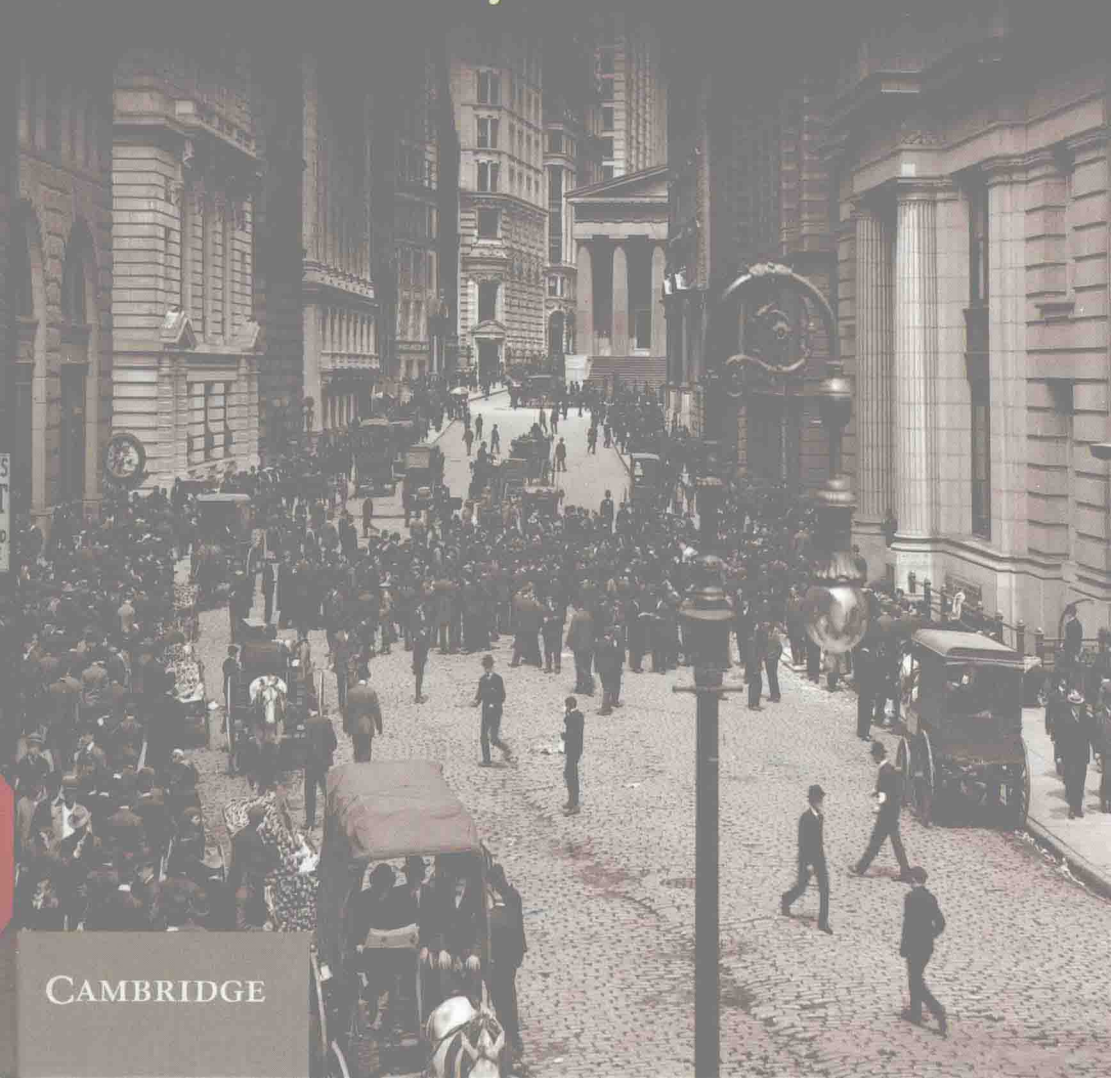


Anarchy and Legal Order

Law and Politics for a Stateless Society

Gary Chartier



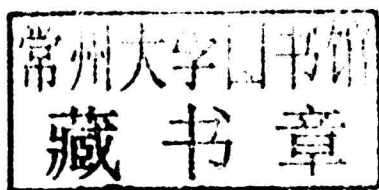
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Anarchy and Legal Order

LAW AND POLITICS FOR A STATELESS SOCIETY

GARY CHARTIER

La Sierra University



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ANARCHY AND LEGAL ORDER

This book elaborates and defends the idea of law without the state. Animated by a vision of peaceful, voluntary cooperation as a social ideal and building on a careful account of nonaggression, it features a clear explanation of why the state is illegitimate, dangerous, and unnecessary. It proposes an understanding of how law enforcement in a stateless society could be legitimate and what the optimal substance of law without the state might be, suggests ways in which a stateless legal order could foster the growth of a culture of freedom, and situates the project it elaborates in relation to leftist, anticapitalist, and socialist traditions.

