

# Political Economy, Concisely

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ANTHONY DE JASAY

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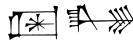
ESSAYS ON POLICY THAT DOES NOT WORK

AND MARKETS THAT DO

Anthony de Jasay

*Edited and with an Introduction by*

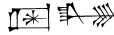
HARTMUT KLIEMT



LIBERTY FUND

Indianapolis

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It is taken from a clay document written about 2300 B.C.  
in the Sumerian city-state of Lagash.

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C 10 9 8 7 6 5 4 3 2  
P 10 9 8 7 6 5 4 3 2

Library of Congress Cataloging-in-Publication Data  
De Jasay, Anthony, 1925–  
Political economy, concisely: essays on policy that does not work  
and markets that do / Anthony de Jasay;  
edited and with an introduction by Hartmut Kliemt.  
p. cm.

Includes bibliographical references and index.

ISBN 978-0-86597-777-8 (hc: alk. paper)

ISBN 978-0-86597-778-5 (pbk.: alk. paper)

1. Free enterprise. 2. Free enterprise—Europe. 3. Central planning.
4. Central planning—Europe. 5. Europe—Economic policy. I. Title.

HB95.D39 2009

330—dc22

2009005124

LIBERTY FUND, INC.  
8335 Allison Pointe Trail, Suite 300  
Indianapolis, Indiana 46250-1684

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## INTRODUCTION

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Anthony de Jasay may be seen in the role of a Frédéric Bastiat of our times. Like Bastiat, whom he admires (and credits with the discovery of opportunity cost, a cornerstone of economics), Jasay himself is a philosopher-economist with hard-won, practical experience. He displays an affinity for British classical liberalism, particularly for David Hume, but keeps his distance from the Utilitarians. A longtime resident of France, Jasay shares Bastiat's encounters with the perversities of the centralized state. Like his great French forerunner, he took (and still takes) to the pen to express his criticism. However, unlike Bastiat, who was a Frenchman, Jasay came to France from Hungary, his native country, with stops in Austria, Australia, and finally Oxford, where he taught economics.

As a philosopher-economist, Jasay continues the British Moralistic tradition originating in the work of Hobbes. Although the British Moralists often sought to refute Hobbes, the themes he initiated persist to the present day. Jasay's first book, *The State*, is a paradigmatic case in point. Its first sentence asks, "What would you do if you were the state?" In response, Jasay spells out his version of what has been called the "Logic of Leviathan" but does not endorse the substantive Hobbesian claim that social order requires this dangerous animal as its creator. Quite to the contrary, Jasay claims, if individuals are left alone, they tend to coordinate their actions; conventional rules and social order will emerge spontaneously.

Always insisting on keeping key concepts in their proper place and not letting them get tangled together, Jasay draws a sharp distinction between freedoms and rights (and considers the "right to freedom" a confused notion). Freedoms are those feasible acts that fall within the spontaneous rules of the social order. Rights and their matching obligations evolve either from voluntary agreements (contracts) or "from above"—the rights being conferred and the obligations imposed by authority.

Drawing a distinction between freedom and rights leads directly to

Jasay's theory of property. He holds with Hume that property originates in finding, is transferred by consent, and is antecedent to society or the state; it is a freedom. He attacks the conventional view that property is a "right," let alone a "bundle" of detachable rights conferred by some collective decision, with the state carrying out the matching obligation of enforcing the right. According to Jasay, this widely accepted view of property rights, proclaimed even by such staunch defenders of freedom as Armen Alchian, implicitly conveys that property is held at society's pleasure, by its grace and favor. Society can withdraw any or all of the detachable "rights" to property just as it has conferred them. If, on the contrary, property is a liberty, the violation of this liberty is a breach of the ageless conventions that define what may and what must not be done.

Whether or not Jasay's view is correct, the basic distinction he makes is of the utmost importance: there exist at least two concepts of property. According to one concept, property is defined by social conventions that are not subject to public law and that precede public enforcement. The other concept emphasizes that a property right represents a public obligation enforced by the state. Using the first concept, it is incongruous to think of property in the context of distributive justice; using the second, however, such an understanding comes naturally. Many of Jasay's criticisms are based on this fundamental insight.

