

THE LIBERTARIAN CASE FOR A BASIC INCOME  
GUARANTEE: AN ASSESSMENT OF THE DIRECT  
PROVISO-BASED ROUTE

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MATT ZWOLINSKI ARGUES that libertarians “should see the Basic Income Guarantee (BIG)—a guarantee that all members will receive income regardless of why they need it—as an essential part of an ideally just libertarian system.”<sup>1</sup> He maintains that for a private property system to be just, it must satisfy the Lockean proviso, which stipulates that individuals may not be rendered worse off in certain ways by the uses and appropriations of private property. The proviso marks one sort of way in which individuals may not be rendered worse off. BIG is to be justified precisely because it prevents proviso violations. We argue that this Direct Proviso-Based Argument for the BIG is in tension with other principles libertarians within the Lockean

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<sup>1</sup> Matt Zwolinski, “Property, Coercion, and the Welfare State: The Libertarian Case for a Basic Income Guarantee for All,” *The Independent Review* 19, No. 4 (Spring 2015), pp. 515–29. Zwolinski makes two sorts of argument in favor of the libertarian case for the BIG. One comes at the theoretical level. The second comes at the pragmatic level. Our task here is to show that Zwolinski is not entitled to his argument at the theoretical level; or, at the very least, he has a good deal of work to do in order to establish his thesis (and his prospects are bleak, in our view). The pragmatic case is another matter, and is beyond the scope of this paper.

tradition hold dear—specifically, prohibitions on seizing legitimately held property and forcing individuals to labor.<sup>2</sup> Because proponents present the argument as foundational moral theory, we assess it at that level, and we find that it fails.

### 1. Zwolinski's Proviso-Based Case for the BIG

Zwolinski finds a rationale for the BIG in three principles many libertarians accept. The first is the thesis of self-ownership, according to which individuals own their own bodies, talents, and faculties. This attractive thesis serves to explain why forced labor, murder, rape, and other bodily invasions are wrong. Such aggressions trench upon the self-ownership rights of the individual. Libertarians within the Lockean tradition, in particular, frequently endorse such a thesis.<sup>3</sup>

Many libertarians accept a second principle, one affirming the possibility of robust extrapersonal property. The same good reasons for supporting the self-ownership thesis require a second commitment: because acquiring property is (very nearly) an essential part of pursuing one's conception of the good, people should not be excluded from a system of private property.<sup>4</sup> Indeed, individuals can acquire robust extrapersonal property. Many libertarians additionally hold that the central question to ask when determining whether a holding is just is whether people went through

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<sup>2</sup> In what follows, we omit the adjective "Lockean" and often write simply "libertarian." However, we should be understood to refer to the Lockean tradition. There are other ways of being a libertarian, we take it, but Zwolinski seems to place himself in this tradition. Similarly, we do not address alternative arguments for the BIG. This paper is directed at the Direct Proviso-Based case and no others. Along these same lines, we are considering only the moral case for the BIG; Zwolinski also has a separate pragmatic—real-world—argument for the BIG. We do not take up that case here.

<sup>3</sup> This thesis is upheld by John Locke in *Second Treatise of Government* (New York: Macmillan, 1952); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy & Policy* 12 (1995), pp. 286–315; and again in "Self-Ownership, Marxism, and Egalitarianism, Part II: Challenges to the Self-Ownership Thesis," *Politics, Philosophy, & Economics* 1, No. 2 (2002), pp. 237–76; Daniel Russell, "Embodiment and Self-Ownership," *Social Philosophy & Policy* 27, No. 1 (2010); and others.