GARY CHARTIER is Professor of Law and Business Ethics and Associate Dean of the Ton and Vi Zapara School of Business at La Sierra University in Riverside, California. He is the author of *Economic Justice and Natural Law* (2009), *The Conscience of an Anarchist* (2011), and *The Analogy of Love* (2007), as well as the coeditor (with Charles W. Johnson) of *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty* (2011).

For

*Kevin Carson, Stephen R. L. Clark, Sheldon Richman,
Jeffrey Cassidy, Annette Bryson, and Wonil Kim*

Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, "What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled emperor."

— AUGUSTINE OF HIPPO (354–430)

When Adam delved and Eve span, Who was then the gentleman? From the beginning all men by nature were created alike, and our bondage or servitude came in by the unjust oppression of naughty men. For if God would have had any bondmen from the beginning, he would have appointed who should be bond, and who free. And therefore I exhort you to consider that now the time is come, appointed to us by God, in which ye may (if ye will) cast off the yoke of bondage, and recover liberty.

— JOHN BALL (1338–81)

Those who make laws, appropriate wealth in order to secure power. All the legislative classes, and all the classes whose possessions depend not on nature, but on the law, perceiving that law alone guarantees and secures their possessions, and perceiving that government as the instrument for enforcing obedience to the law, and thus for preserving their power and possessions, is indispensable, unite one and all, heart and soul to uphold it, and, as the means of upholding it, to place at its disposal a large part of the annual produce of labour.

— THOMAS HODGSKIN (1787–1869)

[A] very large portion of the people of this country do not believe that the government is doing "equal and exact justice to all men." And some persons are earnestly promulgating the idea that the government is not attempting to do, and has no intention of doing, anything like "equal and exact justice to all men"; that, on the contrary, it is knowingly, deliberately, and wilfully doing an incalculable amount of injustice; that it has always been doing this in the past, and that it has no intention of doing anything else in the future; that it is a mere tool in the hands of a few ambitious, rapacious, and unprincipled men; that its purpose, in doing all this injustice, is to keep—so far as they can without driving the people to rebellion—all wealth, and all political power, in as few hands as possible; and that this injustice is the

direct cause of all the widespread poverty, ignorance, and servitude among the great body of the people.

— LYSANDER SPOONER (1808–87)

When Warren and Proudhon, in prosecuting their search for justice to labor, came face to face with the obstacle of class monopolies, they saw that these monopolies rested upon Authority, and concluded that the thing to be done was, not to strengthen this Authority and thus make monopoly universal, but to utterly uproot Authority and give full sway to the opposite principle, Liberty....

— BENJAMIN R. TUCKER (1854–1939)

The State's criminality is nothing new and nothing to be wondered at. It began when the first predatory group of men clustered together and formed the State, and it will continue as long as the State exists in the world, because the State is fundamentally an anti-social institution, fundamentally criminal. The idea that the State originated to serve any kind of social purpose is completely unhistorical. It originated in conquest and confiscation—that is to say, in crime. It originated for the purpose of maintaining the division of society into an owning-and-exploiting class and a propertyless dependent class—that is, for a criminal purpose.

— ALBERT JAY NOCK (1870–1945)

What we call a government is after all nothing but a group of individuals, who, by a variety of sanctions, have acquired the power to govern their fellows. The sanctions range from the fraud of divine right to that of sheer conquest; from the imbecility of hereditary privilege to the irrationality of counting voters. In most cases the extent to which these sanctions produce capable legislators, judges, and administrators will not bear critical examination. Nominally, government exists and functions for the public. Actually it exists and functions for the benefit of those who have in one of these absurd ways acquired power to govern. It is accepted mainly because of the sheer inertia of great masses of people. Ostensibly, of course, it is accepted because it confers a sufficiency of visible benefits upon society to make the officials who operate it tolerated in spite of the selfish and idiotic exercise of the powers conferred upon them.

