

# **Anarchism and non-domination**

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## Abstract

In this article we recover the classical anarchist deployment of republican tropes of non-domination, tyranny and slavery, to expose the conservative limits of the contemporary neo-Roman republican revival. For the anarchists, the modern nation state and the institution of private property are antithetical to freedom as non-domination, acting as structural constraints to freedom rather than the means for its realisation. We re-examine the grounds of this critique to advance two arguments. First, that a commitment to either the state or private property represents an unwarranted positive moral and ethical commitment that skews the negative theory of freedom contemporary republicans seek to develop. Second, the prior moral commitment to the state renders neo-Roman republicanism fundamentally conservative. Anarchist theories of freedom as non-domination push much further than the contemporary republican revival seems to permit, opening new possibilities for institutional and constitutional innovation while remaining consistent with the core republican normative value of non-domination.

## Introduction

With the collapse of communism and the end of the Cold War, both republicanism and anarchism have seen something of a revival in fortunes, both coming to prominence espousing a normative political philosophy that equates freedom with non-domination. In contemporary political theory, republicanism has by far attracted the most scholarly interest. Associated with Quentin Skinner's third concept of liberty and Philip Pettit's neo-Roman view, the republican conception of freedom as non-domination prioritises the rejection of arbitrary interference over non-interference.<sup>1</sup> Distinguished from the taxonomy of positive and negative liberty outlined by Isaiah Berlin, it is associated with independence: to be non-dominated, Skinner argues, is 'to be possessed of a power to act according to your own will rather than being obliged to live in dependence on the will of someone else.'<sup>2</sup> Essential to this conception is an affective language of emancipation from slavery and slavish toadying to the powers that be. Non-domination describes the move from *dominium* to *libertas*, from the status of *servus* to *liber*. Law and constitutional provisions are central to this move but also double as means for checking the powers of majorities, minorities and individuals. It is the presence of laws and an established constitutional framework, benchmarks for political agency, which ensure that none is able to arbitrarily interfere in the free decisions of others.

The concept of non-domination also has a place in modern anarchism. Uri Gordon, one of the leading theorists of anarchist movement politics, has shown that anarchists routinely identify

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<sup>1</sup> Classic statements of the contemporary neo-Roman republican tradition include P. Pettit, *Just Freedom: A Moral Compass for a Complex World* (New York: W. W. Norton & Co., 2014). P. Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012); P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon, 1997); Q. Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998); M. van Gelderen, and Q. Skinner, *Republicanism and Constitutionalism in Early Modern Europe* (Cambridge: Cambridge University Press, 2002). M. van Gelderen and Q. Skinner, *The Values of Republicanism in Early Modern Europe* (Cambridge: Cambridge University Press, 2002). Key secondary literatures include: C. Laborde and J. W. Maynor, *Republicanism and Political Theory* (Oxford: Blackwell, 2008); I. Honohan and J. Jennings, *Republicanism in Theory and Practice* (London: Routledge, 2006).

<sup>2</sup> Q. Skinner, 'Freedom as the absence of arbitrary power,' in Laborde and Maynor, *ibid.*, p. 86.

and challenge the plural and intersecting ‘regimes of domination’ that structure modern life.<sup>3</sup> Gordon continues, ‘any act of resistance is, in the barest sense, “anarchist” when it is perceived by the actor as a particular actualisation of a more systemic opposition to domination.’<sup>4</sup> Saul Newman, equally influential in contemporary postanarchist theory, argues that anarchism is a ‘project [...] of exposing the contingency and arbitrariness of our current social arrangements, the ways they are established through multiple dominations and exclusions.’<sup>5</sup>

Just as the anarchist revival of traditionally republican tropes has been overlooked by most political theorists, contemporary anarchists have advanced their conception without any engagement with the comparable neo-Roman lexicon. The contemporary anarchist neglect of republicanism is particularly unfortunate because it also points to the sidelining of a historical anarchist critique of republicanism. Gordon, like David Graeber, traces the roots of today’s anarchist networks to the radicalism of the sixties, and minimises the links to the 19th and early 20th centuries anarchist traditions; Newman’s concern to expose the perceived epistemological and philosophical shortcomings of 19th century theory actively dissuades reflection on these historical links.<sup>6</sup> Although anarchism provides a powerful critical lens to expose the limits of republican theory on republican grounds, this critique remains buried in the history of ideas. By resurrecting it, our aim is to reformulate it by anarchizing the republican concept of freedom as non-domination.

For Pettit, freedom as non-domination is a negative principle. This means that it is detached from any particular vision of the good and acts as a benchmark against which to judge different constitutional arrangements and assess their ability to maximize negative freedoms. Accordingly, Pettit argues that ‘environmentalism, feminism, socialism, and multiculturalism’ might all ‘be cast as republican causes,’ since each sets out the negative conditions which freedom as non-domination ought to meet, whether freedom from environmental degradation or vulnerability, patriarchy, or the vicissitudes of capitalism.<sup>7</sup> The critical purchase of freedom as non-domination then extends from the rigorousness of the tests it sets to assess the freedom-enhancing properties of political institutions.<sup>8</sup> In this article, we explore how anarchist socialists have responded to the republican call. We recover an anarchist critique of republican institutions to reflect on the robustness of the conceptual test that contemporary republicans use to evaluate the non-dominating properties of their preferred institutional arrangements.

The discussion turns on the question: ‘which institutions do best by freedom?’<sup>9</sup> For Pettit, this necessarily remains an open question. Anarchists argue that the state and private property are freedom-curtailing institutions. For most republicans, the state and private property are essential

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<sup>3</sup> U. Gordon, *Anarchy Alive!: Anti-Authoritarian Politics from Practice to Theory* (London: Pluto Press, 2008), p. 33.

<sup>4</sup> *Ibid.*, p. 34.

<sup>5</sup> S. Newman, *The Politics of Postanarchism* (Edinburgh: Edinburgh University Press, 2010), p. 64.

<sup>6</sup> Gordon, *op. cit.*, Ref. 3, p. 5; D. Graeber, ‘The new anarchists,’ *New Left Review*, 13 (2002), pp. 61–73; S. Newman, ‘Crowned anarchy: postanarchism and international relations theory,’ *Millennium – Journal of International Studies*, 40 (2012), p. 272.

<sup>7</sup> Pettit, *Republicanism*, *op. cit.*, Ref. 1, p. 134.

<sup>8</sup> Skinner, *op. cit.*, Ref. 2, pp. 83–101.

<sup>9</sup> Pettit, *Republicanism*, *op. cit.*, Ref. 1, p. 100.

background conditions for freedom as non-domination.<sup>10</sup> The state is like ‘gravity’<sup>11</sup> or ‘the laws of physics,’<sup>12</sup> Pettit argues. Private property is likewise a regime ‘akin to the natural environment.’<sup>13</sup> Pettit’s schema forces contemporary theorists of non-domination to theorize freedom within their confines, taking states and private property to be empirical conditions, not normative benchmarks, and yet, on further analysis, we see that in fact, this defence of state and private property dilutes the critical purchase of republican theory.

The anarchist view we advance here is that these two institutions underpin our current predicaments and conceptually limit our ways of thinking about alternatives. In and of itself, this is hardly an original claim, but what the recovery of anarchist ideas shows us is that there are strong republican grounds for rejecting both institutions and that freedom as non-domination can be retained as a normative benchmark for future constitutional post-statist and post-capitalist design.<sup>14</sup>

In advancing the anarchist position, we extend two important friendly critiques of the neo-Roman republican turn. The first is that neo-Roman republicanism tacitly endorses a near limitless state, through enabling the state to provide constitutional constraints against all manner of relations of dominations, some of which are non-arbitrary, like the care of the young and vulnerable.<sup>15</sup> The second is that neo-Roman republicanism has failed to take account of republican critiques that highlighted the structural constraints on freedom caused by private ownership of the means of production. This is the argument Alex Gourevitch advances in his recent analysis of the 19th-century union, the ‘red republican’ Knights of Labor.<sup>16</sup>

Following a broadly contextualist method,<sup>17</sup> our aim is to show how Pierre-Joseph Proudhon (1809–1865), Michael Bakunin (1814–1876), Peter Kropotkin (1842–1921) and Leo Tolstoy (1828–1910), key figures in the historical anarchist tradition<sup>18</sup> developed the language of slavery, domination and non-domination, central to 19th century republicanism, to advance what became known as anarchism. The anarchists almost universally argued that private property was a ‘transformation’ of slavery from chattel to wage slavery, and that defending exclusive claims to ownership necessitated a state. Because the constitutional and legal frameworks of statism cemented structural injustice, anarchists argued that freedom from domination required the abandonment of these two institutions. Our aim in this article is to undertake the preliminary

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<sup>10</sup> Neo-Roman republicans have been concerned to defend their conservative credentials from the libertarian right, rather than the left. For example, S. Slaughter, *Liberty Beyond Neo-Liberalism: A Republican Critique of Liberal Governance in a Globalising Age* (Basingstoke: Palgrave Macmillan, 2005), P. Pettit, ‘Freedom in the market,’ *Politics, Philosophy & Economics*, 5, no. 2 (2006), pp. 131–149.