<sup>4</sup> Cf. Eric Mack, "The Natural Right of Property," *Social Philosophy and Policy* 27, No. 1 (2010): 53–78.

the proper channels in acquiring their property.<sup>5</sup> Whether via original appropriation or transfer, holdings are just, at least when they arise from a just situation and move through justice-preserving steps. When holdings do not have a just history, rectification is required.<sup>6</sup>

In appropriating bits of the unowned world and using their justly held property, people might harm others. The third libertarian principle deems some harms to others, even some noninvasive ones, as morally unacceptable. The most famous discussion of this third principle comes from John Locke, who writes that appropriations are just if one leaves “enough, and as good, in common for others.”<sup>7</sup> At least under such conditions, “no one has any grounds for legitimate complaint” about the appropriation.<sup>8</sup> The stipulation that original acquisitions may not relevantly worsen the condition of others is called the Lockean proviso.<sup>9</sup>

Some who articulate Locke’s views limit the scope of the proviso to appropriations, but others do not, and for good reason. After all, uses might affect an individual in exactly the same ways as appropriations. Thus, the proviso should delimit not just how much individuals may acquire but also how individuals may use their property.<sup>10</sup> Eric Mack illustrates this point:

While Zelda sleeps or dawdles, Adam encases each of the specific extra-personal objects which Zelda otherwise would put to use in the promotion of her ends in one of his many smaller, rightfully

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<sup>5</sup> Nozick (1974); Mack (1995 and 2002). These are robust in the sense that they are, at best, modestly consequence sensitive. And they are extensive in that they include the fullest set of discretionary control possible, subject to the rights of others, of course. The proviso itself is an upper limit on the context sensitivity of these property rights.

<sup>6</sup> We gloss over all the messiness of this issue. Perhaps a statute of limitations renders just a holding that has not arisen by justice-preserving steps yet has not been rectified. Loren Lomasky has rightly observed that the reasons for endorsing robust private property rights do not justify the radical upheaval of all current holdings, despite their history. See Loren Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), p. 145.

<sup>7</sup> Locke (1952), §25.

<sup>8</sup> *Ibid.* §33.

<sup>9</sup> The proviso is best seen as part of a theory of self-ownership and not as part of a theory of private property. See Eric Mack (1995).

<sup>10</sup> In fact, Locke himself seems to see “enough, and as good” less substantially linked to appropriations within more complicated and advanced economic systems. The question for Locke seems to become whether economies with money, for example, relevantly restricts individuals. See Locke (1952), sections 36 to 42.

held, impregnable plastic shells. When Zelda seeks to penetrate any of these shells, she is charged with impinging upon Adam's property.<sup>11</sup>

This case shows that Adam might relevantly harm Zelda simply by using his property in certain noninvasive ways. The harm Zelda would endure worsens her condition in a morally objectionable fashion. Zelda may well starve to death, even if Adam does not directly touch her or her property.

This case is relevant to Zwolinski's concerns. He worries that a system of private property rights embodying libertarian principles might run afoul of the proviso. There might be some people who are "poor or otherwise disadvantaged because others have deprived them of access to the earth's natural resources."<sup>12</sup> To illustrate this point, he has us consider Peter the Propertyless Proletarian.

Peter has no money, no real estate, nothing to sell in exchange for money but his labor. So if Peter wants to eat, he must find a capitalist—someone who claims ownership rights over the means of production—and get himself hired. Once he has been hired, he must do whatever the capitalist tells him to do—no matter how arbitrary or capricious it may be—in order to avoid becoming destitute. The threat of poverty thus keeps him in a position of servility in which he must submit to being bossed around by somebody else simply in order to survive.<sup>13</sup>

Zwolinski is clear that "disadvantage is a case of injustice... only when it is brought about by a wrongful act of coercion."<sup>14</sup> He maintains that a system of private property is coercive, at least insofar as those who hold property threaten to use force against those who violate their property rights: "It is an essential part of the point of property rights to be coercive—without that coercion, the right to exclude that is at the core of property rights is meaningless, and such rights could not provide the sort of stability and protection that makes them attractive in the first place."<sup>15</sup> If the system of rights itself renders some individuals relevantly worse off, the proviso is violated. When this happens, those harmed are due compensation.