— RALPH BORSODI (1886–1977)

My political opinions lean more and more to Anarchy (philosophically understood, meaning abolition of control not whiskered men with bombs)—or to 'unconstitutional' Monarchy. I would arrest anybody who uses the word state (in any sense other than the inanimate realm of England and its inhabitants, a thing that has neither power, rights nor mind); and after a chance of recantation, execute them if they remained obstinate!

— J. R. R. TOLKIEN (1892–1972)

You've asked me, "What might you be?" Now I answer you: "I am a Wobbly." I mean this spiritually and politically. In saying this I refer less to political orientation than to political ethos, and I take Wobbly to mean one thing: the opposite of bureaucrat. . . . A Wobbly is not only a man who takes orders from himself. He's also a man who's often in the situation where there are no regulations to fall back upon that he hasn't made up himself. He doesn't like bosses—capitalistic or communistic—they are all the same to him. He wants to be, and he wants everyone else to be, his own boss at all times under all conditions and for any purposes they may want to follow up. This kind of spiritual condition, and only this, is Wobbly freedom.

— C. WRIGHT MILLS (1916–62)

Preface

The “anarchistic socialism” of Benjamin Tucker and the “Ricardian socialism” of Thomas Hodgskin lie behind this book, which is in significant part an attempt to defend contemporary descendants of their ideas. As I seek to articulate an anarchist position that is identifiably leftist, anticapitalist, and socialist, while also hospitable to robust possessory claims and to mutually beneficial exchange as a valuable variety of peaceful, voluntary cooperation, I am deeply grateful for the intellectual inheritance I have received from Tucker and Hodgskin and those who learned from and dialogued with them—Voltairine de Cleyre, Lysander Spooner, Dyer Lum, Herbert Spencer, and William B. Greene, among others.¹

I’ve dedicated *Anarchy and Legal Order* to six people from whom I have learned and continue to learn about politics and philosophy.

- Kevin Carson’s brilliant synthesis of ideas from diverse radical traditions and his ability to draw effortlessly on a wealth of material from economics, history, political philosophy, and organizational theory have grounded an approach to anarchism that I realized could accommodate both my visceral antiauthoritarianism and my opposition to exclusion, subordination, and deprivation. He continues to stimulate and challenge me, and to exemplify an enviable commitment to scholarly productivity. This book would be unimaginable without the inspiration his work has provided.
- As a source of insight during my dissertation research, as the external examiner of my dissertation, and as a continuing interlocutor in subsequent years, Stephen R. L. Clark has served as an exceptional model of clear thinking and elegant writing, of the effective integration of moral passion and reflective faith

¹ I direct those who are convinced that Spencer does not belong in this group to a number of essays by Roderick T. Long, all available via his website, Praxeology.net, <http://www.praxeology.net>. Cf. Thomas Hodgskin, Book Review, *THE ECONOMIST*, Feb. 8, 1851, at 149 (reviewing HERBERT SPENCER, *SOCIAL STATICS* [1851]).

with careful analysis. He was among the first anarchist thinkers to help me see that the authority of the state was indefensible. Stephen's nimble mind ranges over a remarkable range of topics, and I remain delighted by the ongoing opportunity to learn from him about all of them, even when we disagree.

- Sheldon Richman has been a constantly available conversation partner, challenging me, posing difficult questions, directing me to unfamiliar sources, and serving as a vital link to the history of American radicalism. His dry wit, good sense, wisdom, and breadth of knowledge have made our constant exchanges both pleasurable and instructive.
- A treasured friend for more than thirty years, Jeffrey Cassidy has helped to expand my horizons even as he has offered consistent warmth, loyalty, understanding, and innumerable opportunities to banter about pop culture; to reflect on vital human relationships; to explore issues in theology, philosophy, politics, science, and society; and to engage in a welcome and continuing process of mutual radicalization.
- Annette Bryson has engaged and listened and dreamed with me as I have confronted an enormous number of personal and intellectual challenges. It has been a delight to know her since college, to officiate at her wedding, and to reflect with her on our shared past and our many overlapping connections. She has invited me into the world of her own philosophical scholarship, very different from my own. And while she may not embrace all of the positions I take here, we have happily shared a wide range of political convictions and, more than that, an underlying sensibility marked by concern for inclusion and opposition to aggression, subordination, and deprivation. Wise and compassionate and movingly trusting, she enriches my life in diverse ways.
- Wonil Kim, warmly decent and generous friend and dedicated campaigner for peace and for the well-being and dignity of immigrants and workers, has offered for many years the perspective of a humane, antiauthoritarian Marxist on my politics, of an informed scholar of the Bible on my theological ruminations, and of a sensitive pastor on my personal struggles. It is an honor and a pleasure to work with him as a colleague, to team-teach with him a course on social change that links our diverse perspectives, and to share my angst and my joy with him.

