harmonious. For some members of this society, all that they are known to have is the result of gift giving (Marshall, 363). Furthermore, when asked about the topic of theft, most !Kung could not even conceptually understand this question. After living with the !Kung for some time, Lorna Marshall claimed that even after leaving their unlocked and opened possessions in the open while away from the camp, never did anything turn up missing. Things that were lost or forgotten, even two cigarettes in a crumpled pack, were returned with haste (Marshall, 370). Interestingly enough, the !Kung has little to no leadership. They have heads, which are usually earned through age, and their function is virtually indistinguishable from the rest of the tribe

[6] According to Lee, there is fossil evidence that places the !Kung in Africa 40,000 years ago. However, this evidence, though intriguing, is not conclusive (Lee 1976, 5).

(Thomas, 10). Here is a counterexample to the Hobbesian conception of human nature and the need for a government in order to have stability. The !Kung are not only a peaceful society without any form of government, they also have a working conception of property rights (in so far as external objects belong to citizens of that tribe with the special right to exclude other citizens from their use) that is both established and respected among members of that society. Furthermore, anthropologists identify acephalous societies to be "kin-ship" oriented, placing more importance on social harmony and stability rather than wealth or status. Not only are these societies stable, they appear to be harmonious and, based on our standards, relatively peaceful. Another example can be found with the indigenous Australians of Northwest Arnhem Land who arranged their entire society around a type of gift-giving, much like the !Kung. All members of this tribe are expected to give any recourse they may have to any other member who needs that recourse at any given time. Because of this social practice, they lived in a state of relative peace, free from theft and poverty (Broome, 15-18). These are two counterexample to the Hobbesian conception of human nature and the need for a government in order to have stability. The !Kung and the indigenous Australians of Northwest Arnhem Land are not only peaceful societies without any form of government, they also have a working conception of property rights (in so far as external objects belong to citizens of that tribe with the special right to exclude other citizens from their use) that is both established and respected among members of that sociey. [7]

[7] One could argue that the !Kung is not an accurate counter-example because they are not a stable society amongst power seeking, violent tribes. In other words, the peace they enjoy is due to the surrounding tribes' commitment to a government. Thus, they are not a valid counter-example. This position would not undermine my position because: first, I have still shown the possibility of an acephalous society that has something remotely approximating stable and secure holdings; second, all I am charged with doing undermining the Hobbesian picture that secure and stable holdings in an acephalous society is not possible.

In his paper, *Notes on the Original Affluent Society*, Marshall Sahlins directly challenges the claim by Hobbes that the view of those in a state of nature – in this case the hunter-gatherers – are living lives that are characterized as "solitary, poor, nasty, brutish and short." According to Sahlins, data indicates that hunter-gatherers worked fewer hours, were well fed and enjoyed more leisure time than typical members of industrial societies (Sahlins, 85-91).

This account of stable societies with minimal government are not only limited to hunter-gatherer societies. There are numerous examples of sedentary Native American tribes[8]. There are even examples of people that were citizens of a leviathan-esque, monarchic society who moved to uncharted land, and created a peaceful society with little to no government. This was the case in medieval Iceland, which grew to have hundreds of thousands of citizens living in a stable and peaceful society with virtually no government beyond informal, social agreements for several centuries (Byock, 51-67).

To sum up the conclusions of this section, in order for Murphy and Nagel to justify the more charitable claim that it is practically impossible to have property without government, they must make an appeal to human nature. As argued, there are two plausible options for how human nature can be in order to justify their claim about property: first, the Hobbesian account, which argues that humans are necessarily war-like, fear driven, and unable to cohabitate peacefully, thus making a world without government practically impossible for property; second, an argument that human nature is malleable, allowing for the environment to have a significant impact on human beings' psychologies. Murphy and Nagel use the Hobbesian account of human nature to justify

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[8] Brandt, Richard. *Hopi Ethics*; Also, see Kawtko, Stacy. *Nature and the Environment in Pre-Columbian American Life*; Also, see Keesing, Roger. *Kin Groups and Social Structure*.

their position. However, this position is not as obvious as they make it out to be, and, at best, it is highly questionable. In short, the Hobbesian version of human nature is simply not compatible with available anthropological evidence.