The state requires submission of some to the will of others. According to common wisdom, democratic procedures morally dignify a corresponding "rule of submission." Contrary to that notion, Jasay insists that legitimate obligations must be self-imposed by those to whom they apply or must result from conventions that emerged from unforced acts of individuals. The first of the two sources of obligation is widely accepted. But in Jasay's framework the second is crucial as well. Conventions that emerged in a spontaneous process bring about legitimate obligations. At the same time, conventions restrict that which can be legitimately accomplished through collective action, including law enactment.

Jasay's view of the normative force of conventions is obviously in certain aspects similar to Hayek's endorsement of common law, which is not the outcome of deliberate enactment. But, whereas in the Hayekian case the state is seen as an enforcer of order, Jasay conceives

of the state as a source of distortions of social order. The state's claim to the exclusive use of coercive power will endanger property in particular. Individuals who manage to capture the state machinery will use it for their own exploitative purposes. Whenever conventions as coordination devices are substituted by less-benign commands of central authorities, the potential exists for an infringement on individual liberties. And, in Jasay's view, because of the ever-increasing growth and power of the state, these infringements nowadays abound.

Despite his criticism of state action, Jasay is too realistic to engage in the exercises of so-called anarcho-capitalist thinking. Rather, he accepts the realities of the state and collective action, knowing that his criticisms will not make the problems go away but believing that it is worthwhile to make us aware of the perversities of politics. Jasay's aspiration is not to exert an influence on politics by imposing his own policies. To borrow from the title of another of his books, he is "against politics." Because politics as such is a threat to liberty, the primary aim should be to contain it. In this context, the essays in this collection provide grassroots criticisms that make the follies of daily events at least more conspicuous and thereby containment, perhaps, more likely.

*Political Economy, Concisely* comprises fifty-eight essays that appeared in electronic form over a five-year period, from 2003 to 2007, on Liberty Fund's Library of Economics and Liberty website (<http://www.econlib.org/library/>), as well as several other short essays published during the last ten years from various journals and newspapers. Further, as this collection shows, the era of the printed word and, for that matter, the printed book, is not over. When collected in printed form and given a thematic rather than a chronological arrangement, Jasay's short essays become even more impressive, supporting one another like the stones in a Roman arch.

To supplement the shorter essays of this volume, the reader might turn to the more-extended essays in some of the companion volumes of this series. However, the essays in *Political Economy, Concisely* are not merely preparatory for the longer discussions. They have their own specific merits precisely because of the requirements dictated by brevity. The advantages of a concise format compensate for the occasional lack of elaboration. What is not in one will come up in another, complementary, essay. Although it is good economic common sense to insist

that there should be no such thing as a free lunch, the essays herein challenge that maxim, at least to the degree that clarity and brevity can successfully coexist, with no hidden costs.

The ideas expressed in these essays reflect the wit and intellectual elegance of their author, challenging conventional wisdom in a subtle yet incisive manner. The editing in this volume has been kept to a minimum. Additions by the editors of the Econlib website, cross-references to essays that appeared earlier on the same website, and typographical errors have been eliminated. Some essay titles have been slightly changed, and in a very few instances subtitles to sections have been added. The assignment of the essays to categories corresponding to the seven parts of this volume seemed rather natural, whereas the particular sequence of parts, as well as the arrangement of the essays within each part, offered a great level of freedom that, it is hoped, has been used to provide a meaningful context for the reader. In the end, however, the essays can and do speak for themselves.

*Hartmut Kliemt*

PART 1

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**Rights, Property, and Markets**



## PROPERTY OR “PROPERTY RIGHTS”?

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Economists who own their home or have other assets will regard them as their “property.” When speaking in their professional capacity, however, they change their vocabulary and will invoke “property rights.” Do these terms mean the same thing?—and does it matter which term is used? This essay argues that “property” and “property rights” mean different things and muddling them up presents an insidious but quite serious threat to the kind of social order wherein economic efficiency and individual freedom have the best chance to survive.

### “A BUNDLE OF RIGHTS”?

Ironically, the author who has done the most to impose the term “property rights” on scholarly usage was Armen Alchian, an economist of irreproachable credentials both as a fine theorist and as a defender of the free society. In a seminal essay<sup>1</sup> that has become a foundation stone of “property rights economics,” he explained that when you owned, say, a piece of land, what you had was the right to leave it fallow, to plough it, to grow wheat on it for your own use or for sale, to walk across it, to fly over it, to build a house on it, to grant an easement on it, to lease it to another party, to bequeath or to sell it. Property was such a “bundle of rights.” It is tempting to hold that if you removed one stick from the bundle, it remained a bundle; if you removed two, it still remained a bundle. How many sticks can one remove without the remainder ceasing to represent property, and are some sticks more essential than others?

