

THE TERRITORIAL ASSUMPTION: RATIONALE FOR CONQUEST

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Justice being taken away, then, what are kingdoms but great robberies?
—St. Augustine, *The City of God*, Book IV, Chapter IV

THE CLASSIC DEFINITION OF the State involves two elements: a coercive monopolization of defense services over a given geographic area, and the imposition of coercive revenue collection from all of the area's inhabitants. As Murray Rothbard has pointed out, even if taxes were voluntary, the libertarian must still oppose state control over protective services.¹ By what right does the State prohibit competition in the production of security? By what right does the State force the pacifist or libertarian to subscribe to *its* service? The competition among states to provide protection services is certainly anarchic (and chaotic), by anyone's standard. To be consistent, shouldn't statist be opposed to world anarchy, just as they oppose domestic anarchy? How far should state boundaries extend and what should determine the extent of a state's jurisdiction? How do statist answer these questions? (A consistent libertarian, of course, would reply that there should be no state, and therefore the question of state boundaries and state jurisdiction would not arise.)

There are some statist, who in the name of consistency, argue for a one-world government, but do we have any special name for the person who advocates *both* no world government and no national state?

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¹Murray Rothbard, "Will Rothbard's Free-Market Justice Suffice?" reprinted in Carl Watner (ed.), *I Must Speak Out* (San Francisco: Fox & Wilkes, 1999), pp. 47-48.

The libertarian argument against the state exists whether there is a multitude of competing national states or a single world government. Just as the libertarian challenges the right of a national government to exert its monopoly jurisdiction over a given geographic area, so we must question the right of a world government to exert control over the entire face of the globe. The consistent libertarian must challenge the jurisdiction and legitimacy of the state—whatever its boundaries—no matter how big or how small.

The observation that the state is an invasive institution—regardless of its size or form—rests on the fact that the primary purpose of the state is conquest and control over the person and property of its citizens.² It is clear from their behavior that all rulers “regard the people as resources to be deployed for the state’s purposes.”³ The fundamental purpose of all governments and bureaucrats “is to steal as much property as possible, using the least amount of violence.”⁴ The people, their real estate, and their moveable property all exist to satisfy their government’s insatiable appetite for power and wealth. The entire basis for conscription, eminent domain, and taxes (of whatever nature) is the state’s assertion of jurisdiction over its subjects and their wealth, wherever located. This insight helps explain why the United States government collects taxes from American citizens, whether they live here or abroad, and why the Internal Revenue insists on collecting taxes for ten years from ex-Americans who have renounced their citizenship for tax reasons.

In order for states to exist they must legitimize themselves in the eyes of those they conquer. The exercise of brute force is too expensive and too demonstrative of the true nature of the state. One of the primary aims of the state propaganda apparatus (from schools to the media) is to inculcate the idea that territoriality is the essence of the state. “My country: Love it or leave it!” The modern territorial state so pervades our lives that we can hardly think of existing without it. It appears to most of us as “the only imaginable spatial framework for political life.”⁵ The intentional “fusing of polity, economy, nation and

²For an “institutional analysis” of the state see George Smith, “The Ethics of Voting: Part I,” in *ibid.*, especially pp. 29–30.

³Frederick G. Whelan, “Citizenship and the Right to Leave,” *75 American Political Science Review* (1981): 636–53 at p. 640.

⁴Marc Stevens, *Marc Stevens’ Adventures in Legal Land* (Mesa, Az.: by the author, 2005 (3rd printing), p. 24.