<sup>11</sup> Pettit, *On the People’s Terms*, *op. cit.*, Ref. 1, p. 162.

<sup>12</sup> *Ibid.*, p. 161.

<sup>13</sup> Pettit, ‘Freedom in the market,’ *op. cit.*, Ref. 10, p. 140.

<sup>14</sup> M. Egoumenides, *Philosophical Anarchism and Political Obligation* (London: Bloomsbury, 2014).

<sup>15</sup> M. Friedman, ‘Pettit’s civic republicanism and male domination,’ in Laborde and Maynor, *op. cit.*, Ref. 1, pp. 259–265.

<sup>16</sup> A. Gourevitch, *Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century* (Cambridge: Cambridge University Press, 2015), pp. 40–41.

<sup>17</sup> D. Runciman, ‘History of political thought: the state of the discipline,’ *British Journal of Politics and International Relations*, 3 (2001), pp. 84–104.

<sup>18</sup> We focus on the writings of three of the key exponents identified by P. Eltzbacher, *The Great Anarchists: Ideas and Teachings of Seven Major Thinkers*, Benjamin R. Tucker (Trans.) (New York: Dover Books, 2004/1908). For a critical discussion see L. Van der Walt, and M. Schmidt, *Black Flame: The Revolutionary Class Politics of Anarchism and Syndicalism, Counterpower* (Edinburgh: AK Press, 2009).

task of advancing an anarchist critique of republicanism that has been ignored by historians and political theorists, rather than trace the plural alternatives to statehood that have been advanced in anarchist literature.<sup>19</sup> The 19th century anarchist critique of republicanism we outline here pushes debates about alternatives to the contemporary world order in ways that are congruent with the general commitment to freedom as non-domination.

This analysis also achieves three wider, though no less important correctives. First, locating the emergence of anarchism from within republicanism corrects the standard anachronistic historiography of anarchism that sees it as a tradeoff between liberalism and socialism.<sup>20</sup> Second, the recovery of this republican heritage allows us to open up an important vein of constitutional theorizing in anarchist thought. Anarchists tend to see empowerment as the key to social change,<sup>21</sup> but our account suggests that empowerment without constitutional provision is normatively stunted. Finally, this synthetic conceptual history of the emergence of anarchism provides a normative and political challenge to the implicit and explicit politics of the neo-Roman recovery in contemporary political theory.<sup>22</sup> Our politicization and recuperation of the anarchist account of domination is intended to make the contemporary neo-Roman recovery seem conservative, moralized and historically stunted. It is arbitrary on account of its refusal to explore the 19th century tradition of republican thought, and moralized in so far as it requires a normative and political commitment to the state to guarantee private property ownership. This undercuts the negative credentials of the theory of freedom neo-Romans advance, and sheds light on the fundamentally conservative nature of the republican critique.<sup>23</sup> The neo-Roman reluctance to accommodate 19th century republican thinking is telling.<sup>24</sup> The effect is to detach republicanism from material and intellectual transformations central to the emergence of contemporary capitalism. If we want to make sense of modern society, these processes are at least as significant to us as the wars of American independence and the aspirations of the commonwealthmen.<sup>25</sup>

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<sup>19</sup> The revival in interest in anarchist political thought since the end of the Cold War has been staggering. A key resource are the annotated bibliographic chapters in R. Kinna, *The Continuum Companion to Anarchism* (New York: Continuum, 2012), pp. 353–450.

<sup>20</sup> D. E. Apter, 'The old anarchism and the new – some comments,' in *Anarchism Today* (London: Macmillan, 1971), pp. 1–13; R. Rocker, *Anarcho-Syndicalism* (London: Pluto, 1989). In this enterprise, we follow A. Kalyvas and I. Katznelson's revisionist historiography of the emergence of liberalism. *Liberal Beginnings: Making a Republic for the Moderns* (Cambridge: Cambridge University Press, 2008).

<sup>21</sup> Gordon, *op. cit.*, Ref. 3, p. 61; S. Newman, 'Postanarchism: a politics of anti-politics,' *Journal of Political Ideologies*, 3 (2011), pp. 313–327; P. McLaughlin, *Anarchism and Authority: A Philosophical Introduction to Classical Anarchism* (Aldershot: Ashgate, 2007); S. Clark, *Living without Domination: The Possibility of an Anarchist Utopia*, (Aldershot: Ashgate, 2007), p. 67.

<sup>22</sup> P. Kelly, 'Rescuing political theory from the tyranny of history,' in Jonathan Floyd and Marc Stears (Eds) *Political Philosophy Versus History?: Contextualism and Real Politics in Contemporary Political Thought* (Cambridge: Cambridge University Press, 2011), pp. 13–37.

<sup>23</sup> There are clear positive grounds on which a critique of republicanism could be advanced. We do not pursue these here. For one outstanding example of this, see J. P. Clark, *The Impossible Community: Realizing Communitarian Anarchism* (New York: Bloomsbury, 2013), pp. 53–92.

<sup>24</sup> A. Gourevitch, 'Labor republicanism and the transformation of work,' *Political Theory*, 41 (2013), pp. 593–594; Gourevitch, *Slavery to the Cooperative Commonwealth*, *op. cit.*, Ref. 16, p. 9.

<sup>25</sup> There is a substantial left-republican literature. See for example C. Laborde, 'Republicanism and global justice,' *European Journal of Political Theory*, 9 (2010), pp. 48–69; P. Markell, 'The insufficiency of non-domination,' *Political Theory*, 36 (2008), pp. 9–36; S. White, 'The republican critique of capitalism,' *Critical Review of International Social and Political Philosophy*, 14 (2011), pp. 561–579.

## Anarchism and the republican tradition

For Pettit, Rousseau's communitarian unicameralism marks the end of the Roman tradition in European thought, and the point of departure for liberalism which subsequently dominated political thought.<sup>26</sup> It is broadly for this reason that he and others look backwards from the 18th century, rather than look forward to the 19th century to develop their conception of freedom. Historical accounts of French republicanism are not so quick to draw this line. The bifurcation of republicanism into Jacobin and liberal varieties has tended to dominate the historiography<sup>27</sup> since replicated in accounts of the emergence of liberalism and Marxism in the United States.<sup>28</sup> However, not even forward-looking historians who accept the 'extremely elastic'<sup>29</sup> nature of republicanism stretch it to include anarchism. Hazareesingh admits Proudhon's association with the republican tradition, only to dismiss him on account of his systematic anti-feminism.<sup>30</sup> Perhaps more important is the fact that Proudhon could not be said to have 'founded' any republic for it is undoubtedly the case that the centrality of the American and French Revolutions, and the subsequent experimental tendencies of republicans with constitutional and institutional arrangements, define republicanism's modern origins.<sup>31</sup>

One of the virtues of Pettit's conceptual corrective to the approaches adopted in the history of ideas is that it offers a different way of thinking about the scope of republican traditions. By examining the language of freedom, slavery and non-domination, rather than the political project of republican statebuilding, Pettit provides a far broader framing of republicanism and its historical concerns than the mainstream. This opening has been exploited by Alex Gourevitch.<sup>32</sup> Recovering the rich history of the Knights of Labor, Gourevitch has shown how the language of domination and slavery was adopted to define a red republican position that equated freedom as non-domination with the rejection of 'free labour contracts' and the constitutional protection of private property. Anarchists also used this language, adopting it at least forty years before the Knights organized.