If Murphy and Nagel still want to maintain that you can't have property without government, they must abandon the position that this claim is practically impossible, and argue that it is simply possible (and true) that some societies do, in fact, need a government in order to have a functioning system of property rights. However, by the same token, some societies do not need a government in order to have property. In other words, if a world without government would be Hobbes's state of nature, it cannot be a necessary claim that holds true of all humans in a state of nature. If it is true it can only be true contingently for humans raised in a specific social and political environment. Therefore, if some societies are unable to cohabitate peacefully without government, and they further need government in order to have property, we are then left with one alternative about human nature that can justify such a position - i.e., our nature is highly adaptive, allowing for individuals to mold their personalities to the environment in which they develop. The following section will look at evidence in various fields in light of this final position on human nature.

In Russia between the 200 year periods of 1558 – 1721 there were continuous wars, invasions by Tartars who took thousands of slaves, and even existing slavery within the society. Gruesome atrocities were committed by the state, the church and even citizens. Hunger and disease became a way of life. Both men and women regularly went into voluntary slavery, trading freedom for security and food (Clark, 222).

It is truly fascinating that such a horrific state of affairs would persist for as long as they did in Russia during this time. This was the very question Russian historian Richard Hellie pondered, and it wasn't until he ran across Bruce Perry's study on abused children that he found a satisfying answer. The human brain adapts to its environment. It tries to survive in a place that is not conducive for easy survival. However, this price comes at a high cost, according to both Hellie and Perry co-coordinated study into Russian culture during this period. They claimed that the whole of Russian society was marked with chronic violence, a mode that was not only commonplace, but necessary for survival at times. Everybody in that culture, according to Perry and Hellie, was imprinted with "impulsivity of difficulty with abstract cognition, with a certain style of problem-solving that in our current society we would label as post-traumatic stress disorder, and maybe learning disorder, and maybe attention deficit disorder. But in that society, it was the norm" (Clark, 222). In other words, it seems that in order to survive in an otherwise horrific society, one must adapt to such a state that would appear to be abnormal in less stressful societies.

It thus appears that the environment (society) in which one lives might play an important role in shaping our moral personalities. If so, the norm of a society may not be attributed to the innate nature of humans to create such circumstances; instead it might seem that humans adapt to their environment (for better or worse) in order to survive. Science not only supports this theory about the adaptive nature of the human personality, but this theory about human nature accounts for the diversity of cultures and cultural temperaments found through out history.

In their book, *Grizzly Heart*, the world-renowned naturalist, Charlie Russell, and his partner, Maureen Elms, were shocked after adopting and then returning to their natural habitat three orphaned cubs that had been born in a zoo. To their surprise, the cubs were able to survive in the wild without being shown by their mother how to survive. As Russell and Elms observed the two cubs in their first moments of being on their own, they were amazed to discover that the bears instinctively knew what plants to eat, how to crack open acorns, climb trees, what plants were poisonous, how to catch fish, and even how to seek-out and establish a den (Russell and Elma, 121-148). In other words, the skills needed to be a bear are not learned. They are innate.

This is not the case for humans. At birth, a human's brain is not well organized. Only the most rudimentary neural pathways are established leaving it unable to crawl or even seek out its mother's nipple. It is not until we are 20 weeks old that our neurons are organized well enough to allow us the ability to hold our heads up and extend our arms. Furthermore, we are born with a set number of approximately 100 billion nerve cells in our brain. Unable to reproduce or spawn new nerve neuron cells, most of these stay with us throughout our lives. However, an adult's brain grows nearly four times as big as it was at birth. With no new material being formed in the brain, what accounts for this growth throughout a person's life is a massive increase in the number of synapses (or connections) between these nerve cells. The brain thus goes through an extreme process of organization throughout a child's early life (which extends into adulthood, yet comparatively slows down) (Clark, 194-195).