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<sup>11</sup> Mack (1995), 196

<sup>12</sup> Zwolinski 2015: 522

<sup>13</sup> Zwolinski (2015), 522.

<sup>14</sup> *Ibid.* 523.

<sup>15</sup> *Ibid.* 523.

Zwolinski proposes the BIG as a means of ensuring “that all citizens have access to an adequate level of resources.”<sup>16</sup> He seeks to avoid situations in which although people *generally* benefit from the overall prosperity fostered by property rights, *some individuals* might nonetheless be harmed in ways analogous to the harm to Zelda—noninvasively, but in violation of the proviso. Some libertarians might challenge the need for the safety net on the grounds that forced redistribution—for example, in the form of taxes—is unjust because such action violates property rights. Zwolinski responds that a safety net does not run afoul of this “taxation is slavery” sort of objection because the safety net is “a necessary precondition of the legitimacy of private property rights in the first place.”<sup>17</sup> The safety net ensures that there is “enough, and as good,” available to each person.<sup>18</sup>

Zwolinski’s advocacy goes beyond a case-by-case safety net to a BIG for pragmatic reasons. Zwolinski grants that the following objection is sound: only those who suffer relevantly can claim compensation. Thus, only some may rightly claim compensation. The BIG would guarantee money to everyone, even those who have no title to it. Thus, it cannot be justified. Zwolinski asks: “Why, then, should those who have suffered no harm receive any benefit at all?”<sup>19</sup>

Zwolinski offers three answers to this question: the BIG would be less invasive, less dangerous, and less costly than alternatives. Consider, for instance, a safety net in which those believing they are owed compensation for proviso violations present their cases on an individual basis. According to Zwolinski, such a safety net would be, first, invasive as it would require the filing of cases and associated paperwork.<sup>20</sup> Second, it would be dangerous to grant the government the power to judge which claims are legitimate. Third, it would be costly (in terms of hours and salaries) to establish a group charged with making such adjudications. In light of these risks, Zwolinski holds that “in the real world... wise public policy should be designed in a way that anticipates and minimizes the risk of harm caused by human ignorance and greed.”<sup>21</sup> Thus, the BIG is preferable to other safety-net alternatives.

As we see it, Zwolinski’s argument runs thus:

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<sup>16</sup> Ibid. 523.

<sup>17</sup> Ibid. 523.

<sup>18</sup> Zwolinski (2015), 525.

<sup>19</sup> Zwolinski (2015), 525.

<sup>20</sup> Perhaps the invasion of privacy involved in having individuals file forms is anathema to libertarian principles.

<sup>21</sup> Zwolinski (2015), 525.

- Z1. Libertarians accept self-ownership—that is, robust rights over one’s own body, talents, and faculties.
- Z2. Libertarians believe people may rightly own portions of the extrapersonal world.
- Z3. Ownership and use of the extrapersonal world can be justified only when they do not make people relevantly worse off (The Lockean proviso).
- Z4. If property rights fail to satisfy the Lockean proviso, we must guarantee help to those whom the general tide of prosperity has left behind.
- Z5. We can satisfy the proviso’s demands as articulated in Z4 with a government-funded safety net.
- Z6. There are good libertarian reasons not to try to determine who deserves compensation and who does not.
- Z7. The alternative most consonant with libertarian principles is the BIG.
- Z8. Thus, libertarians should endorse the BIG.

Has Zwolinski successfully squared the BIG with quintessential libertarian concerns? We do not think so. In the following section, we adduce a series of questions motivated by standard libertarian concerns Zwolinski has not addressed. We aim to show that Zwolinski has not offered an acceptable path to Z8.

## 2. Problems with the Proviso-Based Argument

Perhaps the most obvious and important consideration Zwolinski does not address is the following. Suppose a private property system does not violate the proviso. Implementing the BIG would thus violate the rights of everyone required to fund it. It is only when both the proviso violations and the culprits become difficult to identify that the case for the BIG might become more plausible. It is paramount that one sees that the case for the BIG can never be stronger than the reasons to believe a libertarian system will (or will likely) violate the proviso in the first place. If the antecedent in Z4 provides the only justification for even just a safety net, we need to know that the antecedent holds in order to justify the BIG.