⁵Alexander B. Murphy, “The Sovereign State System As Political-Territorial Ideal: Historical and Contemporary Considerations,” in Thomas J. Biersteker and Cynthia Weber (eds.), *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996), pp. 81–120 at p. 91.

society has produced the most powerful of all institutions in our times, so powerful in fact that for much of modern discourse it masquerades as a natural phenomenon rather than the historical creation that it is.”⁶ Just as it might be said that the last thing a fish would discover is water, so it appears that 21st Century men and women accept the State “as a fixed element of [their] circumstances.”⁷ The purpose of this article is to challenge this territorial assumption and the illogical reasoning from which it stems.⁸

An assumption, of course, is the taking of something for granted or for truth, even though it may not be true. Thus, the territorial assumption embraces two ideas: first that states are necessary to the existence of society; and second, that defense services must be provided on a contiguous geographic basis. Neither assumption is objectively true. There is nothing immutable or unchangeable about the size and shape of political governments; nor is there anything to the fact that we *must* have them.⁹ Why must the production of security be based on a coerced geographic monopoly? Even the St. Augustine quote at the beginning of this article assumes that some element of justice resides in the state as a matter of course. But how can justice be present in an institution which, by necessity, violates the rights of at least some of those over whom it rules? So long as at least one libertarian exists on the face of the earth the idea that the state and justice can co-exist in the same political container must be a false proposition. And even after the state has killed off the last libertarian can it be said to be a just institution if all those who accept it do so because they fear for their lives and the confiscation of their property? What kind of justice is it that says “Your money or your life,” and whichever way you answer, your antagonist wins the game? Even though *territory* is derived from the Latin *terra*, is there not some etymological basis for the claim that *territory* and *terrorist* have the same root derivation—*terreor*, meaning to frighten?¹⁰

⁶Peter J. Taylor, “The State As Container: Territoriality in the Modern World-System,” 18 *Progress in Human Geography* (1994): 151-62 at p. 157.

⁷*Ibid.*

⁸Murphy, *op. cit.*, p. 106. The title for this article was suggested here, but also see Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (New York: W.W. Norton, 1976), p. 5, which refers to “the rationalization for conquest.”

⁹Colin Williams and Anthony D. Smith, “The National Construction of Social Space,” 7 *Progress in Human Geography* (1983): 502-18 at p. 505.

¹⁰Thomas Baldwin, “The Territorial State,” in Hyman Gross and Ross Harrison (eds.), *Jurisprudence: Cambridge Essays* (Oxford: Clarendon Press, 1992), pp. 207-30 at pp. 209-10.

All human activity takes place in particular locations.¹¹ Even the virtual reality of the computer screen requires a spot for the monitor and its operator. People require the use of the earth, for standing (and sitting) room, as well as to provide the means for food, shelter and clothing. Governments take advantage of this fact by asserting their authority and control over specific pieces of contiguous land. The land may be said to be “owned” by some private party but the ultimate arbiter for its use and control is the sovereign, national state. According to the international legal system, “the state is the grand owner of its territory and the people living there.”¹² “People generally accept the assumption that the land surface of the earth should be divided up into discrete territorial units, each with a government that exercises substantial authority within its own territory.”¹³ Within its sphere, each nation-state is the supreme decision-maker as to what may or may not be done. Thus, each state is sovereign over its own territory and within its own jurisdiction.

STATES AND THE QUESTION OF BOUNDARIES

There are two types of boundaries that concern us here: political boundaries that demarcate portions of the earth into different political jurisdictions, “that is areas within which a particular political authority holds sway”; and property boundaries that serve to define the “area within which an owner is entitled to make use of physical objects” and the real estate itself, and to exclude others from that use.¹⁴ As we shall see there are questions that arise from the implicit acceptance of both political boundaries and property boundaries. From the first arises questions that must be answered, like: if the just powers of government are derived from the people (for example, as outlined in the American Declaration of Independence), then who are the relevant people and how are they bounded?¹⁵ There is no “natural” boundary between the United States and Canada, so why didn’t the people of Canada become

¹¹Edward W. Soja, *The Political Organization of Space* (Washington, D.C.: Association of American Geographers, 1971), p. 3.

¹²Daniel Philpott, “The Ethics of Boundaries: A Question of Partial Commitments,” in David Miller and Sohail H. Hashmi (eds.), *Boundaries and Justice: Diverse Ethical Perspectives* (Princeton, N.J.: Princeton University Press), pp. 335-60 at pp. 341-42.