With the potential for neurons to connect in multi-trillions of possible ways, there are approximately 15,000 set synapses developed by age 3. This is 6 times more than are

present at birth, and many more than are present in an adult's brain. This temporary increase in synapses allows children to absorb information in massive volumes. This highly malleable "learners brain" maintains this ability until age 10, at which time the brain begins to discard the connections not needed or rarely used. This is why it is much easier to learn new languages as a child, and why it becomes increasingly more difficult with age (Clark, 195-196). Thus, being born with limited innate knowledge about being human, much of who we become and what we know, even the most seemingly basic activities, are learned from our environment.

Within the age old debate of nature vs. nurture, it is unlikely that the answer is one over the other, and more likely a combination of both. However, through the incorporation of biology into the debate it is apparent that nurture plays a much more significant role in determining who and what we become. In his book, *Savage Girls and Wild Boys*, Michael Newton provides the most shocking and well documented cases amongst hundreds of feral children. There are a few cases of children that were discovered in the wild living amongst social groups of various species, and all of which were found either during this crucial early years of their development or just years after. Some that were found living with wolves were reported to be acting as wolves act. They were walking on all fours, eating raw meat, and exhibited no human behaviors at all (Newton, 182-207). Furthermore, once discovered by society the children were rarely able to acquire normal language, mental and social skills. Their brains and bodies had acquired the skills for survival in the environment in which they developed. Thus, their behavior mimicked that of wolves (or whatever species adopted them). Unlike cubs,

humans do not innately know how to become human. That only occurs after they have interacted with other humans, from whom they learn how to become one.

Feral children are a spurious topic due to the rare and poorly documented nature of most cases. However, the idea that there is a window for the acquisition of proper mental and social skills early in a human's life is not only defended by biology, but also psychology and cognitive development. Freud argued that our personalities are fully formed by the age of five. His contemporary, Alfred Adler argues that our environment from the moment of birth is what we use to establish who we are to become (Adler, 111). This idea was later picked up by Jean Piaget whose observations with children's development lead him to conclude that:

> Far from being a source of fully elaborated "innate ideas," the maturation of the nervous system can do no more than determine the totality of possibilities and impossibilities at a given stage. A particular social environment remains indispensable for the realization of these possibilities (Piaget, 436).

The idea that our early childhood is the most crucial period for proper psychological development is commonplace for most psychologists. If during this time infants do not receive adequate care and standard contact with a social group, their mental development will be severely stymied. Thus, humans have a window for acquiring proper social, mental and linguistic skills. This was the thesis put forth by Eric Lenneberg in his seminal 1964 paper, *The Capacity of Language Acquisition*, which suggests that if children do not receive the adequate attention from a social group of their species, their brains will not develop properly as the following case suggests:

At the age of thirteen, Genie was finally discovered by authorities after undergoing one of the most brutal periods of child abuse ever recorded. Her father,

Clark, tied her to a chair during the day, and the tied her in a sleeping bag at night. The only noise she was accustomed to was her father either growling or yelling profanities at her. When found, she was mute and incontinent, crawled on all fours, and understood nothing that was said to her; she didn't even know how to properly masticate food, instead she put the food in her mouth, let the saliva absorb it and then spit the remainder of the mush on her clothes. But this was not because of retardation. With in 4 years of foster care and with extensive counseling, she was taught how to speak some language and social skills. In short, her case, as unfortunate as it was, provided empirical evidence to Lenneberg's theory, and helped prove that there is in fact a critical window for proper development in a child's life (Newton, 208-228).

This need of human infants for an environment of other humans to allow for the process of normal development is present in other primate species with a strong social instinct like ours. This became evident in Harry Harlow's essay, *Early Social Deprivation and Later Behavior in the Monkey*. In what some would consider an unconscionable experiment that involved depriving baby rhesus monkeys of all social contact from other members of their species, Harlow was able to scientifically demonstrate the importance of companionship in the early stages of primate development. In this experiment, Harlow had made test groups: the first group of monkey had no contact with other rhesus monkeys, and lived in total isolation. Each was observed to have spent most of its lives huddled in a corner, holding its knees and rocking. Each developed a behavioral pattern that exhibited autism. The second group was given a furry toy animal that resembled an adult rhesus monkey, and though their symptoms were still sub-par, they were significantly better off than the group left in

isolation. Furthermore, the third group, consisted of orphaned monkeys placed together in a single cage, exhibited behavioral patterns that were better off than the second group. These experiments provide further scientific proof that primates – including humans – biologically and psychologically require social nurturing in order to develop according to social norms.