From the end of the restoration period and up to the beginning of the Second Empire (1830–1851), anarchist thought was shaped by an engagement with the major currents of republicanism: the Jacobin republican socialism of Louis Blanc, the liberal republicanism of Adolphe Thiers and

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<sup>26</sup> Pettit, *Just Freedom*, *op. cit.*, Ref. 1., pp. 11–13.

<sup>27</sup> S. Hazareesingh, *Political Traditions in Modern France* (Oxford: Oxford University Press, 1994); J. Jennings, *Revolution and the Republic: A History of Political Thought in France Since the Eighteenth-Century* (Oxford: Oxford University Press, 2011).

<sup>28</sup> Kalyvas and Katznelson, *Liberal Beginnings*, *op. cit.*, Ref. 20; N. Fischer, *Marxist Ethics within Western Political Theory: A Dialogue with Republicanism, Communitarianism and Liberalism* (New York: Palgrave Macmillan 2015).

<sup>29</sup> Hazareesingh, *Political Traditions*, *op. cit.*, Ref. 27, p. 66.

<sup>30</sup> S. Hazareesingh, *Intellectual Founders of the Republic: Five Studies in Nineteenth-Century French Political Thought* (Oxford: Oxford University Press, 2001), pp. 216, 290.

<sup>31</sup> See, for example, R. Bellamy. 'The political form of the constitution: the separation of powers, rights and representative democracy,' *Political Studies*, 44, no. 3 (1996), p. 436. Whether because they have been interpreted as the poor cousins to Marx (P. Thomas, *Karl Marx and the Anarchists* (London: Routledge & Kegan Paul, 1980), generic anti-statists (cf. N. Jun, 'On philosophical anarchism,' *Radical Philosophy Review*, 19 (2016), pp. 551–567), or simply terrorists (R. Kinna, *Early Writings on Terrorism* (London: Routledge, 2006)), ignoring anarchism seems perfectly acceptable in contemporary political science.

<sup>32</sup> A. Gourevitch, 'Labor and republican liberty,' *Constellations*, 18, no. 3 (2011), pp. 431–454; Gourevitch, 'Labor republicanism,' *op. cit.*, Ref. 24; Gourevitch, *Slavery to the Cooperative Commonwealth*, *op. cit.*, Ref. 16.

Victor Hugo, Edgar Quinet, Jules Barni and Charles Renouvier, and the economics of J.B. Say.<sup>33</sup> As Stephen Vincent and Alex Prichard have shown,<sup>34</sup> not only did Proudhon engage directly with these tendencies in republican thought, he also engaged with the leading political philosophies of the age, specifically the writings of Rousseau, Kant and Comte. Likewise, Bakunin's anarchism was shaped as much by his critique of Mazzini as it was by his fall-out with Marx.<sup>35</sup> The rise of republican nationalism was an important spur for the development of his anti-theological, socialist federalism. Only three years before the bloody repression of the Paris Commune in 1871, Bakunin shared a stage with Hugo, Giuseppe Garibaldi and Barni in the ill-fated congress of the League for Peace and Democracy.

Anarchists honed the language of domination and slavery in the late 19th century in a milieu shaped by debates about abolition of slavery and serfdom, during the consolidation and enforcement of the institution of private property, the commodification of labour and the emergence of the modern nation state. Albert Parsons, one of the Chicago anarchists martyred in 1887 when he was tried and executed for professing anarchist ideas embraced the civil and political liberties established in the course of the French Revolution but rejected the economic 'subjection and dependence' extending from property ownership and 'formally entrenched behind the bulwarks of statute law and government.' Using Proudhon to develop the critique of wage-labour dependency that resonated with the Knights of Labor, he declared himself an anarchist and constitutionalist and described anarchism heir to French revolutionary republicanism: 'We stand upon the right of free speech, of free press, of public assemblage, unmolested and undisturbed. We stand upon the constitutional right of self-defense, and we defy the prosecution to rob the people of America of these dearly bought rights.'<sup>36</sup>

As Carl Levy notes, anarchists also made common cause with the 'radical federalist and internationalist' movements contained within republicanism<sup>37</sup> to advance alternative constitutional arrangements. Proudhon was almost alone in using the language of constitutionalism to elaborate his ideas, but the principles of the decentralized federation and 'free' or 'voluntary' agreement that he recommended were taken up widely by later 19th and 20th century anarchists and anarchist syndicalists. His ideas found fertile soil in the land of the *cacique* system and *latifundismo*.<sup>38</sup> Indeed, Spanish republicanism and federalism were profoundly shaped by Proudhon's anarchism, most notably through the influence of the Catalan Francesc Pi i Margal (1824–1901) and the Galician Ramon de La Sagra (1798–1871). Margal translated two of Proudhon's works on constitutional politics into Spanish before becoming president of the first Spanish republic in 1875. De la Sagra, a close friend of Proudhon's, established *El Porvenir* in 1848, one of the first anarchist

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<sup>33</sup> L. Lobère, *Louis Blanc: His Life and His Contribution to The Rise of French Jacobin Socialism* (Illinois: Northwestern University Press: 1961); Jennings, *op. cit.*, Ref. 27, pp. 269–276.

<sup>34</sup> S. K. Vincent, *Pierre-Joseph Proudhon and the Rise of French Republican Socialism* (Oxford: Oxford University Press, 1984); A. Prichard, *Justice, Order and Anarchy. The International Political Theory of Pierre-Joseph Proudhon* (London: Routledge, 2013).

<sup>35</sup> T. R. Ravindranathan, *Bakunin and the Italians* (Kingston and Montreal: McGill-Queen's University Press, 1988).

<sup>36</sup> A. Parsons, *Haymarket Statements of the Accused*, [1886] online at <https://www.marxists.org/subject/mayday/articles/speeches.html#PARSONS>.

<sup>37</sup> C. Levy, 'Anarchism, Internationalism and Nationalism in Europe, 1860–1939', *Australian Journal of Politics and History*, 50, no. 3 (2004), p. 333.

<sup>38</sup> E. Malefakis, *Agrarian Reform and Peasant Revolution in Spain: Origins of the Civil War* (London/New Haven: Yale University Press 1970); T. Kaplan, *Anarchists of Andalusia, 1868–1903* (Princeton: Princeton University Press, 1977).

journals, before founding sociology as an academic discipline in Spain, serving on the board of Proudhon's ill-fated Bank of the People, and then as a Spanish politician.<sup>39</sup>

Following the collapse of the Paris Commune and the massacre of 20,000 communards by the French state in 1871, anarchists and other radicals who organized in the First International, including the nascent Marxist camp, dropped all reference to republicanism.<sup>40</sup> From this time, oppressed peoples were more likely to associate republicanism with colonization, racism and imperialism than freedom against tyranny.<sup>41</sup> This re-alignment of anarchism against republicanism helps explain why contemporary theorists have little or no knowledge of the anarchist heritage of the republican tradition, even though anarchists still use a language of freedom, domination and slavery that all contemporary republicans would recognize. Making up for this neglect re-links anarchism to wider and more established currents in contemporary political theory, opening up new lines of critical analysis within it.

## Private property, domination and the 'transformation of slavery'

In order to make sense of the conceptual innovations the anarchists introduced, we return to Rousseau and reconstruct, from the anarchist's rejection of his ideas, the legacy of republicanism therein. The anarchists were attracted and repelled by Rousseau in equal measure. On the one hand, they endorsed Rousseau's rejection of Pufendorf's claim that it is legitimate to sell oneself into slavery, to renounce one's freedom as one would one's property. On the other, they objected to Rousseau's framing of property as a convention that must be regulated by law. This formulation resolved the paradox that arises from Rousseau's critique of inequality and the nature of first possessory claims, which he advances in the *Discourse on Inequality* and his defence of property in *The Social Contract*.<sup>42</sup> But it did not placate the anarchists, who continued to argue, with Rousseau, that both property and slavery do 'violence to nature,'<sup>43</sup> and they also rejected his contention that the reign of force ends where law begins.

We consider the argument against law and the state below, but first, examine the way Proudhon and Bakunin related property to slavery. Proudhon's argument was that the introduction of constitutional rights to private property and the exploitative systems these entrenched in the post-revolutionary period precipitated the transformation of slavery into wage-slavery. Remembered best for the epithet 'property is theft!' Proudhon opened his defining work of anarchist political theory by conjoining property with slavery. Invoking republican ideas about the virtues of independence, Proudhon explained:

If I had to answer the following question, 'What is slavery?' and if I should respond in one word, 'It is murder,' my meaning would be understood at once. I should not need a long explanation to show that the power to deprive a man of this thought, his

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<sup>39</sup> G. Bourde, 'La Sagra, sabio y utopista,' *Revista de la Biblioteca Nacional de Cuba José Martí*, 3 (2015), pp. 109–150.