¹³Murphy, op. cit., p. 81.

¹⁴Miller and Hashmi (eds.), op. cit., p. 4, in their “Introduction.”

¹⁵Jeremy Rabkin, “In Defense of Reasonable Lines: Natural Law from a Natural Rights Perspective, in *ibid.*, pp. 317-34 at p. 325.

Americans in 1776? As David Miller has written, “[N]o justificatory account of political authority can avoid paying attention to the boundary question, that is, of how to determine the limits of the political community within and over which political authority is to be exercised.”¹⁶ From the second arises questions about the justification of private property: What justifies the holding of property by individuals? If property ownership precedes the formation of the state, then by what right do states exert jurisdiction over property owners who do not want to be included? And, “when should rights to private property give way to the interests of the wider community?”¹⁷

Geographers and political scientists enumerate five different methods by which boundaries may be established: 1) conquest; 2) settlement; 3) inheritance; 4) sale/purchase; and 5) secession.¹⁸ However, by far the vast number of political boundaries over the course of history have been established or altered by wars. As David Hume noted in 1748:

The face of the earth is continually changing, by the increase of small kingdoms into great empires, by the dissolution of great empires into smaller kingdoms, by the planting of colonies, by the migration of tribes. Is there anything discoverable in all these events but force and violence?¹⁹

The boundaries that exist at any moment are clearly arbitrary and the product of historical accidents, such as the outcome of wars, compensations, monarchical marriage agreements, population transfers, suppression of regional ethnic groups, and just plain “naked power politics.”²⁰ Diplomats, political leaders, generals, and their “mapmakers are likely to

¹⁶David Miller, “The Justification of Political Authority,” in David Schmidtz (ed.), *Robert Nozick* (Cambridge: Cambridge University Press, 2002), pp. 10–33 at p. 28.

¹⁷Miller and Hashmi (eds.), op. cit., p. 6, from their “Introduction.”

¹⁸Allen Buchanan and Margaret Moore (eds.), *States, Nations, and Borders: The Ethics of Making Boundaries* (Cambridge: Cambridge University Press, 2003), p. 13, from their “Introduction.”

¹⁹David Hume, “Of the Original Contract,” in his *Essays Moral, Political, and Literary* (Indianapolis: Liberty Classics, 1987 [first published 1748]), p. 471.

²⁰Raimondo Strassoldo, “Boundaries in Sociological Theory: A Reassessment,” in Raimondo Strassoldo and Giovanni Delli Zotti (eds.), *Cooperation and Conflict in Border Areas* (Milano: Franco Angeli Editore, 1982), pp. 245–72 at p. 259. Also see Lea Brilmayer, *Justifying International Acts* (Ithaca, N.Y.: Cornell University Press, 1989), p. 73.

have been ignorant, drunken, or corrupt” or just plain power-freaks.²¹ There is absolutely no reason why one state’s borders stop at a particular line and why another state’s territory begins on the other side of that line—except that one state’s military violence had the ability to expand that far. Can any one think of a state committing “suicide” or of “withdrawing to its natural boundaries?”²² Without doubt, “more than any other form of human association, the state is devoted to” expanding its population, its territory, and its physical and ideological power.²³ When the Mexican government, before the U.S. War with Mexico in 1848, decided to make a boundary around the Hopi country, the Hopi thought the boundary lines to be so ridiculous that they laughed about it.²⁴ Similarly, “the dividing line between Mexico and the United States is” simply an imaginary line created by politicians, and on the northern border of the United States there is “only an artificial concept that divides the vast stretch of nature that native tribes freely traversed before the emergence of Canada and of the United States.”²⁵

DO NATIONS HAVE MORAL RIGHTS TO THEIR TERRITORY?