In conclusion, the predominantly malleable nature of the human brain throughout early human development is not only the position about human nature that accounts for our anthropological findings, and both biological and psychological evidence supports, it is the one aspect of human nature that political philosophy would do well to acknowledge. Failure to give such empirical findings proper credit might lead to fallacious and hasty generalizations found when discussing human nature. Thinkers have attributed the standard/normal psyche for citizens in their society (and societies like their own) to all humans in all situations. We should be careful not to generalize from a few isolated examples of uncooperative chaos to claims about human nature.

If we are unable to successfully live in a world void of government it is because our socialization, for better or worse, has made our psychological and physical stability dependant on the existence of government. In light of the evidence that supports this conception of human nature, Murphy and Nagel must once again revise their position on property. They have failed to show that property is logically dependant on the existence of government, and they have failed to show that it is highly improbable that a society can exist without a government and still have property rights. In light of the other alternative for supporting their claim about property, they must drastically revise their

position to say that only some societies need a government in order to have property, which is ultimately unassuming at best.

IV. the Scope of a Government's Role in Property

With the evidence for human nature being that of a malleable state, allowing for a vast difference in a culture's general personality, it makes sense that some societies may not be able to obtain the possibility of property without a government. In fact, it appears that the more diverse, complex and largely populated a society, the less likely it will be that that society can operate with the social convention of property without an overarching government to guarantee and enforce the right. However, this does not mean that property can only exist through the existence of a government.

In fact, this was (and for some small tribes it still is) the reality for a multitude of pre-colonial, tribal communities. Craig Galbraith, Carlos Rodriguez, and Curt Stiles assert in the recent book, *Self Determination: the Other Path for Native Americans*, that "pre-colonial indigenous populations had a highly developed sense of individual private property" (7). The conception of private property was so developed for the farming-based tribes that it extended to land rights that were established and respected by various tribes. Interestingly enough, almost all of the land inhabited by the farm-based tribes scattered throughout pre-colonial America were family owned, and remained that way as long as the land was used to make improvements to its natural state. The Lummi tribe of the northern Puget Sound went as far as allowing individual property to be inherited. Furthermore, individual slave ownership and trade were prevalent among pre-colonial

indigenous tribes. Intertribal slave markets, particularly in Canada, were well established with indexed prices in terms copper plates, blankets, horses and other commodities (Galbraith/Rodriguez/Stiles, 10). Furthermore, while some regions organized into state level cities, most were either nomadic or lived sedentary lives in farming communities. For the most part, these tribes were small communities that were governed, if at all, by a system of chiefdom.[9]

In looking at these examples, which are just a few amongst many[10], we can conclude that like modern societies, pre-colonial Native Americans did have a conception of private property that was the norm within their communities. The question remains whether these tribal based communities had a government that allowed for the possibility of a meaningful practice of private ownership. In other words, one could still maintain the position that you cannot have property without government, and extend the definition of a government to consist of sedentary, chiefdom tribes or even informal hunter-gatherer communities. This very question is the basis of the second criticism to Murphy and Nagel's claim about property rights.

There are two positions one can take in light of the pre-colonial tribal based communities. The first position I will call the *Lockeian position*, which was loosely articulated by Locke in the *Second Treatise of Government* (13-16). This position claims that the pre-colonial Native Americans had a conception of property rights without any form of government. In other words, the sedentary and hunter-gatherer societies, including those under chiefdom rule, had a loose structure that made decisions for the

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[9] In the book, *The Transition to Statehood in the New World*, the anthropologist Robert Carneiro concisely defines this system as "an autonomous political unit comprising a number of villages or communities under the permanent control of a paramount chief" (45).

[10] Similar examples amongst aborigines can be found in L.R. Hiatt's book, *Kinship and Conflict*

better of the community, but these structures were not sufficient to be considered governments. The second position I will call the *Murphy/Nagel position* because it supports and allows for their claim that there can be no property without government. It asserts that the pre-colonial Native American communities did operate with a system of government, and that any community gathering that makes decisions about the good of a community is considered a government, whether it be a simple gathering of members or a more advanced system of chiefdoms.