I am fortunate to be able to call Kevin, Stephen, Sheldon, Jeffrey, Annette, and Wonil my friends and to continue to be able to draw on their insights and their personal support.

My comrades at the Center for a Stateless Society—including Sheldon, Kevin, Charles W. Johnson, Roderick T. Long, Brad Spangler, Chris Lempa, Joseph Stromberg, James Tuttle, Roman Pearah, Anna O. Morgenstern, Tom Knapp, Darian Worden, David S. D'Amato, Tennyson McCalla, Mike Gogulski, Ross

Kenyon, Mariana Evica, Stephanie Murphy, Wendy McElroy, Stephan Kinsella, William Gillis, Julia Riber Pitt, and Jeremy Weiland—deserve my ongoing thanks for, among other things, their enthusiastic encouragement of this and other projects. They have been engaging conversation partners as well as valued friends. Their ideas are reflected throughout this book. I'm also very thankful for the stimuli for my work provided by John Finnis, Germain Grisez, Carole Pateman, Michael Taylor, Anthony de Jasay, Stephen Munzer, Fritz Guy, John Hick, Brian Hebblethwaite, Charles Teel, Jr., David Schmidtz, David D. Friedman, Murray Rothbard, Karl Hess, and Randy Barnett. Gene Callahan deserves credit for prompting the reflections that led to what is now Chapter 5. While I am unsympathetic to David Hume's metaethical posture, I have drawn appreciatively on his general account of justice in possession at multiple points. Thanks are due, too, to Matt Zwolinski, Pete Boettke, Steve Horwitz, John Tomasi, Fernando Tesón, Andrew Jason Cohen, Jason Brennan, Danny Shapiro, Jacob Levy, James Stacey Taylor, Brian Doherty, Riley O'Neill, Gene Berkman, and Kevin Vallier for listening, reacting, supporting, and challenging; to Sky Conway and Joyce Brand for fostering good conversation; and to Sandy Thatcher and Roy Carlisle for being the seasoned publishing professionals they are.

My parents did not live to see this book published, and no doubt each would have responded to it with mixed feelings. But they deserve repeated thanks for bequeathing me a passion for freedom, a skepticism about authority, and a disgust at elite mischief—all of which are, I hope, deeply embedded in this book.

Anarchy and Legal Order builds on, even as in some ways it departs from, the account of ethics in economic life I developed in *Economic Justice and Natural Law*. It differs especially in allowing the anarchist ideas that played minor roles in the earlier book to occupy center stage and in focusing specifically on the moral limits on the use of force—and so on the development of a natural-law version of the moral requirement of nonaggression.² Credit for the refinement of my position goes first of all to Kevin Carson, who addressed a number of pointed questions to me about the links between *Economic Justice* and my more explicitly anarchist work, but I am also grateful to the other participants in an author-and-critics session devoted to the book that took place at the 2011 San Diego meeting of the American Philosophical Association's Pacific Division—Roderick Long, who organized the session, as well as Douglas Den Uyl, Douglas Rasmussen, David Gordon, and Jennifer Baker. Carson also provided detailed, helpful comments on a draft version of *Anarchy and Legal*

² Other differences include (i) greater development of the desiderata underlying just possessory claims and the implications of these desiderata, (ii) a clearer distinction between the justifications for the use of force with and without consent, (iii) a change in focus from direct legal mandates to the indirect impact of institutional change as the central means of fostering workplace democracy and nondiscrimination, and (iv) an explicit acknowledgment of the importance of mechanisms for encouraging social change quite apart from the legal system.

Order. Sandy Thatcher offered a wide range of helpful suggestions on parts of the manuscript, as did Jonathan Crowe, John Clark, Richard Broughton, Stephen R. L. Clark, Roderick T. Long, Mark Pennington, Douglas B. Rasmussen, Michael Stokes, Joseph Stromberg, David Gordon, and several anonymous readers. I am grateful as well to Neera Badhwar for giving me the chance to think about well-being in dialogue with a chapter of her forthcoming book on virtue and happiness, and to Hillel Steiner, David Schmidtz, Matt Zwolinski, Fernando R. Tesón, Mark Pennington, and Jonathan Crowe for being willing to endorse the book.