Zwolinski provides no reasons to think the antecedent does, or will, hold. He observes only that it might. But we have known at least since Locke

that it is logically possible to violate the proviso. Libertarians have long doubted, however, that a market would *actually* run afoul of the proviso.<sup>22</sup> This doubt is not itself an argument, but it does point to a crucial lacuna in Zwolinski's case for the BIG.

With respect to whether we should expect proviso violations, the gap in the case for the BIG is even larger. Zwolinski must give us reason to expect several important empirical factors to hold. First, he must show that the proviso is or will be violated frequently enough to justify a safety net, as opposed to a case-by-case system of adjudication (or some other alternative). Second, he must show that the proviso violations frequently occur in a manner that makes it difficult to identify both the wrongdoers and the claimants. If we know who the wrongdoers are, it is unclear why everybody should pay to redress the wrongs. If the claimants are easily identifiable, it is unclear why everybody should receive compensation.

Notice that there is no question who violates Zelda's rights in the thought experiment Zwolinski borrows from Eric Mack. Adam is guilty, and Zelda is owed damages. For a third party—call her Yolanda—to demand that a BIG be implemented on the grounds that she might suffer a proviso violation in a world in which Adam and Zelda are the only individuals involved in proviso violations would be wildly unjustified. At least, Yolanda's demand should strike libertarians as suspect, and the burden is on Yolanda (or her defenders) to remove this suspicion.

This relates to the final concern we should have vis-à-vis proviso violations. The concern is that Zwolinski moves from noting that the proviso could be violated to justifying a policy aiming to prevent proviso violations—namely, forcing people to fund a BIG. But this modal problem is serious for libertarians. If it is permissible to make this move, as Zwolinski seems to, from the possibility that the proviso will be violated to the claim that we may force people to fund BIG, we can generate other decidedly nonlibertarian conclusions as well. The argument we have just attributed to Yolanda seems to employ precisely the sort of move Zwolinski does; but we believe libertarians should see that move as needing a much greater defense—perhaps one that blocks Yolanda's argument but preserves Zwolinski's thesis.

Similarly, Z6 cannot as easily be defended as Zwolinski lets on. Zwolinski's argument seems to introduce something like what Nozick calls “a

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<sup>22</sup> Zwolinski suggests it is important to say quite a bit about what one's property right looks like. This specification is needed to figure out when an aggression against someone's property has occurred. See Nozick (1974), 182; and Mack (2002), 249.

‘utilitarianism of rights’; violations of rights (to be *minimized*) merely would replace the total happiness as the relevant end state in the utilitarian structure.”<sup>23</sup> Nozick rejects this as a fundamental moral maxim, and so do all deontic-minded libertarians.<sup>24</sup> A good case for the BIG must explain how a moral principle that seems to be incompatible with libertarianism can arise as a good policy principle. A successful case here would either show that there is no problem with making this move in designing public policy or explain why the principle ultimately resonates with libertarian principles.

Zwolinski seems to suggest that only the rich must fund the BIG, but there are two problems with that position. First, one may become rich without violating anyone’s rights. Think of Nozick’s famous Chamberlain example to illustrate.<sup>25</sup> Chamberlain is rich after the transfers, and Nozick would presumably take taxing away Chamberlain’s income to be illegitimate. Second, individuals will need to prove they are *not* rich to be exempt from funding the BIG. Alternatively, the government will need access to people’s finances to determine who is rich enough to pay. Either way, the government will need information that libertarians tend to think the government has no right to force people to deliver.<sup>26</sup> The dialectical problem this poses for Zwolinski is that he specifically tells us he does not want the government to have access to the records of those who request the BIG. This is part of the motivation for Z6. But to figure out both which people are obligated to fund the BIG and which are exempt, the government must have precisely the information Zwolinski tells us that libertarians wish not to grant to the government.