Simply put, the pre-colonial indigenous tribes had a working understanding of private property – the evidence is too glaring to argue against such a position. Therefore, they either had a system of government that allowed for this practice, which is what Murphy and Nagel want (and indeed *have*)to say, or they did not have a government, which argues in favor of a Lockeian conception of property rights as being natural – i.e., existing prior to any legal conventions. Murphy and Nagel face a dilemma if they maintain the position that the pre-colonial indigenous tribes did have a government, which allows them to sustain their claim that we cannot have property without government. If this is so, then a system of government exists that is supported without any tax money. This seems to conflict with the second claim in their argument on property, which claims that there can be no government without taxes.

On the other hand, for Murphy and Nagel's second claim to be true, then they will have to uphold that the pre-colonial indigenous tribes did not have a government. If Murphy and Nagel shift to the Lockeian position in order to support the premise that we cannot have government without taxes, then they are forced to drop their first claim, which holds that there can be no property without government.

Without firmly defining the scope of government, Murphy and Nagel seem to be equivocating between two conceptions of government in order to defend their main argument. Their position, thus, utilizes different necessary conditions for each conception of a government, which is needed to maintain their primary argument. For their first claim (premise) to be true – *there can be no property without government* - Murphy and Nagel must uphold the position that the pre-colonial indigenous tribes did have a government. However, this means that a system of taxes is not a necessary requirement for defining a government, and thus there second claim can be true. On the other hand, for their second claim (premise) to be true – *there can be no government without taxes* - Murphy and Nagel must re-establish the necessary conditions for government to include a tax system. However, if they uphold the Lockeian position that there was no government amongst the pre-colonial Native American tribes, they must abandon their first claim.

The purpose of this paper is not to argue in favor of one position over the other. However, the evidence presented in the previous section on human nature seems to account for the diversity throughout the multitude of human societies, which also allows for the possibility of respected property rights without the existence of a strong government. It thus seems (and evidence proves) that humans can be born into a society that operates under an informal system of property rights that needs no government to guarantee such rights.

However, it seems that one avenue of avoiding this dilemma just presented to Murphy and Nagel would be to redefine what they mean by taxes. In doing so, they would have to establish taxes to include any activity given, including simply offering

one's free time, to the government of that community for the sake of making community decisions. Though this is obviously not what they have in mind in their book when discussing taxes, to loosely redefine taxes to include these conditions would lead to an assortment of problems. Treating the contribution of one's free time as a tax would strike most of us as counterintuitive since we both give it freely and we can withhold it without threat of significant coercive penalty. However we cast what a tax is, In order to sustain their position, Murphy and Nagel seem committed to an overboard notion of "tax."

Another possible way out of this dilemma is for Murphy and Nagel to claim that there is a distinct difference between property and holdings, and unless a government is present, all one may possess is that which they hold and are willing and able to maintain through force. In order to have property we need an overarching power to define and, most importantly, enforce these rights. Thus, without a strong coercive power in the form of government, the post-colonial Native American tribes this paper uses as counterexamples against the Murphy and Nagel position merely offers a system of holdings, not property.

In order for this thesis to sustain, it, like any theoretical position about the nature of reality, must account for empirical observations. In light of this truth, Murphy and Nagel must hold the position that the pre-colonial Native Americans, who, as we have seen, had a strong understanding of private possessions, which entailed exclusionary rights amongst members of the same tribe, did not have a system of property. Through this claim, Murphy and Nagel seem to be adding a suspicious necessary requirement to the definition of property. In other words, their theory maintains that government is necessary in order to have property. However, there are numerous examples of

communities that had little or no government and, in what appears in every significant respect, to have had a system of property.

Granted, the post-colonial Native Americans may have had a system of informal convention that masqueraded as property, when in fact it was simply a functioning system of holdings of its members; however, as history showed, these holdings were not respected by foreign (European) invaders who claimed their land and labor through force, and justified by Locke. One needs to look no further than the Europeans overpowering Native Americans to see that without a strong government to insure the respect of the property rights of its citizens, a society's holdings will remain in threat of becoming the property of those with both the will and power to take them.