This concept of property opens the door to a kind of gradualist argument. If “society” or the government purportedly acting on its be-

First published by Liberty Fund, Inc., at [www.econlib.org](http://www.econlib.org) on December 4, 2006. Reprinted by permission.

1. Armen A. Alchian, “Some Economics of Property Rights,” *Il Politico* 30 (1965): 816–29.

half removes from the bundle a stick here and a stick there, if it forbids the owner to build on his land, or subjects the growing of some crop to an acreage quota, imposes an easement or a public preemption privilege, the “bundle” that is left is still property of a sort. How many rights may the government remove from it for the bundle still to pass for property and the government to pass for its protector?

#### FREEDOMS AND RIGHTS DIFFER FUNDAMENTALLY

The “bundle of rights” concept gives rise to a dangerously weak theory of property. To find the root cause of the weakness, one must go “back to basics” and firmly grasp the difference between a freedom and a right.<sup>2</sup>

A freedom is a relation between *one person* and a set of acts. The person is presumed to be free to perform any act in the set that does not breach the rules against torts (offenses against person and property) and (a less stringent requirement) the rules of civility. A substantial obstruction of freedom (e.g., gagging or threatening to hit a person to stop him from speaking freely) is a tort or an incivility. As such, it is wrong. To say that a person has a “right to a freedom” is tantamount to saying that he has a right not to be wronged—a redundant and silly proposition. It also implies that he would not have this freedom if he had not somehow obtained a right to it—an implication that is at the source of much false theorizing. You do not need a right to move if your moves stay within the rules—this indeed is what it *means* to have rules.

In contrast to a freedom, a right is a relation between *two persons*, *the rightholder and the obligor*, and an act the obligor must perform at the rightholder’s bidding. A right may be created by contract in which the obligor, in exchange for a consideration, surrenders his freedom to perform (or forbear from performing) some set of acts as he pleases, and agrees to perform (or forbear from performing) it as required by the rightholder. Here, both parties enter voluntarily into the right/

2. See Anthony de Jasay, “Freedoms, ‘Rights,’ and Rights,” *Il Politico* 66 (2001): 369–97.



obligation relation. However, a right may also be created by some authority, such as the government acting on behalf of "society," *conferring* it upon rightholders and *imposing* the corresponding obligation on obligors of its own choosing. The conferring of welfare rights on some and the imposition of the corresponding taxes on others is a mundane example. The granting of civil rights to some minority and the imposition of the appropriate conduct on the rest is a perhaps less mundane one. The notion of "property rights," as used in current economic theory, conjures up the fiction that property is conferred by "society" upon the proprietors and the corresponding obligation to respect it is imposed by "society" on everybody. (It is worth noting that respect for property is part of the rules against torts. Violating property is a wrong that must simply not be done; and this interdiction is enforced by various private or public ways and means of enforcement ranging from reciprocity and retaliation to law courts and a police force. A separate obligation to respect or protect property, a corollary of the supposed "right to private property," is double-counting. Like any other double-counting, it obscures the view of what is owned and what is owed.)

#### PROPERTY RIGHTS, TRUE AND FALSE

There are, in fact, genuine property rights in the sense of two-person relations involving a right and a matching obligation. Leases, loan agreements, a shareholder's equity in net corporate assets, options and other equity and credit derivatives, insurance policies, and, in a broader sense, all outstanding contracts with the exception of contracts of employment, are property rights proper.

When you lease your house, we know where the tenant's right(s) come from. They arise from the surrender, for a given period, of your freedom to use your own house and your assumption of an obligation to let the tenant use it subject to certain conditions and in exchange for value received or to be received.

But where does your putative "right" to own the house come from? The standard answer is that it comes from your purchase agreement with the previous owner, or a bequest or gift he made to you. The previous owner's right to do this, in turn, came from an agreement with, or

bequest or gift from, the owner previous to *that* owner, and so on. Such a regress, however, can only shift the problem ever further backward and does not resolve it.