Finally, we think Z5 is doubly problematic. First, it seems to be in tension with self-ownership. While Zwolinski rejects slavery objections to taxation, he focuses on the interpretation of the slavery charge holding that taxation seizes people’s legitimate holdings. The slavery charge Nozick actually makes is not so easily averted. Nozick holds that the real problem with taxation is the following:

[T]he fact that others intentionally intervene, in violation of side constraints against aggression, to threaten force to limit the

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<sup>23</sup> Nozick (1974), 28, interpolation added.

<sup>24</sup> Lockeans are a subset of deontic-minded libertarians, so if a utilitarianism of rights runs afoul of deontic-minded libertarians, it runs afoul of Lockeanism a fortiori.

<sup>25</sup> Nozick 1974: 160-161.

<sup>26</sup> Even if the government forces no one to deliver this information, but instead offers to pay people to deliver it, there are good reasons to expect the program to fail. See Mack (2002).

alternatives, in this case to paying taxes or (presumably the worse alternative) bare subsistence, makes the taxation system one of forced labor and distinguishes it from other cases of limited choices which are not forcings.<sup>27</sup>

The concern is that taxes require the threat of force in order to succeed. The threat of penalties associated with taxes is unjustified, at least as Nozick sees it. Taxes require people to furnish receipts or allow access to financial records, all under the threat of force.<sup>28</sup> These requirements and threats trench upon self-ownership. Zwolinski must show that it is permissible to threaten people on the grounds that they are involved in a system that might, or does, generate rights violations. The challenge here is to square funding the BIG with an aversion to forcing people to do things.

It is important to see that Zwolinski cannot double down and reiterate the proviso's role as necessary for a private property system to be just. The proviso is a necessary condition, but so is the constraint against violating rights. Thus, if we need to violate rights to satisfy the proviso, the resulting system of private property will, we presume, be unjust. This difficulty will become clearer when we show the problem with Z5.

In addition to the modal problem we mentioned earlier, the second problem with Z5, along with Zwolinski's general thesis, is that both are ambiguous. To get to the heart of the ambiguity, consider the following thought experiment. Suppose that there is an ideally just libertarian system; let us call its location Zwolinskiville, in which all the members have consented to the BIG and to no other rules or set of rules. Suppose further that "ideally just libertarian systems" are those in which everyone consents to establish a system of rules and then consents to the rules generated. Given the consent, it is now true that the BIG is (to repeat Zwolinski's words) "an essential part of an ideally just libertarian system."

The article *an* is crucial, though. To see why, suppose that directly next to Zwolinskiville is Galt's Gulch, another ideally just libertarian society, the members of which have not consented to the BIG. In Galt's Gulch, they have a safety net, but the safety net is enforced case by case by the court system. All inhabitants see the courts as an indispensable function of government, one that "settles disputes among [people] according to objective laws."<sup>29</sup> The judges rule according to standards consented to by all members

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<sup>27</sup> Nozick (1974), 169.

<sup>28</sup> This is a point made in Mack (2002).

<sup>29</sup> Galt's Gulch might function as Objectivists think a proper government should. Here is Ayn Rand on the proper role of government: "The proper functions of a

of Galt's Gulch. Also, just beyond Galt's Gulch is a third ideally just libertarian society: the town of Rothbard's Ranch. In Rothbard's Ranch, there is no formal safety net. Here, the market functions well enough that the proviso is never violated. Despite their deep respect for the principle of not violating the proviso, folks in Rothbard's Ranch see no reason to fund the BIG; the mere possibility the proviso might be violated does not move them to fund the BIG, because they are averse to seizing legitimate holdings and requiring forced labor.