What this argument fails to recognize is the similarity of ownership within almost every existing society. Private property can be found from in even the most egalitarian societies we know of. The !Kung, for example, live in such an egalitarian society, and even though their system is supported by an on going gift giving tradition, tools, spears and clothes are respected as private property of those that made them. Within their community, they are allowed to dispose of or exclude anyone else who participates within the community (Shostak, 8-9). In other words, without a complex coercive power to enforce such a right, this right exists none the less *inside the community*. A similar system exists in the Native American tribes mentioned above. However, there is a respect of insider property by outsiders of that community. This became evident with the annual inter-tribal markets that successfully flourished for thousands of years.

Like any society, even in complex, industrialized, diverse and strongly governed societies like the United States, which has volumes of legalese to establish the legal

definition of what constitutes property, these post-colonial Native American societies had an informal convention that successfully defined and enforced a system of property. Like property rights in any existing society, one was allowed to exclude another from using their property, and theft amongst insiders was forbidden. That is, until foreigners overpowered their system.

Even though history shows that a strong government may provide for further defense of its community's property rights, it does not show that property only exists within the confines of a government. Owned objects with exclusionary rights, respected by the insiders a community, are commonplace in human societies, and it is within the community, no matter how large, that the right of property is enacted. What both history and anthropology shows us is that the existence of a strong government is not necessary for the successful function of property rights within a community. Even within an industrialized society that operates under a strong government and vast military, a more powerful country could (and has) conquered and claimed the country, and in turn restructured the defined property of that community to fit its own agenda.

V. Conclusion

Murphy and Nagel assert that we have no entitlement to our pretax income because of two premises: first, there can be no property without government and second, there can be no government without taxes. They attempt to support this claim by conveniently adopting a Hobbesian conception of human nature, which does not allow for the possibility of property without the existence of government. Thus in order to have

property, we must have a government, and a government can only exist through a system of taxes. In showing that Murphy and Nagel are equivocating between their conception of government to support both of their premises, it is apparent that their claim is too bold. They must admit that we can either have property without government, or that we can have government without taxes. Either way, it appears that we may be entitled to more of our pretax income than Murphy and Nagel want to admit.

Regardless of whether property arose out of a natural right or convention, it is positive that a government is not needed to define property. Murphy and Nagel, like so many before them, defend a position on property rights that in inconsistent with empirical observations in history, anthropology, psychology and biology. Like anyone that maintains the position that you cannot have property without government, invariably, when pressed, they must uphold a position about human nature that can account for this claims veracity. It is not a logical impossibility to conceive of a society of humans that peacefully adopted an informal convention of property rights, and have little to no government. In fact, there are numerous examples of such tribes through history. Thus, for the role of government to be necessary, we must need the policing, and coercive nature of government to enforce and guarantee these rights. It is because of the sufficient level of chaos without a government that keeps the possibility of property impossible.

Murphy and Nagel, like so many philosophers before them, invoke a concrete and distinct theory on human nature that, if true, guarantees the claim's truth. If humans are indeed by nature so ill-disposed to cooperation, then a system like property, which requires a level of respect for others not naturally found, is not possible. However, like so many philosophers before, Murphy and Nagel make commit the fallacy of hasty

generalization: they take human nature to be universally in accord with the general psychology of their society. Without taking into account humans' natural and extremely strong ability to adapt to their environments, thus making their nature more malleable than concrete, it is easy to see how one might reach such a conclusion. However, it is simply such a conclusion is unsupported once one looks at the diversity amongst people through out a large range of social systems. Thus, once we incorporate anthropology, biology and psychology into both inquiries into human nature and the possibility of property without government, we are able to see that it is possible (and is prevalent throughout recorded history) to have property without government.

Murphy and Nagel assert that in order to have property, we must have a government, and a government can only exist through a system of taxes. In showing that Murphy and Nagel are equivocating between their conception of government to support both of their premises, it is apparent that their claim is too bold. They must admit that we can either have property without government, or that we can have government without taxes. Either way, it appears that we may be entitled to more of our pretax income than Murphy and Nagel want to admit.

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