<sup>40</sup> J. -J. Becker, 'La Gauche et l'idée de la guerre,' in J.-J. Becker and G. Candar (Eds) *Histoire des Gauches en France: Volume 1, L'héritage du XIXe siècle* (Paris: La Découverte, 2004), pp. 522–530; P. Darriulat, *Les Patriotes: La gauche républicaine et la nation 1830–1870* (Paris: Éditions Du Seuil, 2001).

<sup>41</sup> F. Fanon, *The Wretched of the Earth*, trans. by Constance Farrington (Harmondsworth: Penguin Books, 1969).

<sup>42</sup> C. Pierson, 'Rousseau and the paradoxes of property,' *European Journal of Political Theory*, 12 (2013), pp. 409–424.

<sup>43</sup> J. -J. Rousseau, *Discourse on the Origin of Inequality*, F. Philip (Trans.) and Patrick Coleman (Ed.) (Oxford: Oxford University Press, 1994), p. 75.

will, and his personality is the power of life and death. So why to this other question, 'What is Property?' should I not answer in the same way, 'It is theft!,' without fearing to be misunderstood, since the second proposition is only a transformation of the first.<sup>44</sup>

Private title in things, Proudhon argued, facilitated the theft of property and value from those who produced it. Whereas under systems of primitive accumulation property is seized, and slavery produces without recompense, under capitalism, labourers work to produce, but the title to the capital and the exclusive domain over property ensures that the product of labour never remains with the labourer, and that the labourer remains as dependent on the master as the slave had been prior to emancipation. Proudhon argued that the transformation of slavery, from chattel to wage labour, and the theft of the product of labour resulted from the legal appropriation of property as an exclusive right of dominion:

When the Emancipation of the Slave was proclaimed, the proprietor lost the man and kept the land; just as today, in freeing the blacks, we leave the master his property in land and stock. Nevertheless, from the standpoint of ancient law as well as of natural and Christian right, man, born to labour, cannot dispense with the implements of Labour; the principle of Emancipation involved an agrarian law which guarantees them to him and protects him in their use: otherwise, this pretended Emancipation was only an act of hateful cruelty, an infamous deception [...] The result was that the emancipated slave, and, a few centuries later, the enfranchised serf, without means of existence, was obliged to become a tenant and pay tribute.<sup>45</sup>

Passages such as these can be found throughout the anarchist literature. Tolstoy, who corresponded with one of the sons of the radical abolitionist William Lloyd Garrison,<sup>46</sup> described the transformation in a worked example of the master–slave relationship before and after the abolition. Even though the 'slaver owner' was deprived of 'slave John, whom he can send to the cesspool to clear out his excrements,' Tolstoy noted, he still had money 'to be a benefactor' to 'anyone out of hundreds of Johns ... giving him the preference and allowing him, rather than another, to climb down into the cesspool.'<sup>47</sup> For Bakunin too, '[t]he truth is that the whole life of the worker is simply a continuous and dismaying succession of terms of serfdom – voluntary from the juridical point of view but compulsory in the economic sense – broken up by momentarily brief interludes of freedom accompanied by starvation; in other words, it is real slavery.'<sup>48</sup>

Making common cause with the red republicans in America, anarchists rejected the free labour contracts that abolitionists like Garrison championed. Yet in contrast to the Knights of

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<sup>44</sup> P. -J. Proudhon, *What is Property? Or, an Inquiry into the Principle of Right and of Government*, D. R. Kelley and B. G. Smith (Trans) (Cambridge: Cambridge University Press, [1840] 1994), p. 13.

<sup>45</sup> P. -J. Proudhon, 'Letter to Bastiat,' [1850] in Benjamin Tucker (Trans.) and Iain McKay (Ed.) *Property Is Theft!: A Pierre-Joseph Proudhon Anthology* (Edinburgh: AK Press, 2011), p. 523.

<sup>46</sup> L. Perry, *Radical Abolitionism: Anarchy and the Government of God in Antislavery Thought* (Ithaca: Cornell University Press, 1973), p. 3. On Garrison see also Gourevitch, *Slavery to the Cooperative Commonwealth*, *op. cit.*, Ref. 16, pp. 41–45.

<sup>47</sup> L. Tolstoy, 'The Slavery of Our Times,' in David Stephens (Ed.) *Government is Violence Essays on Anarchism and Pacifism* (London: Phoenix Press, 1990 [1900]), pp. 129, 136.

<sup>48</sup> M. Bakunin, in G.P. Maximoff (Ed.) *The Political Philosophy of Bakunin: Scientific Anarchism* (Glencoe, IL: Free Press, 1953), p. 188.

Labor, who used the critique of free labour contracts to focus on the effects of property ownership – the extraction of surplus value – the anarchists contended that domination is inherent in the claim to exclusive ownership.<sup>49</sup> Further parting company with red republicans, the anarchists rejected the possibility of universalising republican freedom through state regulation. Proudhon’s aim was rather to ‘REPUBLICANIZE [...] PROPERTY’<sup>50</sup> to ‘republicanize specie, by making every product of labour ready money.’<sup>51</sup>

As a critic of republicanism Proudhon argued for the removal of the possibility of dominium inherent to the possibility of the privateness of property. This explicitly struck at the heart of classical Roman accounts of property. For the Romans, as for the Greeks,<sup>52</sup> the very possibility of privateness of property, the ability to alienate and to exchange title was dependent on the prior notion of total dominium. *Meum esse*, a claim to dominium and absolute exclusivity or sovereignty over a thing is central to the possibility of the privateness of property for without this, the property could not be said to be alienable and transferable.<sup>53</sup> It underpinned and was epitomised by the institution of slavery. Proudhon’s argument was that the exercise of domination, experienced as dependency on a master by chattel and wage slaves alike extended from the exclusive right to private property that *meum esse* enshrined.<sup>54</sup> Republicanizing property meant abandoning this exclusive right and granting only the limited right to property on the basis of use.

In contrast to classical republicans, neo-Romans do not treat inequality as natural and of course reject chattel slavery, but they concur that private property does not itself entail domination. Further departing from a strict Roman republicanism contemporary neo-Romans seek to redress the egregious inequalities that result from historic distributions of private property, and the potentially dominating practices of agents who benefit from this distribution. The typical solution is progressive taxation or a universal basic income.<sup>55</sup> This third way aligns republicanism with welfarism and, as Nelson has forcefully argued, it is ‘wholly incompatible’ with the Roman view of non-domination.<sup>56</sup> Redistribution is designed to ensure that there is no structural domination of the poor by the rich, but in the standard republican account, it ensures the domination of the rich by the poor. The anarchist critique that extends from Proudhon’s rejection of republicanism is that for as long as private property is constitutionally guaranteed, dominion is only weighted one way or another and domination ensues.

By analyzing bourgeois property relations from the perspective of domination and freedom rather than marginal utility and value theory, Proudhon’s arguments also highlight the limits

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<sup>49</sup> That this is echoed in Marx should come as no surprise. As Marx pointed out in the *Holy Family*, Proudhon’s analysis made possible the first scientific study of the economy, a modern influence as significant as Sieyès’ on politics. P. Hauptmann, *Marx et Proudhon. Leurs Rapports Personnels, 1844–1847. Plusieurs Textes Inédits* (Paris: Editions Economie et Humanisme, 1947), pp. 32–33.

<sup>50</sup> Cited in Vincent *op. cit.*, Ref. 34, p. 143.

<sup>51</sup> P. -J. Proudhon, ‘Organisation of credit and circulation and the solution of the social problem,’ [1848] in *Property Is Theft!* *op. cit.*, Ref. 49, p. 284.

<sup>52</sup> E. Nelson, *The Greek Tradition in Republican Thought* (Cambridge: Cambridge University Press, 2004).

<sup>53</sup> P. Birks, ‘The Roman concept of dominium and the idea of absolute ownership,’ *Acta Juridica*, no. 1 (1985), 26–27. See also, J. H. Burns, ‘Fortescue and the political theory of dominium,’ *The Historical Journal*, 28 (1985), pp. 777–797.