Murray Rothbard once wrote to the effect that it was absurd to consider the territory of every nation-state sacrosanct. “The crucial flaw is the implicit assumption ... that every nation-state ‘owns’ its entire geographic area in the same just and proper way that every individual property owner owns his person and the property that he has inherited, worked for, or gained in voluntary exchange.”²⁶ In answering the question, “Can

²¹Michael Walzer, “The Rights of Political Communities,” in Charles R. Beitz, Marshall Cohen, Thomas Scanlon, and A. John Simmons (eds.), *International Ethics* (Princeton, N.J.: Princeton University Press, 1985), pp. 65-194, at p. 171.

²²Soja, *op. cit.*, p. 52, citing Luther Gulick, *The Metropolitan Problem and American Ideas* (New York: Alfred Knopf, 1962), p. 36: “[A]mong governmental institutions, the suicide complex is notably absent” Also see J. R. V. Prescott, *Political Frontiers and Boundaries* (London: Allen & Unwin, 1987), p. 110: “There is no recorded case of a state wishing to withdraw to its ‘natural boundaries’.”

²³Soja, *op. cit.*, p. 15 citing Morton H. Fried, *The Evolution of Political Society* (New York: Random House, 1967), p. 240.

²⁴Peter Spotswood Dillard, “The Unconquered Remnant: The Hopis and Voluntaryism,” Whole Number 129 *The Voluntarist* (2006): 1 citing George Yamada, *The Great Resistance, A Hopi Anthology* (New York: G. Yamada, 1957), p. 20.

²⁵Ali Khan, “The Extinction of Nation-States,” 7 *American University Journal of International Law and Policy* (1991-1992): 197-234 at p. 231.

²⁶Murray N. Rothbard, “Nations by Consent: Decomposing the Nation-State,” 11 *Journal of Libertarian Studies* (1994): 1-10 at p. 3.

nations have moral rights to territory?,” Jeffrey Reiman paints the following picture:

Imagine a gigantic crowd of people, millions of them, standing on a gigantic piece of land, say the size of Europe. When a whistle blows, they are to form themselves into groups of any size and then, in the fashion of musical chairs, to grab any amount of land they can successfully hold onto against other groups. They may use as much violence as they wish to seize and hold what they grab. When the dust settles, groups of varying size from tiny to huge hold patches of land varying size from tiny to huge. Could it possibly be that such groups—so unequal in size, so arbitrarily assembled, so unlimited in their use of violence—could have moral rights to the territory they happen to end up with? I don’t see how. And I don’t think that the actual history of the way nations end up with their territory differs in any morally relevant way from this imaginary story.²⁷

The very existence of state boundaries poses some very curious questions and situations. Consider the border between two very large countries. “Citizens living near the border are obviously closer to people on the other side than they are to citizens [of their own country] living in the interior.”²⁸ If passports are necessary to move across borders, from one country to another, what about movement between cities in the same country? How do you draw the line between passports for external use and internal use?²⁹ And what is the justification for distinguishing the rights of citizens inside the borders from those of aliens outside the borders? Do people have any more or any fewer rights because they live on one side of an imaginary line as opposed to the other?³⁰ “How can those who argue for principles of justice of universal scope, or for human rights, endorse structures that entail that the rights people actually have depend on where they” live?³¹ Another curious, but somewhat unrelated point, is that in a mixed world of anarchist

²⁷Jeffrey Reiman, “Can Nations Have Moral Rights to Territory?” in John R. Jacobson (ed.), *The Territorial Rights of Nations and Peoples* (Lampeter: Edwin Mellen Press, Ltd., 1989), pp. 163-185, at p. 163.

²⁸Michael Walzer, “Response to Chaney and Lichtenberg,” in Peter G. Brown and Henry Shue (eds.), *Boundaries: National, Autonomy and its Limits* (Totowa, N.J.: Rowman and Littlefield, 1981), pp. 101-06 at p. 104.

²⁹David MacGregor, “The Passport Fraud: Nation States As Prison Camps,” November 24, 2003, www.sovereignlife.com/essays/24-11-03.html.

³⁰Will Kymlicka, “Territorial Boundaries: A Liberal Egalitarian Perspective,” in Miller and Hashmi (eds.), op. cit., pp. 249-275 at p. 249.

