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Against Overlordship

◆

DANIEL B. KLEIN

Libertarians and conservatives say that Obamacare *forces* you to buy health insurance. Folks of the left are apt to shrug at calling it *force*. If they engage the matter and object to calling it “force,” the objection entails something like the following: “No one is forcing you. If you don’t want to buy health insurance, fine, leave the country. No one is stopping you.”

The leftist may continue: “There are no natural property rights. Property is a set of permissions, a bundle of rights, determined by the government and delegated to you by the government. When a rearrangement of the bundles would be good, the government should make it. ‘Your’ property rights are simply whatever permissions result from the process.”

Let us enter into this way of thinking, follow through on it, and expose its presuppositions.

Although progressives and social democrats may not be fully conscious of their statements’ substance, they are saying something like the following: The state owns the substructure on which topsoil, buildings, and other things sit, and your property is enveloped in a contract with that substructure’s collective owner. Simply by being in the United States, you voluntarily agree to all government rules.

In 1911, the influential British author L. T. Hobhouse explained: “The State is vested with a certain *overlordship* over property in general and a supervisory power over industry in general” ([1911] 1994, 209–10, emphasis added). In 1910, he wrote: “[T]he Progressive ‘trend’ is . . . towards making England the property of the English nation . . . by the . . . application of the principle of public *overlordship*” (359, emphasis added).

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The definition of *overlord* is “a person who is lord over another or over other lords,” as in “to obey the will of one’s sovereign and overlord.”¹

President Barack Obama sees himself as the duly appointed officer of the overlord, which is the collectivity called “the people” or “the state.” The polity is one big voluntary club. Its officers are government officials. Its central apparatus consists of government institutions. Its official expression is government law: statutes, regulations, executive orders, and court rulings.

In a commencement address at the University of Michigan in 2010, President Obama explained: “[I]n our democracy, government is us. We, the people . . . [applause] . . . we, the people, hold in our hands the power to choose our leaders and change our laws, and shape our own destiny.”

The state’s dominion is the entire polity. As long as you are in the United States, according to the progressives, you have a contractual obligation to abide by the rules. You believe in honoring contracts, don’t you?

At the end of the nineteenth century, several factors debilitated liberalism and thrust collectivism forward. A new generation of writers openly declared state overlordship.

Ernest Belfort Bax, a British writer, wrote in his 1891 book *Outlooks from the New Standpoint*: “Liberty, in any society, is inseparable from property. Good, but this does not say it is inseparable from private property. . . . No! liberty may be inseparable from property, but nowadays it is assuredly inseparable from the common holding of property by the community” (81).

In his 1894 book *The Sphere of the State*, the American writer Frank Sargent Hoffman explained: “The natural right to property, therefore, is ultimately resolvable into a State right. The people, as an organic brotherhood, are to decide what disposition is to be made of all property. . . . The supreme ownership of all the natural sources of property is with the State. The land, the water, and the air, and all that they contain are the common possession of the race. They are under the supreme control of the whole people in their organic capacity as a State” (56–57).

Coming out of an age when liberal formulations were well established, the collectivists of 1890 had to state bluntly the key precept of their thinking.

In the 1882 book *The Coming Democracy*, British author George Harwood put the matter in this way: “As no man gave the land, so no man can be allowed to take it away, for the nation has rights over it which no private titles can ever annul. *The Coming Democracy will unflinchingly assert these rights*” (171–72, emphasis added).

The overlordship idea makes a kind of sense. Look carefully at the word *lord*. If you rent an apartment, you enter into a contract with the landlord, who fundamentally owns the apartment. The contract carves out certain subdominions for you as tenant. Only figuratively is the apartment “yours.”

1. This definition of *overlord* is found at dictionary.com, and the citation there is to *Random House Dictionary* (2010).

If the apartment complex has a no-smoking rule, and you have agreed to the terms and conditions of the rental contract, you have not surrendered ownership of your lungs or your cigarettes—you are free to exit the contract and take your lungs and cigarettes elsewhere. But as long as you remain within the envelope of the contract, the lord's domain, the contractually accepted restrictions bind you.

Many religious people believe that the heavens and the earth are the property of God—the Lord. Some conservatives take an illiberal turn by saying that laws against obscenity and drug use, for example, are not violations of liberty because in those unsavory activities you—a soul—mistreat God's property, given the implicit promises or obligations to which God holds you while your corporeal person dwells in his earthly domain. For some religions, bans on such ungodly behavior are like bans on murder, theft, and breach of contract.