<sup>54</sup> Birks, *ibid.*, 1–38; C. Pierson, *Just Property: A History in the Latin West. Volume 1: Wealth, Virtue, and the Law* (Oxford: Oxford University Press, 2013), pp. 39–58.

<sup>55</sup> Pettit, ‘Freedom in the market,’ *op. cit.*, Ref. 10.

<sup>56</sup> Nelson, *op. cit.*, Ref. 52, p. 16.

of the left-republican position that Alex Gourevitch extracts from his history of the Knights of Labor. Gourevitch is concerned with workplace domination as a microcosm of social domination more broadly, and talks of ‘social domination’ as structural.<sup>57</sup> He takes this from Marx. For Marx, such relations of domination persist beneath the state in what he called ‘civil society.’ Gourevitch is right that the labour contract is fundamentally and irreversibly exploitive and that ‘[n]o matter how equal the two parties are when making the contract, that equality disappears once the contract is made.’<sup>58</sup> Gourevitch shows in detail how constitutional guarantees of private property, not just asymmetries of power, work to the advantage of the bourgeoisie, enforcing the structural domination of the propertyless or poor. Yet echoing the critique developed by the Knights of Labor, Gourevitch turns to the state to remedy this structural domination, effectively detaching the constitutional defence of private property from the right to personal dominion. Proudhon would have agreed that key social relations of power are left unmolested by republican constitutionalism – indeed the latter is the enforcement of the former – but his view that the background constitutional defence of private property underpinned the transformation of slavery into wage slavery pointed to a rejection of the transfer of the right of dominion to the state. It is only by removing this right that we can ensure domination is removed. Indeed, as we now show, this right of dominion is central to state sovereignty, itself central to the ability to enforce the constitutional right to private property.

## Structural domination and the state

In much contemporary political theory, anarchism is still haunted by libertarianism and philosophical anarchism. As is well known, the first group proscribes state interference on the basis of a prior commitment to property in the self and an absolute defence of private property in general.<sup>59</sup> The latter group, including writers ranging from Robert Paul Wolff to John Simmons,<sup>60</sup> largely ignores the question of private property and focuses on the problem of political obligation. As Nathan Jun has recently pointed out, it is rare to find anyone interested in either form of anti-statism who engages with the lived traditions or political philosophy of anarchism.<sup>61</sup>

We should not, therefore, find it surprising that anti-state arguments in contemporary republican political theory tend to face towards the niche libertarian view or that the framing of the argument about the state replicates the terms of this established debate. In both, state theory turns on the justification of a stark alternative. Wolff’s dichotomy between autonomy and authority is mirrored in Pettit’s choice of the ‘freedom of the heath’ or the freedom of the ‘city.’<sup>62</sup> Only the latter is a properly political community, and the near universal alternative to the state is an ‘apolitical order.’<sup>63</sup>

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<sup>57</sup> Gourevitch, ‘Labor republicanism,’ *op. cit.*, Ref. 24, p. 606.

<sup>58</sup> Gourevitch, *Slavery to the Cooperative Commonwealth*, *op. cit.*, Ref. 16, p. 178.

<sup>59</sup> R. Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1974).

<sup>60</sup> R. P. Wolff, *In Defence of Anarchism* (Berkeley, CA: University of California Press, 1998); A. J. Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton, NJ, Chichester: Princeton University Press, 1993).

<sup>61</sup> N. Jun, ‘On philosophical anarchism,’ *Radical Philosophy Review*, 19 (2016), pp. 551–567; B. Franks, ‘Between anarchism and marxism: the beginnings and ends of the schism ...,’ *Journal of Political Ideologies*, 17 (2012), pp. 207–227.

<sup>62</sup> Pettit, *Republicanism*, *op. cit.*, Ref 1, p. 67.

<sup>63</sup> Pettit, *ibid.*, p. 136.

The state, it is held, is a commonwealth where citizens are compelled to the political community by their material obligation to constitutionalize. This entails the establishment of and obedience to laws, ‘an empire of laws, not of men’ as Pettit puts it.<sup>64</sup> Laws in turn entail the monopolization of force and thus a clear distinction between inside and outside, or the constitution of international politics as a distinct and problematic domain of political life, which compels us to arms.<sup>65</sup> The non-state is either a Hobbesian condition which ‘approximates to permanent civil war,’ a ‘state of nature,’ ‘balance of deterrence,’ ‘war of all against all’ or one in which ‘reciprocal powers’ with no formal delimitation of their roles and functions will dominate.<sup>66</sup> In this version, anti-statists are voluntarists who misunderstand Locke’s warnings about the ‘inconveniences’ of the state of nature. Pettit imagines that a form of constitutionalism might plausibly emerge from this a-legal order, but it would be a system of ‘antipower,’<sup>67</sup> that is, an overwhelming deployment of power that actively controls or eliminates the arbitrary power of some over others. Gourevitch uses similar tropes. In his closing remarks on the Knights of Labor, he detects a certain naivety in the movement’s ‘voluntaristic’ tendencies.<sup>68</sup> The Knights were wrongly suspicious of state power and dissuaded from establishing political parties.

The binary choice, state/non-state explains why Pettit contends that living with the state is like living with ‘the laws of physics,’<sup>69</sup> or ‘[l]ike having to live in the presence of gravity.’<sup>70</sup> This view is reinforced by the state’s interventionist role which injects goodness into naturalness. As Pettit puts it: ‘[u]nregulated by the agency of a state, wealth and power tend to accumulate in fewer and fewer hands. As by an “iron law”, to quote a recent historian [Fukuyama] of political order, “the rich tend to get richer, in the absence of state intervention”. It is extremely unlikely that any spontaneous norms could resist the effects of growing economic accumulation and ensure the resourcing of basic liberties for the poor as well as the rich.’<sup>71</sup> Yet this account of intervention relies on prior understandings of accumulation predicated on a specific conception of the nature of property and the alienation of surplus. In other words, Pettit only needs a state because of the special ways that private property operates. Absent the latter, there need to be other reasons for a state, or none at all.

The important point to emerge here is that the (absent) historical sociology of the state structures the republican argument: law is a system which regulates our interactions in this sub-optimal, if realistic, status quo, and violence must be monopolized, ironically to enforce right. In the next three sub-sections, we outline the anarchist sociology of the state and explore the critique of law and violence it elicits. Our aim is to show that Pettit’s claim that the efficiency savings of ‘having a state’<sup>72</sup> outweigh the loss of liberty this entails is a false choice. The absorption of the history of state formation in a theorization of a state/non-state dichotomy tricks us into thinking that the anarchist critique supports an unrealistic, dangerous idea of abolition. While the anarchist critique is unstinting, it focuses on processes of state formation that are open to change and constitutional redesign. It thus provides a normative critique of the state which

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<sup>64</sup> Pettit, *ibid.*, p. 173.

<sup>65</sup> P. Pettit, ‘A republican law of peoples,’ *European Journal of Political Theory*, 9 (2010), pp. 70–94.

<sup>66</sup> Pettit, *Republicanism*, *op. cit.*, Ref. 1, pp. 94–95.

<sup>67</sup> P. Pettit, ‘Freedom as antipower,’ *Ethics*, 106 (1996), pp. 588–589.

<sup>68</sup> Gourevitch, *Slavery to the Cooperative Commonwealth*, *op. cit.*, Ref. 16, pp. 188–189.

<sup>69</sup> Pettit, *On the People’s Terms*, *op. cit.*, Ref. 1, p. 161.

<sup>70</sup> Pettit, *ibid.*, p.162.

<sup>71</sup> Pettit, *ibid.*, p. 135.

<sup>72</sup> Pettit, *Republicanism*, *op. cit.*, Ref 1, p. 93.

encourages us not to give up on the attempt to properly interrogate ‘which institutions do best by freedom.’ And it first did so deploying the language of slavery, domination and freedom.

### **The distinctiveness of the anarchist historical sociology of the state**

The thrust of the classical anarchist argument is that the state’s dominating force is not independent of the institution of private property which it upholds. Understanding that this relationship is a dynamic historical one gives anarchists insights into the ways that contemporary states continue to sustain structural forms of domination. Their critique has deep roots and it has been a major bone of contention in revolutionary socialist circles since the 1860s.