³¹Onora O’Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), p. 170.

territories and nation-states, the anarchist societies only have borders in a negative sense. In an area where no formal government exists, like Somalia today, the political borders of the surrounding nation-states define the geographical extent of the anarchist society.

It should be clear that the assertion that political borders are arbitrary calls into question the legitimacy of the state. If the state is not properly and justly sovereign over its “own” territory, if its claims to sovereignty are fraudulent, then one must be inexorably led “toward both anarchism and extreme cosmopolitanism.”³² This being the case, governments would not have any legal jurisdiction over the land masses they now control. Such a situation would allow private land owners several different options: they could protect themselves; or sign up with Protection Agency A, B, or C, or any other protection agency of their choice; or decline all protection whatsoever. If many, but not all, private landowners signed up with Protection Agency A to defend them, then at most we might rename the general area in which this occurred, Region A, after the defense agency that had the most clients in the area. David Miller challenges this picture by pointing out that “[i]t relies on giving an account of property rights prior to an account of territorial jurisdiction, and it collapses as soon as we observe that there is no ‘natural’ system of property, but instead property entitlements depend upon the positive laws of the state.”³³

Miller also applies the same analysis to the idea that consent might serve as the basis for legitimizing the jurisdiction of the state.

To say that a state has authority over a piece of land because its owner, A, has consented to the state’s jurisdiction is to go in circles because A’s claim to ownership is dependent upon the positive laws of the state. “So unless it can be shown that [A] has a pre-political, natural right to [his property],” the state’s jurisdiction over A and his property cannot be established by referring back to A’s consent. Secondly, what happens if various individuals in the same geographic area prefer to contract with different political agencies? “Either we say that jurisdiction should be personal, rather than territorial, and abandon the idea of political authority residing in a state” which claims and exercises a monopoly of the legitimate use of force in a given territorial area, “or else we have to abandon the idea of individual consent, and say, for example that *majority* consent in any given territory is sufficient to establish legitimate authority.” This creates new problems as in logically determining what area the state should encompass (how are its

³²Brilmayer, op. cit., p. 137

³³David Miller, “Liberalism and Boundaries: A Response to Allen Buchanan,” in Buchanan and Moore (eds.), op. cit., pp. 262-72 at p. 264.

boundaries determined); and is inconsistent with the belief “that political authority should be constituted on the model of free association, with everyone having a choice about who he is engaged with politically.”³⁴

Miller, thus, finds himself in a quandary, one which is avoided by the Rothbardian libertarian. For Rothbard, the very essence of his natural rights libertarianism is a theory of property titles which is totally independent of the state.³⁵ For Rothbard the twin axioms of self-ownership and homesteading provide a way to defend individual consent as the basis for any protection contract. One of the reasons the state is illegitimate is because there is an independent system of establishing property titles. Individuals and the societies they formed existed prior to the state. The state could not exist without individuals (either to man it or support it). Property is not dependent on the state for its formation. Rather, the state’s parasitic nature depends upon the wealth produced by individuals in society. Hence, property pre-exists the state. Legitimate property ownership does not depend upon the state for definition nor enforcement.

THE KING’S PATENTS AND JUSTICE IN PROPERTY TITLES

Rothbard points out the importance of a theory of justice in property titles by offering up the following example. Suppose, he said, the government of New York State is about to be dissolved. Prior to the deadline the state legislature turns over all the real estate in the entire state to the Rockefellers. How would the owners and occupiers of such land react? Should the existing owners of the land refuse to recognize its re-assignment or should they meekly obey because the State of New York can define property titles any way it wishes?³⁶ The same situation occurred during the English colonization of the Eastern seaboard of the United States during the 17th century. The King’s patents were used to justify control over all the inhabitants (the aborigines, as well as English settlers) of a given colony.³⁷ When, during the 1630s, Roger Williams

³⁴Ibid.

³⁵Murray N. Rothbard, *For a New Liberty* (New York: Collier Books, 1978), pp. 30-31.