For social democrats, the state is the overlord and the polity its dominion. By remaining within the polity, we voluntarily agree to the government's laws. Social democrats today, however, only rarely spell out their position. Stephen Holmes and Cass Sunstein hold that “[p]rivate property [is] a creation of state action,” and “laws [enable property holders] to acquire and hold what is ‘theirs.’” They say that we voluntarily enter into the government's laws, and they liken the matter to entering into the bylaws of a corporation (1999, 66, 230, 210, 217). The title of the first chapter of their book declares, “All Rights Are Positive”—that is, all rights are created by the government and exist only insofar as the government's laws recognize them.

In their work on “libertarian paternalism,” Richard Thaler and Cass Sunstein quietly eradicate the distinction between voluntary help, instruction, consideration, and propriety, on the one hand, and coercive government paternalism, on the other. Otherwise, in applying “libertarian paternalism,” they would object vehemently to a vast array of long-standing restrictions. They perceive no difference between voluntary proprieties, default rules, and so on, on the one hand, and laws such as drug, sex, and gambling prohibitions, occupational licensing, and the premarket approval of drugs, on the other. To them, all such rules are enveloped within the people's club of the polity, and you voluntarily consent to them simply by being within the polity. Therefore, for example, they can view “cooling off” laws as “libertarian” (2008, 250–51). Their underlying presupposition of overlordship, which obliterates libertarianism, is what has made their “libertarian paternalism” so popular in leftist quarters.² Holmes and Sunstein say that libertarian ideas of liberty are just “fairly tales” (1999, 216).

Such candor is rare today, but in 1900 it was common. Hobhouse wrote: “The ‘right to work’ and the right to a ‘living wage’ are just as valid as the rights of a person or property” ([1911] 1994, 76). That statement can make sense only on the assumption that such things are covered by a contract with the overlord.

2. For an exchange on “libertarian paternalism” that focuses on the underlying semantic issue, see Klein 2004a, 2004b, and Sunstein 2004.

The issue turns entirely on the configuration of ownership. According to Hobhouse and Sunstein, the envelope or groundwork—the *substructure*—of the political jurisdiction is fundamentally owned by the state. One way to think of this idea is to suppose that the state fundamentally owns all of the land in the polity. Another way would be to suppose that the state owns the substructure on which each plot of earth is situated; you own the soil, perhaps, but the state owns the “flower pot” in which your soil sits. Either way, the social-democratic state claims overlordship.

According to the social democrats, the state is to the polity what the landlord is to the apartment complex or the owner is to his hotel or the employer is to his workplace. This view is the collectivist conception of ownership.

The original liberal conception, however, was individualistic. The land, the house, and the money are yours, just as surely as your hands and legs are yours. Moreover, you have not entered into a contract with any supposed overlord. David Hume (1711–76) and Adam Smith (1723–90) explicitly rejected “social-contract” theories of political authority. They held that government has a certain authority, but only by convention, from necessity and utility, not from overlordship and hence not from any supposed contract with an overlord.³

You naturally claim ownership of your own person. The claim springs at least in part from your uniquely intimate knowledge and control of your bodily processes; it springs from the constitution of your being (Hume [1740] 1978, 522–67; Friedman 1994). Related principles apply to inanimate property: Hume wrote of possession, occupation, prescription, accession, succession, and transference by consent ([1740] 1978, 501–16).

Today’s ownership of land derives from the lineage of past ownership, rooted in recognitions based on principles like those that make self-ownership natural. These liberal principles reject the idea that in a time long ago the king or “the people” somehow established ownership of the entire area that now constitutes a country. Liberalism holds that either no substructure exists, or if one does, such substructure is *unowned*, like the stratosphere. Hence, there is no owner-host saying “Conform to my rules or get off my substructure.”

The lineage sometimes becomes murky, especially after decades or generations have passed since the land was conquered or expropriated. But one of the focal principles of natural ownership is that history eventually forgets, as David Hume discusses ([1740] 1978, 507ff.).