As historians have often observed, this disagreement emerged from a shared critique of exploitation and wage slavery. Bakunin and Marx agreed that law is permissive of domination in what Marx called ‘civil society.’ ‘Juridically,’ Bakunin noted in a review of *Capital*, capitalists and workers are both equal ‘but economically the worker is the serf of the capitalist, even before the market transaction has been concluded.’<sup>73</sup> This voluntary servitude, contract slavery, to which Rousseau objected, is central to the capitalist labour market.<sup>74</sup> Like Marx, Bakunin recognized that this structural condition compels all social classes – factory owners, the bourgeoisie and state functionaries – making all slaves to the logic of property and the market: ‘there is hardly an industrial enterprise’ Bakunin argued, ‘wherein the owner, impelled on the one hand by the two-fold instinct of an unappeasable lust for profits and absolute power, and on the other hand, profiting by the economic dependence of the worker, does not set aside the terms stipulated in the contract and wring some additional concessions in his own favor.’<sup>75</sup>

As we have seen, left republicans like Gourevitch draw on this account of the relationship between worker and capitalist and conclude from it that the state might yet realize a non-dominating condition of social relations through the correct deployment of constitutional political power ‘in order to redistribute ownership and control.’<sup>76</sup> But it is on this point that Bakunin and later anarchists departed from Marx.

The idea that the state was a system of domination was a unifying thread in Bakunin’s writing. While still a republican fellow-traveller, he described the state as ‘nothing but [...] domination and [...] exploitation, well-regulated and systematized.’<sup>77</sup> Two years later, by now mixing with Marx, Bakunin used class idioms to express the same idea: ‘bourgeois domination’ he contended, ‘is the slavery of the proletariat.’<sup>78</sup> In *Statism and Anarchy*, a text directed against Marx, Bakunin revived the languages of republicanism to argue that the structural domination of capital and the state are mutually constitutive: ‘If there is a State, then necessarily there is domination and consequently slavery. A State without slavery ... is inconceivable – that is why we are the enemies of the State.’<sup>79</sup>

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<sup>73</sup> Bakunin, *The Political Philosophy of Bakunin*, *op. cit.*, Ref. 48, p. 187.

<sup>74</sup> S. Beckert and S. Rockman (Eds.), *Slavery’s Capitalism: A New History of American Economic Development* (Philadelphia: University of Pennsylvania Press, 2016).

<sup>75</sup> Bakunin, *The Political Philosophy of Bakunin*, *op. cit.*, Ref. 48, p. 188.

<sup>76</sup> Gourevitch, *Slavery to the Cooperative Commonwealth*, *op. cit.*, Ref. 16, p. 190.

<sup>77</sup> M. Bakunin, in S. Dolgoff (Ed. and Trans.) *Bakunin on Anarchy. Selected Works by the Activist Founder of World Anarchism* (London: Allen and Unwin, 1973), p. 144.

<sup>78</sup> Bakunin, *ibid.*, p. 164.

<sup>79</sup> M. Bakunin, *Statism and Anarchy*, Marshall Shatz (Ed.) (Cambridge: Cambridge University Press, 1990/1873), p. 178.

The distinctiveness of the anarchist conception of the state that Bakunin outlined remained hazy in the fluid and often feverish politics of 19th century socialism. But it complicated and pushed further than Marx's analysis of economic forces, towards the analysis of parallel processes of territoriality, monopoly and centralization.<sup>80</sup> The conclusion Bakunin drew from the Commune, for example, was that anarchists and Marxists both envisaged the 'creation of a new social order based solely on the organisation of collective work' and 'the collective appropriation of the instruments of labour.' The difference was that 'communists believe they should organise the workers' strength to take over the political power of the states' and the 'revolutionary socialists organised with a view to the destruction, or, if one want a more polite word, the liquidation of the states.'<sup>81</sup> Believing 'every political state' to be 'nothing but organized domination for the benefit of one class, to the detriment of the masses,' he warned that the proletariat would 'in its turn become a new dominating and exploiting class' should it ever attempt to seize state power.<sup>82</sup>

Anarchists also rejected Marx's view that the state was an historic achievement.<sup>83</sup> For them, forms of statelessness were historic achievements, for the state entailed the centralization of power and domination, and the diminution of decentralization and complexity. It was a system of monopoly and colonization that gradually, but forcibly, extended its responsibilities across social, cultural, religious and political realms. Anarchists anticipated Weber as much as they developed Marx.<sup>84</sup> As Bakunin put it:

The bourgeoisie and its diverse social and political organisations in industry, agriculture, banking and commerce, just as in all the administrative, financial, judicial, university, police and military functions of the State, is tending to weld itself further and further each day into a truly dominant oligarchy and a countless mass of creatures who are more or less vainglorious and more or less fallen, living in a perpetual illusion and pushed back inevitably more and more into the proletariat by an irresistible force, that of present-day economic development, and reduced to serving as blind instruments of this all-powerful oligarchy.<sup>85</sup>

When anarchist-inflected analysis started to gain traction in academia, over a hundred years after Bakunin's death,<sup>86</sup> it was still at odds with prevailing currents in Marxist political theory which revolved around questions of relative autonomy and the state's ontological status.<sup>87</sup>

## Law, violence and the state

Bakunin's conception of the process of state's formation reinforced Proudhon's view that the state was always already implicated in domination by the logic of the constitutional defence of

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<sup>80</sup> M. Bakunin, *God and the State.*, Paul Avrich (Trans.) (New York: Dover Publications, 1970/1870–1871).

<sup>81</sup> M. Bakunin, *The Paris Commune and the Idea of the State* (London: CIRA, 1971/1871), p. 2.

<sup>82</sup> Bakunin, *Bakunin on Anarchy. op. cit.*, Ref. 77, p. 390.

<sup>83</sup> R. Rocker and R. E. Chase, *Nationalism and Culture* (Sanday: Cienfuegos Press, 1978).

<sup>84</sup> On Max Weber and the anarchists see D. M. Williams, 'A society in revolt or under analysis? Investigating the dialogue between 19th-century anarchists and sociologists,' *Critical Sociology*, 40 (2014), pp. 469–492; S. Whimster, *Max Weber and the Culture of Anarchy* (Basingstoke: Macmillan, 1999).

<sup>85</sup> Bakunin, *The Paris Commune, op. cit.*, Ref. 81, p. 4.

<sup>86</sup> C. Tilly, 'War making and state making as organised crime,' in P. B. Evans, D. Rueschemeyer and T. Skocpol (Eds) *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985), pp. 169–191.

<sup>87</sup> P. Abrams, 'Notes on the difficulty of studying the state,' *Journal of Historical Sociology*, 1 (1988/1977), pp. 58–89.

private property. This challenged the legitimizing stories that underpinned liberal and republican accounts of the state's origins. The state did not provide universal transcendent order, as modernists proclaimed, only order of a particular kind.<sup>88</sup> Pressing this analysis, Kropotkin linked the monopoly and colonization of the state directly to the imposition of law, showing how the promise of instituting private property motivated political, military and religious elites to codify laws that would cement their privileges. The revival of the Roman tradition secured this change. Formal commitments to rights and freedom seduced the citizens of newly constituted states, yet as Bakunin remarked, the people understood the meaning of 'equality, freedom, justice, human dignity, morality and the well-being of individuals' quite differently from the lawyers empowered to give them content.<sup>89</sup> The vagaries of the language enabled elites to turn republican thinking on its head. Law and the state were the tools elites used to craft the movement from freedom to slavery: Roman law never protected peoples from tyranny nor rescued them from chaos. It transformed 'a confederation of citizens' into 'a flock of *subjects*,'<sup>90</sup> consolidating power, delimiting it and explaining its material distribution.

Anarchists agreed with republicans that force was required to underwrite the law but saw the monopoly of violence as a cultural phenomenon which structured justice and law, not a separate requirement for law's protection. Arguing that our institutions of justice are radically 'infected with violence,'<sup>91</sup> Proudhon coined the term *militarisme* to describe the integration of war making functions with state-building.<sup>92</sup> Later anarchists developed alternative conceptions of war, but generally absorbed Proudhon's understanding of state violence. For Bakunin '[s]overeignty, the drive toward absolute domination, is inherent in every State; and the first prerequisite for this sovereignty is the comparative weakness, or at least the submission of neighboring states.'<sup>93</sup> Whether or not states regularly used armed force, the monopoly of violence placed the 'domestic' and the 'international' on a continuum of relations of violence.