³⁶Ibid., p. 30.

³⁷Ruth Barnes Moynihan, “The Patent and the Indians: The Problem of Jurisdiction in Seventeenth-Century New England,” *2 American Indian Culture and Research Journal* (1977): 8-18 at p. 12.

engaged John Cotton in a debate over the validity of the King's patent in Massachusetts, Williams was actually challenging English sovereignty and jurisdiction to the New World.³⁸ "Williams insisted that the settlers could have no title to their lands by royal grants since the country 'belonged to the native Indians'."³⁹ In the Carolinas, all title to the land there was strictly controlled by the governors. An individual settler who claimed vacant land, and then cultivated it through his own labor, was actually denied title by the colonial government. Individual settlers were also prohibited from buying lands from the Indians. As the colonial governor put it, "Individuals are not to claim property through their labour alone but [only] as surveyed and granted by the laws written by the Lord Proprietor."⁴⁰ When John Ellis, an Indian trader in the Carolinas, informed the Catawbas that neither his Majesty in England, nor the colonists settling the area 'had [... any] right to those Lands,' he was promptly threatened with arrest by the colonial governor if he continued his diatribe.⁴¹

It is clear that the English governments of the colonies understood the importance of controlling land distribution.⁴² When certain land titles were adjudicated before the United States Supreme Court in the early 1830s, Chief Justice John Marshall recognized that it was not peaceful labor or purchase from the Indians which gave European governments rightful title to aboriginal lands. Rather, he wrote, it was nothing but sheer force and violence. "[T]he real basis of the European's right was 'conquest,'" and moreover, "once conquered [-] not only the land, but the people, bec[a]me subject to the victorious government."⁴³ This points out the importance of establishing whether aboriginal title was extinguished by conquest and leads right back to considering the justness of political boundaries. Any comprehensive moral theory of political boundaries must answer the question: who can make the legal rules that define property rights? Does the extent of political jurisdiction and territory depend upon the consent of land owners, who willingly place their land and property under the protection of a given state? Or does the state conquer the inhabitants of a given area and then

³⁸Ibid., p. 8.

³⁹Richard Tuck, "The Making and Unmaking of Boundaries from the Natural Law Perspective," in Buchanan and Moore (eds.), op. cit., pp. 143–70 at p. 156.

⁴⁰Barbara Arneil, *John Locke and America* (Oxford: Clarendon Press, 1996), p. 129.

⁴¹Ibid., p. 76.

⁴²Ibid., p. 83.

⁴³Ibid., p. 197.

promulgate (and/or confirm) the needed conventions that establish property titles within the area under the government's control?⁴⁴

Although the Rothbardian position has not often been embraced by natural law theorists, there is a strain of thinking within the natural law tradition which argues that “all mankind is one,” and that in fairness all human beings should be treated the same, regardless of where they live or whether they are pagan, Christian, atheist or barbarian. “By natural law one's right arise from being a human being” and not from being a citizen of any particular country or a member of any particular culture.⁴⁵ The ancient Confucian view that there is no reason why one's moral duties to others must stop at the borders of one's own political community would seem to coincide with the Stoic vision of a single humanity embracing a universal moral community.⁴⁶ In other words, “states are morally irrelevant” because “human rights transcend national boundaries.”⁴⁷

The force of this argument leads to two possibilities. If states are irrelevant, then one can simply dismiss the state and enter the arena of libertarianism; or one could argue for a one-world state where there would be no political borders except at the bounds of the known world. The consistent statist wants to extend the idea of the domestic state to “comprehend the whole world.” One commentator has called such people “statists whose country is the United States of Earth.” The difference between them and the Rothbardian is that the natural rights libertarian sees the state as totally antithetical to the ends of human justice, whereas the consistent statist, while dismissing the national state, argues that justice can only be found in a world state.