In all three of these libertarian societies, there is some standing willingness to redress violations of the proviso. We can grant that societies that never bother (either at the societal or individual levels) to redress proviso violations very likely fail to be ideally just. We take this to be a point in favor of Zwolinski's general line of thought: it is possible that proviso violations occur in a system of private property; when they do, there is at least a *prima facie* reason to redress those violations (and there should perhaps be reason to prevent similar proviso violations from occurring in the future). Even if we accept that ideally just libertarian systems should see proviso violations as generating a *prima facie* reason to redress them and prevent future similar violations, it remains unclear that there are any injustices relevant to the proviso in Galt's Gulch and Rothbard's Ranch.

The crucial ambiguity in Zwolinski's thesis is that it is unclear whether he maintains that at least one ideally just libertarian society has a BIG as an essential feature, or that all ideally just libertarian systems must include the BIG. Perhaps he means that the BIG is the proper political embodiment of an interest in seeing the proviso satisfied within the context of holding other libertarian commitments. We consider these alternatives in order.

If Zwolinski means at least one ideally just libertarian society has a BIG as an essential feature, then we suggest the thesis is both true and uninteresting. On the assumption that either BIG is implemented such that it does not seize legitimate holdings and force people to engage in forced labor, or simply that everyone consents to it, we see no problem. But this is no reason for libertarians who are skeptical of the BIG to embrace it. After all, the skepticism results precisely from concerns that neither of these justifying conditions will hold.

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government fall into three broad categories, all of them involving the issues of physical force and the protection of men's rights: the police, to protect men from criminals—the armed services, to protect men from foreign invaders—the law courts, to settle disputes among men according to objective laws" (Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* [New York: New American Library, 1964], p. 151).

If he means either that all ideally just libertarian systems must include a BIG or that the BIG properly embodies a political interest in seeing that the proviso is satisfied in order to preserve other libertarian commitments, Zwolinski has not made his case. Zwolinski certainly suggests that the BIG is an essential part of any just libertarian system. Perhaps some quintessentially libertarian concerns yield a solid libertarian case for the BIG. This is an important thesis, but Zwolinski does not himself establish such a concern. As long as the thought experiment offered above is coherent, Zwolinskiville may be *an* ideally just libertarian system.<sup>30</sup> Then again, both Galt's Gulch and Rothbard's Ranch also are ideally just libertarian systems, and both lack the BIG. So Zwolinski has not established that the BIG is a necessary part of an ideally just libertarian system.

To be clear about the nature of our thesis, we want also to distance ourselves from a particular position. Some libertarians seem eager to defend the status quo in liberal democracies (for instance, the United States), suggesting that distributions of wealth as they currently stand are more or less just—or close enough to be untroublesome. This is far from our position, and nothing in our argument commits us to it. Our opposition to Zwolinski's moral argument rests only on the shortcomings in the Direct Proviso-Based Argument.

We may oppose the BIG on these grounds while acknowledging that many current holdings may well not be traceable through just steps. A country with a history of killing, plundering, and defrauding the local inhabitants will likely find few holdings that can be so traced. This opens the door for discussing the BIG as a means of rectifying past injustices.<sup>31</sup> That discussion must settle whether a statute of limitations on claims of injustice is morally required, whether all rights violations must be set right, and whether libertarians should support a system that threatens to violate rights by implementing a BIG. But this is not the moral argument Zwolinski pursues; and it is not based on the proviso. Instead, this rationale for a BIG is based on straightforward injustices, and not proviso violations. A discussion of that case is beyond the scope of this paper.

A successful proviso-based case for a BIG must resolve the many problems we have adduced. We have not argued that it is impossible to

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<sup>30</sup> This, again, assumes that the implementation of the BIG does not violate the other libertarian principles adduced in this section.

<sup>31</sup> Nozick considered, but never openly endorsed, treating something like the Difference Principle as rule of thumb for rectifying injustices in a world with the muddied history ours has. See Nozick (1974), 231.

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resolve those problems, but Zwolinski's case is an instructive failure: the road is long, with many winding turns, and Zwolinski only begins to take us down it. Such are the problems and prospects of the Direct Proviso-Based Argument.