The literature offers us two solutions, the Lockean and the socialist. In the Lockean solution, the chain of legitimate transfers of ownership goes on backward until it ends with the original owner who took possession. He had a “right” to do so if two notorious provisos were satisfied: he must have “mixed his labor” with what he appropriated, and he must have “left enough and as good” for those who came after him. These pious provisos have come in for much and deserved criticism on grounds of their contestable logic, and in this essay I will simply leave the reader to judge the Lockean solution for himself.

The socialist solution is to intimate that property is privately held only by the grace of society that could choose to change its distribution, or take it into public ownership, if it did not create a *right* to it and if it did not confer this right upon individual proprietors. The latter hold their property subject to any conditions by which society circumscribes the right to it. It may withdraw the right altogether if it deems it in the public interest to do so. Constitutional obstacles to this can always be got round, for society is not going to stop itself from doing what it wishes to do. In any event, if the right to property is in society’s gift, it can always take back the right it has conferred and with that extinguish its own obligation to protect it.

#### THE PRESUMPTION OF GOOD TITLE

The contradictions and outlandish fictions of both the Lockean and the socialist solution disappear in thin air the instant we cease to maintain the arbitrary supposition that one needs a *right* to own valuable resources. This supposition originates in an atavistic belief that everything should belong to everybody or be shared equally, and any departure from this norm requires a justification, an *excuse* of some kind.

Not everyone believes this, and those who do believe it only in certain contexts. It is not a universal human trait, but only one of various extravagant ones. In no way does it place it beyond dispute that owning property is morally reprehensible and unjust unless it can be shown that a *right* to it exists.

Ownership is a fact of life whose origins are veiled by the mists of prehistory. By the elementary rules of debate, the burden of proof lies with those who claim that a *right* is needed to justify it. This claim must be made good either as regards the institution of ownership in general or, failing that, the ownership of a particular asset by a particular owner. As to the former, making it good is impossible, for a metaphysical proposition cannot be verified. As to the latter, the claimant must show that the owner does not have good title to the asset.

It is blatant nonsense to try and switch the burden of proof to the owner, and ask him to prove that his title is good; for he can never prove the negative assertion that there is no flaw hidden in it somewhere out of sight. It is he who wants us to believe that there is one, who must spot the hidden flaw.

Putting it concisely, challenges to property require to be verified by the challenger, for they cannot be falsified by the defender. It is this asymmetry that generates the presumption in favor of title (“possession is three parts of the law”). Property being analytically a freedom, it is no surprise to find the same logic yielding the presumption of title that yields the vaster and more inclusive presumption of freedom.

“DESIGN FAULTS” IN LOCKE’S  
THEORY OF PROPERTY TAIN T OWNERSHIP  
WITH GUILT

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Ownership is a relation between an owner and a scarce resource, such that the owner is at liberty to use and alienate it, exclude all others from access to it except by his consent, and thus also at liberty to grant various kinds of prior claims and use rights in it for those toward whom it assumes contractual obligations. It is doubtful whether ownership, even ownership by a collective entity, has any meaning without some element of exclusion that separates owners from nonowners of the resource in question. When everybody owns a thing, nobody owns it.

The crux of moral and political aspects in property theory is how an unowned object first becomes legitimately owned. Once the legitimacy of first acquisition is settled, all subsequent acquisitions by the saving of income, exchange, gift, or bequest of assets can be defended on the ground of mutual consent. If that test is met, the distribution of property cannot be condemned as unjust unless the voluntary transactions that gave rise to it are also condemned as either unjust or irrelevant to just ownership.

Some enemies of property ownership choose to attack initial acquisition, others the relevance for valid title of subsequent voluntary transactions. This article will treat the first of these two targets. Luck plays a large role in the history of ideas, and as bad luck would have it, the most influential theory of property to this day is that of John Locke.<sup>1</sup>

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1. See John Locke, *The Second Treatise of Civil Government* (1690); there have been many editions, but especially significant are John Locke, *Two Treatises of Government: A Critical Edition with an Introduction and Apparatus Criticus* by Peter Laslett, rev. ed. (Cambridge, UK: Cambridge University Press, 1963), reissued with a new introduction by Cambridge University Press in 1988; and *Political Writings of John Locke*, ed. David Wootton (New York: Mentor, 1993).