Thanks are also due, of course, to the usual suspects: Elenor Webb and (in addition to Jeffrey, Annette, Sheldon, and Wonil) Aena Prakash, Alexander Lian, Andrew Howe, Angela Keaton, Anne-Marie Pearson, Bart Willruth, Carole Pateman, Chelsea Krafve, Craig R. Kinzer, David B. Hoppe, David R. Larson, Deborah K. Dunn, Donna Carlson, Ellen Hubbell, Eva Pascal, Fritz Guy, Heather Ferguson, Jan M. Holden, Jesse Leamon, Joel Sandefur, John Elder, John Thomas, Julio C. Muñoz, Kenneth A. Dickey, Lawrence T. Geraty, Less Antman, Ligia Radoias, Maria Zlateva, Michael Orlando, Nabil Abu-Assal, Patricia Cabrera, Roger E. Rustad, Jr., Ronel Harvey, Ruth E. E. Burke, Sarvi Sheybany, Sel J. Hwahng, and W. Kent Rogers. I especially appreciate the moral and logistical support Elenor provided as I completed this book. As usual, Dean Thomas ensured that La Sierra University's Zapara School of Business was a congenial place in which to complete work on a project of this kind.

I am very thankful to Cambridge University Press editors John Berger and Finòla O'Sullivan for their support for this book, and to production editor Paul Smolenski, senior editorial assistant David Jou, copy editor Brooke Smith, Bhavani Ganesh (of Newgen Knowledge Works Pvt Ltd. Chennai), and other participants in the production process for facilitating the rapid production of the book, ensuring its aesthetic appeal, and helping to make my writing accurate and clear.³

All of the author royalties I receive for this book will be donated to AntiWar.com. This exceptional source of news and inspirer of activism, cross-ideological but staffed by a disproportionate number of anarchists, performs a vital service by promoting peaceful, voluntary cooperation in a conflict-ridden world, and I urge all those who find my arguments in *Anarchy and Legal Order* appealing to support it.

³ In addition, I am grateful for permission to make use in this book of material published elsewhere: *Enforcing the Law and Being a State*, 31 L. & PHIL 99 (2012) (Springer); *Government Is No Friend of the Poor*, THE FREEMAN: IDEAS ON LIBERTY, Jan.–Feb. 2012, at 15; *Response to Charles Clark*, 9 CONVERSATIONS IN REL. & THEOL. 188 (2011); *SOCIALIST ENDS, MARKET MEANS: FIVE ESSAYS* (Tulsa Alliance of the Libertarian Left, 2009); *ADVOCATES OF FREED MARKETS SHOULD EMBRACE "ANTI-CAPITALISM"* (Tulsa Alliance of the Libertarian Left, 2011); *Intellectual Property and Natural Law*, 36 AUST. J. LEG. PHIL. 58 (2011); *Pirate Constitutions and Workplace Democracy*, 18 JAHRBUCH FÜR RECHT UND ETHIK 449 (2010); *Natural Law and Non-Aggression*, 51 ACTA JURIDICA HUNGARICA 79 (2010); and *Natural Law and Animal Rights*, 23 CAN. J.L. & JURIS 33 (2010).

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Introduction

Embodying Freedom

People cooperate peacefully and voluntarily when they interact without aggression.¹ A just society, a society rooted in peaceful, voluntary cooperation, is both possible and desirable.² Because the state precludes and preempts this kind of cooperation, aggressing or threatening to engage in aggression against those who disobey it, a peaceful, voluntary society must be a stateless society—an anarchist society.³ The

¹ By “aggression,” I mean, roughly, nondefensive, non-remedial harm to people’s bodies and nondefensive, nonremedial interference with their just possessory interests; see Chapter 2, *infra*. “Peace” as nonaggression is a necessary condition for peace in other, more elaborate senses, and it can reasonably be expected to promote peace in these senses.

² Events and states of affairs are not proper subjects for moral evaluation, which is concerned with *choice*. Moral choices are made by particular people, even if in concert and cooperation with others. Thus, while it is possible to talk about a “just legal system” or even a “just society,” this kind of language is shorthand. A just *institution* is one that characteristically functions in accordance with reasonable choices by particular people. Similarly, to call a legal *rule* just is simply to say that someone can enforce the rule consistently without doing anything unjust.