The transformation of slavery into wage-slavery ran alongside the transformation of arbitrary monarchical rule into the regularized militarized domination of representative governments. The State, as Kropotkin put it, was a 'power placed above society ... a territorial concentration and a concentration of many or even all functions of the life of society in the hands of the few.'<sup>94</sup> It was an 'engine for stealing wealth by commanding the military.'<sup>95</sup> And as law fixed property relations it not only cemented wage slavery through labour contracts, it also regularized prevailing local moral norms to determine the boundaries of legitimate action in ways that benefited elites. Appropriating the republican language of slavery, anarchists showed that they were fully attuned to what is now referred to as the intersectional nature of oppressions; legal domination entrenched patriarchy through the regulation of marriage contracts and racism, through colonial expansion within and without the state's territorial boundaries. Rudolf Rocker later quoted approvingly from the constitution of the IWW (1906), which portrayed the law as an instrument of 'outright

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<sup>88</sup> For more see Prichard, *op. cit.*, Ref. 34.

<sup>89</sup> Bakunin, *Bakunin on anarchy*, *op. cit.*, Ref. 77, p. 299.

<sup>90</sup> P. Kropotkin, *The State: Its Historic Role* (London: Freedom Press, 1942/1896), p. 11.

<sup>91</sup> P. -J. Proudhon, *La Guerre et la Paix, Recherches Sur La Principe et la Constitution du Droit des Gens*. Nouvelle edn (Paris: Editions Tops, 1998/1861), Vol. I, p. 102.

<sup>92</sup> V. R. Berghahn, *Militarism: The History of an Intellectual Debate 1861-1971* (Leamington Spa: Berg Publishers, 1981), p. 7.

<sup>93</sup> Bakunin, *Bakunin on Anarchy*, *op. cit.*, Ref. 77, p. 337.

<sup>94</sup> Kropotkin, *The State: Its Historic Role*, *op. cit.*, Ref. 90, p. 10.

<sup>95</sup> Peter, Kropotkin, *Mutual Aid: A Factor of Evolution* (Montreal: Black Rose Books, 1988/1902), p. 89.

slavery;<sup>96</sup> Eliséé Reclus examined the effects of abolitionism in America and argued that the continued existence of supremacist cultures meant that ex-slaves were not merely exploited as workers, but in special ways as black workers.<sup>97</sup> Voltairine de Cleyre similarly probed the nature of sex slavery and the relationship to chattel and wage-slavery.<sup>98</sup> And so this trope persisted well into the first half of the 20th century.

Prior to the two World Wars, universal suffrage and welfare states, this process of the transformation of slavery and the consolidation of state power to embed capitalist property relations, seemed self-evidently unjust, and the critique of republican language perfectly natural and deeply political. Tolstoy was one of the most vociferous critics of law and the state in this respect. In the presence of the law as established by and through states, slavery is inevitable, he argued, precisely because those who are governed by laws never write them, and their imposition necessitates brute force. States extract taxes to fund conquest, which is itself dependent on the prior establishment of secure administrative systems and the cooperation of the propertied elites, whether landholders drawing from serfs or factory owners drawing from their workforce. Law can never be the guarantor of liberty, as republicans argue, because the interests it ‘tracks,’ to use Pettit’s phrase, are always mediated by background conditions of domination that are removed from public scrutiny. Echoing Proudhon, Tolstoy designated ‘(l)and, taxes and property’ as the three ‘sets of laws’ that explained ‘the slavery of our times.’<sup>99</sup> Presumed or tacit consent necessarily involved structural violence. ‘It cannot be otherwise. For laws are demands to obey certain rules and to compel some people to obey certain rules can only be done by laws, by deprivation of liberty and by murder.’<sup>100</sup>

## The state and domination

In the context of contract theory, Pettit’s claim that ‘laws create the freedom enjoyed by citizens’ looks compelling.<sup>101</sup> Set alongside the anarchists’ historical sociology, it is less persuasive. The anarchist account of state-formation supports a conception of anarchy that mainstream political theory typically reduces to an abstract condition whose leading features can be deduced from the state’s absence. Neo-Roman republicanism does not challenge this dominant approach. Anarchy, for anarchists, is not a lawless condition best thought of as nasty or inconvenient. No such order exists in international relations and modern anthropology indicates that it is an inaccurate description of the cultures of stateless peoples.<sup>102</sup> Recent scholarship, showing how the revival of the Roman legal tradition by 18th-century republicans established particular types of political community, rather than political community in general, adds weight to the anarchist

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<sup>96</sup> R. Rocker, *Anarcho-Syndicalism* (London: Pluto, 1989), p. 45.

<sup>97</sup> J. Clark and C. Martin, *Anarchy, Geography, Modernity: Selected Writings of Eliséé Reclus* (Oakland, CA: PM Press, 2013), pp. 74–98.

<sup>98</sup> V. de Cleyre, ‘Sex Slavery,’ in Alexander Berkman (Ed.) *Selected Works of Voltairine de Cleyre* (New York: Mother Earth Publishing, 1914), p. 352.

<sup>99</sup> Tolstoy, *op. cit.*, Ref. 47, p. 136.

<sup>100</sup> Tolstoy, *ibid.*, p. 139.

<sup>101</sup> Pettit, *Republicanism, op. cit.*, Ref. 1, p. 36.

<sup>102</sup> J. C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009); S. D. Krasner, ‘State, power, anarchism,’ *Perspectives on Politics*, 9, no. 1 (2011), pp. 79–83.

critique.<sup>103</sup> Recovering the anarchist sociology of the state explains why, for anarchists, domination, otherwise conceptualized as *dominus*, exclusive and absolute control and jurisdiction, is at the heart of private property and statehood. These institutions are not historical accidents or transhistorical *a priori*. They are the cumulative and often unintended effect of political decisions taken by republicans and others to structure world politics in the interests of the propertied elites. Domination is ideologically and structurally core to modern states and any attempt to realize non-domination as a transformative principle must at the very least call into question these two institutions.

## Democratizing the constitution: can it be done?

Armed with their critique of the state, 19th century anarchists denied the possibility of democratizing the constitution but advocated the democratic republicanization of property as a means to challenge the powers of the constitution that states guaranteed. While some modern political theorists voice deep concerns about the undemocratic nature of neo-Roman republicanism, they also suggest that there is scope for the democratic reform of republican constitutions. In this last section, we show how the anarchist theory of the state shapes a very different conception of democratic change.

As John McCormick argues, neo-Roman republicanism constitutionalizes without democratizing.<sup>104</sup> Invoking Michels' 'iron law of oligarchy',<sup>105</sup> McCormick contends that the popular selection of groups of elites in democracies is structurally embedded through republican constitutionalism. Reversing the neo-Roman argument that 'republicanism is the completion of democracy,' Nadia Urbinati similarly argues that in the absence of 'an equal relationship of power among citizens' and 'an effective right to express one's opinions [...] legal liberty and due process of law are not secure acquisitions.'<sup>106</sup> This demands a fuller participation. This line of argument underpins a number of different proposals to democratize republicanism. McCormick's specific demand is for a new people's tribune, and radical democratic innovations, to reconstruct republicanism 'almost beyond the point of recognition.'<sup>107</sup>

The anarchist critique of neo-Roman republicanism suggests that 'almost' is the operative word, for the democratic deficit that McCormick, Urbinati and others identify in neo-Roman republicanism operates at the level of the constitution. The limits of republicanism are indeed marked by the active discouragement of participation and the curtailment of democratic processes, but also by the systems of power that the modern constitution cements and within which democratic processes operate. It is for this reason that anarchists have typically rejected electoral politics, even though many contemporary anarchists would endorse the participatory and deliberative forms of democracy that McCormick and others call for.

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<sup>103</sup> G. E. Aylmer, 'The meaning and definition of "Property" in seventeenth-century England,' *Past & Present* 86 (1980): 87–97; D. Graeber, *Debt: The First 5,000 Years* (New York: Melville House, 2011), chapter 1; A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

<sup>104</sup> J. P. McCormick, 'Machiavelli against republicanism,' *Political Theory*, 31, no. 5 (2003), pp. 616–617.

<sup>105</sup> R. Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*, Eden Paul and Cedar Paul (Ed.) (New York: Free Press, 1966).

<sup>106</sup> N. Urbinati, 'Competing for liberty: the republican critique of democracy,' *American Political Science Review*, 106, no. 3 (2012), p. 619.