In civilizations such as ours, the liberal principles exist independently of whatever the government’s laws happen to be. We all understand that according to what Smith called *natural* jurisprudence ([1790] 1982, 218, 340, 341), slaves in the

3. See Hume [1740] 1978, 484–569, esp. 490, 548, 567, and in Hume 1987 the essays “Of the Original Contract” and “Of Passive Obedience.” See also Smith [1776] 1976, 416–17, 710–14; 1978, 315–19, 321, 401–4; and [1790] 1982, 80, 159–66, 252–53, 318, 340–42.

antebellum South owned themselves, even though that ownership was privately *and institutionally* desecrated and trampled. We understand that alcohol prohibition, even though duly enacted, was a trampling of liberty. Your property is delineated and socially deemed as *yours* by what we might call natural focal points and natural conventions. My marijuana is my marijuana, and I have not entered any contract with “the people” or any other overlord not to smoke it.

Although conflicts arise between competing sets of focal points, the Smithian view remains and stands firm. Decades before the abolition of the slave trade in the British Empire in 1807 and the abolition of slavery in 1833, Smith described slave traders as “wretches who possess the virtues neither of the countries which they come from, nor of those which they go to, and whose levity, brutality, and baseness, so justly expose them to the contempt of the vanquished” ([1790] 1982, 206–7).

These natural conventions inhere in the idea of individual liberty. The contours of liberty for Hume and Smith are pretty much like the contours of liberty for a modern-day libertarian.

For Hume and Smith, however, conventions arising from necessity and utility also recommend a degree of acquiescence to government and concede a sort of authority to government. The general rule was that we do not tolerate coercion, but a further convention is that we make one special exception: the government.

Thus, Hume and Smith’s views differ from those of some libertarians. For Hume and Smith, the *ethical claims for* liberty are less definite, less categorical. For them, a presumption in favor of liberty is a maxim, which allows exceptions. In contrast, some libertarians—for example, those in the tradition of Murray Rothbard—make their claims for the liberty principle more categorical and axiomatic.⁴ Here I prefer Hume and Smith.

However, exceptions to the general rule that make concessions to government do *not* make the government overlord of the polity. The liberty principle is a natural principle, antecedent to and independent of government rules. We are individually lord of our stuff. Each individual is lord of his or her own property, and liberal language conveys this understanding.

When the government institutionalizes its taking of our property, even if we do not call such taking “extortion,” we nonetheless will not call it a condition of a contract or voluntary agreement. We instead call it *taxation*. Liberal semantics make a category special to such governmental affairs, including also restrictions and interventions, recognizing them as neither criminal nor consensual. Taxation and intervention are not criminal, but they are coercive, and they should bear the burden of proof.

4. See Rothbard 1982. Although I reject Rothbard’s categorical claims for liberty, I generally embrace his definition of liberty, as represented by the various explorations and characterizations given in this source.

Hume and Smith's formulations and those by others developed in the words of liberalism. The semantics recognized one's claim to being left alone; they carried a presumption of liberty.

After the publication of *The Theory of Moral Sentiments* in 1759, Smith was celebrated and paramount within his cultural setting, which was itself a cultural peak in Europe. The publication of *The Wealth of Nations* in 1776 ensured him a large influence. The American Founders understood his works as reaffirmations of their basic tenets, and these works greatly influenced the new nation's liberal ethos (see Appleby 1992, 3, 4, 9, 323).

But the liberalism of Hume and Smith was subverted, particularly after 1880. The tides of collectivism, progressivism, socialism, and social democracy flooded in. The words *liberal*, *liberty*, *freedom*, *justice*, *contract*, *property*, *rights*, *equality*, and *equity* were defiled and hijacked. They have fallen to social-democratic meanings or simply to confusion. All of the changes in meanings come down to the one linchpin: the shift from the individualist to the collectivist conception of ownership. Before people knew what had hit them, the age of overlordship had suddenly arrived. In examining the shift in semantics, F. A. Hayek aptly quotes Confucius: "When words lose their meaning, people will lose their liberty" (1988, 106). By the end of the 1930s, the old liberals were devastated. The shift was generational, the seniors thinking differently than the youngsters. The social-democratic tide still engulfs us. For a century or more, the elites have spoken primarily in the social-democratic semantics.

Is it too late to throw off the idea of overlordship and to restore the individualist conception of ownership?

At this point, we encounter an irony. If conservatism is about conserving something precious, that something is not the array of institutions of the past, which included slavery, the denial of women's individual rights, the trampling of Native American rights, and the U.S. postal monopoly. If conservatism is about conserving something precious, it must seek to preserve a system of language and discourse rooted in the individualist conception of ownership. The irony is that within that system of language, the philosophy that opposes overlordship is called *liberalism*. If conservatism is serious about the individualist conception of ownership—a big *if*, to be sure—its aspiration must be to restore its identity as liberalism.

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