CONCLUSION

Whether or not statists would agree, the successful justification of any political authority would need to address the following question:

⁴⁴Allen Buchanan, “The Making and Unmaking of Boundaries: What Liberalism Has to Say,” in Buchanan and Moore (eds.), op. cit., pp. 231-61 at pp. 233-234.

⁴⁵Brian Barry and Robert Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (University Park: The Pennsylvania State University Press, 1992), p. 205.

⁴⁶Joseph Chan, “Boundaries of the Body and the Body Politic in Early Confucian Thought,” in Miller and Hashmi (eds.), op. cit., pp. 89-111 at p. 101. Also see Neal Wood, *Cicero's Social and Political Thought* (Berkeley: University of California Press, 1988), p. 140, and Anthony Pagden, “The Christian Tradition,” in Buchanan and Moore (eds.), op. cit., pp. 103-26 at p. 104.

⁴⁷Brilmayer, op. cit., pp. 30-31.

1. The Question of Protection: “Why, in general, is a system of political authority to be preferred to an anarchic state of nature in which personal protection and other essential services are left to individual persons, or voluntary associations of persons?”

And, if one surmounts this hurdle, then the following questions must still be confronted:

2. The Question of Form: If political authority should exist, what form should it take?
3. The Question of Boundaries: If political authority should exist, then how “are we to demarcate people and territories so that each system” or country is delineated?
4. The Question of Limits of Jurisdiction: If political authority should exist, over “what matters may political authority not be rightfully exercised”? In “what areas of life must individuals be left free to act as they choose—alone or in association with others?”⁴⁸
5. The Question of Taxation: If political authority should exist, how should it support itself? If it is granted the power to tax, how is it possible to control the purse strings?

To posit these questions is to demonstrate the need to challenge the territorial assumption. The fact is, that for most of human history “there have been very few societies which revolved primarily around relatively fixed and clearly defined territorial units.”⁴⁹ Until the advent of the modern state, group membership depended less upon one’s physical location than on one’s position within the social/kinship system.⁵⁰ Under such arrangements, jurisdiction and authority were mainly over people, not the territory where they lived. Even today, there are tribal peoples in Africa that do not accept the view that there must be a well-defined system of territorial boundaries bringing all people within the jurisdiction of some political system.⁵¹ In the long,

⁴⁸Miller (2002), op. cit., pp. 28-29. These questions are partially quoted and paraphrased from Miller’s text.

⁴⁹Soja, op. cit., p. 33.

⁵⁰Ibid.

⁵¹Ibid. Also see Michael van Notten, *The Law of the Somalis* (Trenton, N.J.: The Red Sea Press, 2005), for a description of the customary law of the Somali people.

historical view, territoriality “only achieves prominence” with the emergence of the nation-state.⁵²

And what, might we ask, is most responsible for laying the foundation of the modern nation-state? At least one possible (and powerful) answer is offered by Joseph Strayer:

The power ... of the modern state [... is] based on its ability to tax—on the fact that in the last analysis it can raise more money than any competing social group. And the acceptance of the principle that all subjects must pay taxes for the defense of the realm ... [regardless of their other loyalties and obligations] was a long step toward nationalism. It meant that the primary loyalty of all the inhabitants of a kingdom must be to that kingdom and that supranational or subnational organizations were of lesser importance.⁵³

As we know, most people in the world today have been acculturated to take the state for granted, and they, at most, seek to limit the state within the confines of national boundaries. Most people have never thought about the fact that taxation is theft, nor have they ever questioned the legitimacy of state boundaries. Most of our contemporaries simply assume that the state must exist, “and accept grudgingly or willingly, the enormous impact it has on [their] lives.”⁵⁴ Nevertheless, there are still those few siren voices that call the nation-state into question and claim that we can live without it. Some of those people are libertarians, and it is they who identify the territorial assumption as a rationale for conquest.

⁵²Soja, op. cit., p. 30.

⁵³Joseph Strayer, *Medieval Statecraft and the Perspectives of History* (Princeton, N.J.: Princeton University Press, 1971), pp. 339–40.

⁵⁴Miller (2002), op. cit., p. 11.