<sup>107</sup> McCormick, *op. cit.*, Ref. 104, p. 616.

Often dismissed as a juvenile response to authority, the anarchist rejection of electoral politics and representative democracy is a function of the depth of the problems democracy is asked to resolve: the institution of private property, the structures and processes of domination that maintaining this constitutional arrangement demands, and the ways in which sustaining this central form of domination then percolates into other, no less important, areas of social life. This is a labour of Sisyphus.

In attacking the republican constitution, anarchists neither rejected democracy nor constitutional politics. Instead, they sought to detach constitutional politics from relationships grounded in the forms of slavery that inhered from private property and the state. Proudhon's argument was not that there should be no property, for this would be tantamount to Athenian or Jacobin communism and require a seemingly limitless state to enforce it.<sup>108</sup> He proposed limitless possessory claims, negotiated democratically between groups and individuals.<sup>109</sup> Rather than title being exclusive and based on dominium, property would be democratically negotiated in infinitely plural ways, both in productive relations and exchange relations too. It is this democratic republicanization of property which, ironically, destroys its exclusivity. Accomplishing the abolition of property entails the curtailment of proprietary rights, *dominus*, by law, routinely and constitutionally.<sup>110</sup> All ownership thus becomes possession, with no absolute right to ownership of anything. This communal negotiation of title is vital to freedom as non-domination, distinguishing the 'free man' from the 'slave.'

Proudhon's anarchist proposal demands continuous democratic vigilance and a constitutional framework that facilitates interventions that are non-dominating. Indeed, in Proudhon's politics, democracy is freed from an exclusively 'political' realm into the complex groupings of society. It becomes central to every purposeful political group, not just the state.<sup>111</sup> Republicans might object that this is hardly feasible. Pettit rightly warns that any distribution of property that has to be maintained by continual government intervention is extremely taxing from the point of view of non-domination.<sup>112</sup> However, this is exactly what Roman accounts of private property, or Athenian inspired collectivist property relations, require: the meddling state so abhorred by libertarians. Democratizing property along the lines Proudhon suggested, that is mutualistically, horizontally and though bilateral and multi-lateral contract, would obviate the need for a state to enforce any one particular regime over another. Indeed, such is the cost to the state of maintaining private property that taxation for this purpose is the *sine qua non* of policing and the military, namely, the protection agencies that guard the title that accrues to sovereignty and colonial occupation. It is against this background that we need to understand anarchist criticisms of constitutionalization, the state and conventional accounts of democracy.

Pettit is surely right to fear populist and extra constitutional means for revising the constitution in favour of dominant majorities or minorities. Yet if republicanism does not foster civic virtue, the neglected question is how vocal minorities and disenfranchised majorities who are

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<sup>108</sup> Proudhon, *What is Property?*, *op. cit.*, Ref. 44, pp. 196–197.

<sup>109</sup> P. -J. Proudhon, 'Theory of Property,' (1865) in S. Wilbur (Trans.) *Property Is Theft!* (Edinburgh: AK Press, 2011), pp. 775–784.

<sup>110</sup> For fuller discussions of anarchist accounts of law and stateless law see G. Chartier, *Anarchy and Legal Order: Law and Politics for a Stateless Society* (Cambridge: Cambridge University Press, 2014); A. S. Chambost, *Proudhon et la Norme: Pensée Juridique d'un Anarchiste* (Rennes: Presses Universitaires de Rennes, 2004); N. Bourgeois, *Les Théories Du Droit International Chez Proudhon: Le Fédéralisme et la Paix* (Paris: Marcel Rivière, 1927).

<sup>111</sup> Proudhon *What is Property?*, *op. cit.*, Ref. 44, pp. 117–169.

<sup>112</sup> Pettit, 'Freedom in the Market,' *op. cit.*, Ref. 10, p. 140.

neither propertied nor politically powerful can revise the constitution. Pettit's contention that private property constitutes the 'natural environment' and that living in a state is like 'living under the laws of physics' drastically limits the potential for democratic innovation. It invites charges of both utopianism and conservatism at once, and this is, at its core, the problem with neo-Roman conceptions of property and statehood.

Unless the state removes dominium in property, inequality and social discord will increase. If states restrict property, then private property itself, as Proudhon observed, becomes 'impossible,' and the domination of the propertied is inevitable.[113] As Bakunin argued, no state 'not even the reddest republic' is capable of giving the people 'what they really want, i.e., the free self-organization and administration of their own affairs from the bottom upward, without any interference or violence from above.'<sup>113</sup>

## Towards anarchist constitutionalism

In this article, we have recovered a set of arguments that challenge the notion that freedom from domination must work within the intellectual and political parameters of the modern nation state and capitalism. Such is the dominance of the modern nation state in our contemporary understandings of politics and freedom, that thinking imaginatively about non-domination without the state has become difficult, to say the least. The role of political theory is surely to expose and to uncover, as well as to build and justify, and to the extent that the anarchists are able to pierce the assumptions of modern politics, it is incumbent upon political theorists to engage with anarchist arguments about what politics might be. We have tinkered long enough and the return to a new constellation of authoritarian, populist, neoliberal and autarkic world leaders suggest we need radically rethink the benefits of our current liberal institutions. We hope that the anarchist account here makes a political case for much more radical institutional re-design.

Centrally, we must accept that any attempt to think about freedom as non-domination and from dependency must question the necessity of the state and the exclusive right to private property. The alternative simply prefigures our conception of which institutions might do best by freedom and forecloses our political imagination. Our purpose in this article has not been to detail that alternative, only to challenge the republican arguments for constraining the concept freedom as non-domination by conflating it with a set of contingent historical constitutional arrangements. In advancing this critique, our review of the history of anarchist ideas dovetails with the left-libertarian argument that the concept of freedom as non-domination developed by neo-republicans is moralized.<sup>114</sup> For Ian Carter,<sup>115</sup> the negative credentials of the republican theory of freedom are compromised by the claim that some obstacles to doing whatever you like are morally acceptable – specifically obstacles like imprisonment by states who track your avowed interests. Pettit's blunt retort to his critics is that 'there is no substance to the claim that the republican theory of freedom I favor is moralized,'<sup>116</sup> but this is clearly not the case. The legitimacy of the state cannot be defended with reference to the principle of non-domination,

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<sup>113</sup> Bakunin, *Bakunin on Anarchy*, *op. cit.*, Ref. 77, p. 338.

<sup>114</sup> M. H. Kramer, 'Liberty and domination,' in *Republicanism and Political Theory*, *op. cit.*, Ref. 1, pp. 31–57; K. Dowding, 'Republican freedom, rights and the coalition problem,' *Politics, Philosophy and Economics*, 10 (2011), pp. 301–322.

<sup>115</sup> I. Carter, 'How are power and unfreedom related?,' *Republicanism and Political Theory*, *op. cit.*, Ref. 1, pp. 64–68.

<sup>116</sup> Pettit, *Republicanism*, *op. cit.*, Ref. 1, p. 117.

for this implies that a whole range of secondary moral and ideological commitments come into play, some of which will evoke substantive conceptions of the good, outlawed by a pure negative theory of freedom as non-domination. To defend the state and the constitutional guarantee of private property disables vigilance of institutionally embedded, dominating social relationships and perpetuates forms of slavery linked to dependency.

This observation does not suggest easy resolution. Indeed, it is doubtful that there is any resolution. When anarchists illuminated the shortcomings of republican constitutionalism they asked questions about the extent to which non-domination could be guaranteed by *any* constitutional arrangement. The 19th century anarchist critique does not hold out the promise of a non-moralized theory of freedom. Rather it opens up the possibility of using anarchy as a constitutional principle, that is, to provide a concept of non-domination capable of testing the freedom-enhancing properties of actually existing states.

Anarchism not only exposes how deeply the neo-Roman account of freedom as non-domination is moralised, it also uncovers a much wider set of dubious assumptions about freedom and politics. The richness of republican political theory and its emancipatory force is revealed through the recovery of anarchist analysis. While it should be clear from the forgoing discussion that anarchists deployed a coherent and sustained critique of the republican concept of freedom as non-domination, much more needs to be done to tease out the constitutional implications of that critique and to re-link anarchism to the history of political thought more broadly. If the constitutional question is not reopened, beyond the narrow confines of the state, then domination and tyranny are all we can expect.

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