³ I take a state to be, in roughly Weberian terms, an entity that claims, and exercises something reasonably like, a monopoly over the determination, adjudication, and enforcement of legal rights in a given geographic area. Thanks to Charles Johnson for emphasizing the importance of referring to legal rights here and to Heather Ferguson for stressing the need to clarify the meaning of “state” as I use it in this book. In the interests of convenience, I refer at various points to states as doing things; in reality, of course, states as such don’t do things—rather, particular people, engaged in certain kinds of cooperative activities and proceeding with the benefit of certain kinds of legitimation, do things in their roles as state actors, and it should be clear throughout I have the actions of such people in mind when I talk about state action.

By “anarchy,” I do not, of course, mean *chaotic violence* but rather *social order rooted in peaceful, voluntary cooperation, and so without the state*. Cf. Patricia Crone, *Ninth-Century Muslim Anarchists*, 167 PAST & PRESENT 3, 3 (2000) (referring to “anarchists in the simple sense of believers in anarchy, ‘no government’.”). While my primary focus here is on opposition to social order created and maintained by aggressive force, support for anarchy is naturally and intimately associated with opposition to social hierarchies maintained by nonaggressive means (see Charles W. Johnson, *Liberty, Equality, Solidarity: Toward a Dialectical Anarchism*, in ANARCHISM/MINARCHISM: IS A GOVERNMENT PART OF A FREE COUNTRY? 155, 179–83 [Roderick T. Long and Tibor Machan eds., 2008]); as I argue in Chapter 6, ending institutionalized aggression and various complementary varieties of nonaggressive

general character of the kind of legal and political order compatible with anarchy can be specified and justified in light of a plausible conception of what it means for people to live fulfilled, flourishing lives.

Contemporary natural law theory offers such a conception. It incorporates both a rich and variegated understanding of human well-being and a set of principles that can guide our attempts to foster our own welfare and that of others—the Principle of Fairness, the Principle of Respect, and the Principle of Recognition (Chapter 1). People’s obligations to each other with respect to physical things are both sources of conflict and (while too frequently invoked to legitimize unjust privilege) useful guarantors of autonomy and sources of flourishing; just possessory claims serve to demarcate those interests people can reasonably defend using force from those they can’t—and, properly understood, they help to explain why the state is illegitimate. Rooted both in basic moral principles and in a set of desiderata derived from these principles and from truisms about human existence, these obligations, embodied in what I call the *baseline possessory rules*, can play a crucial instrumental role in fostering people’s welfare. However, while there are good reasons to respect people’s possessory interests in physical things, people often claim that they are entitled to treat other kinds of things as possessions. Though people often claim that other people or other sentients are among their legitimate possessions, arguments that our fellow sentients, human or nonhuman, are raw material we can use at our discretion are unconvincing. And the notion that someone can justifiably control how other people embody abstract ideas in their own legitimate possessions finds little support in a credible account of people’s just possessory claims. The strong *prima facie* presumption in favor of respecting people’s claims to their justly acquired physical possessions—those acquired in accordance with the baseline rules⁴—combined with everyone’s right not to be the object of purposeful, instrumental, or otherwise unreasonable physical attack, can be usefully summarized in the form of a maxim of *nonaggression* (Chapter 2).⁵

protest can reasonably be expected to lead to significant reductions in the frequency and influence of such hierarchies.

⁴ On just acquisition, see Chapter 2.IV, *infra*. To anticipate: just acquisition is acquisition in accordance with the baseline rules. Someone justly acquires a physical object if she takes effective possession of it when it is not justly claimed by anyone else, or when she receives it through voluntary transfer from another just possessor.

⁵ The natural-law approach to moral theory I take here combines something resembling an Aristotelian account of personal flourishing, a Kantian account of duties with respect to basic aspects of others’ well-being, and a Humean account of obligations with respect to others’ possessory claims. The understanding of the prohibition on violence against basic aspects of flourishing which the natural-law approach grounds is thus straightforwardly deontological, similar to that enshrined in the Formula of the End-in-Itself. By contrast, the account of possessory rules I defend has (as applied to institutional actors) obvious affinities with a sort of practice-consequentialism; while I do not believe that global or aggregating consequentialism is defensible, persons reasoning in accordance with the Principle of