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The Right to Roam?

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Abstract

Matthias Brinkmann defends the right to roam. The purpose of this article is to analyze the right to roam as presented by Matthias Brinkmann. What is this right? In a nutshell, it is the “right” to trespass onto other people’s property. Brinkmann supports this practice from a “left-liberal” point of view. This paper critiques both the so-called right to roam and the political-economic philosophy underpinning Brinkmann’s defense of it. The goal is to defend the institution of private property rights against its critique represented by the right to roam argument.

Keywords

roaming, trespass, property rights, left-liberalism

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Introduction

Private property rights are the be-all and the end-all of a free society. They are the very foundation of civilized order. However, the right to own property is under widespread attack from critics of the free enterprise system. What is a private property right? It is the right to do as you wish with what you own,¹ and to prevent others from interfering. In this context, it is worth quoting Norman Malcolm recounting his experiences as a student with his teacher, Ludwig Wittgenstein: “On one walk he ‘gave’ to me each tree that we passed, with the reservation that I was not to cut it down or do anything to it, or prevent the previous owners from doing anything to it: with those reservations it was henceforth mine.”²

The critique of laissez-faire capitalism addressed in this paper is the so-called “right” to roam on other people’s property. The so-called right to roam entails invading, trespassing, occupying, or intruding upon private property of other people without permission. Matthias Brinkmann defends this “right” from a left-libertarian perspective grounded in egalitarianism.³ It seems that the roamers are poorer than the property owners whose land they encroach upon. Thus, the unjust acts committed by the roamers are somehow seen as justified.⁴

The method employed in this paper involves extensively quoting passages from Brinkmann’s support of the right to roam and then critically responding to them. The methodology primarily consists of reductio ad absurdum: examining the logical implications of the right to roam, deducing the consequences, and concluding that even proponents of this right would likely recoil from these results.

In Section II, we discuss limitations on roaming. Section III is dedicated to analyzing two models of roaming. Section IV addresses easements. In Section V, we examine the interests of roamers. Section VI explores the issue of interest theory. Sections VII, VIII, IX, and X cover Moderation, Utility Comparisons, Personal Property, and Autonomy, respectively. The paper concludes in Section XI.

Limitations on roaming

Roaming undermines property rights⁵ based on the Lockean theory of homesteading.⁶ When taken to its logical conclusion, this practice could potentially abolish all private property. However, our author does not support roaming holus-bolus. He opines: “There are limits to the right: roamers must

1. Provided, only, that you respect the equal rights of others to do whatever they want with their own property.

2. N. Malcolm, *Ludwig Wittgenstein: A Memoir*, Oxford University Press 1958, pp. 31-32.

3. All references to this author will pertain exclusively to: M. Brinkmann, *Freedom to Roam*, “Journal of Ethics and Social Philosophy”, 2022, Vol. 22, No. 2, pp. 209-233, DOI: [10.26556/jesp.v21i2.1365](https://doi.org/10.26556/jesp.v21i2.1365).

4. Brinkmann does not consider the reverse scenario where the roamers are wealthier than the property owners. It would be interesting to know his opinion on such a case. Based on my assessment, I believe he would then oppose the right to roam.

5. He states: “... no external piece of property is fundamentally owned: the possession of any piece of land is only justified insofar as it is compatible with equal opportunities for all.” Given human differences, the notion of “equal opportunities for all” is unrealistic. The logical implication, then, is that “the (private) possession of any piece of land” will never be justified. See: M. Brinkmann, *Freedom to Roam*, op. cit., p. 224.

6. The footnote has been moved to the bottom of the text, click [here](#) to go to it.

respect the privacy of landowners, must stay away from houses and their curtilage, and must not damage the land—in particular, they must not cross fields or other agriculturally used lands.”⁷

But why should there be any limitations on the right to roam? I have the right not to be murdered, stolen from, or raped, and there are no limitations on these rights. If these rights are abrogated, an unjust act has occurred. If there was genuinely a right to roam, it too should be unrestricted. Either a right is a right or it is not. Negative rights, such as the right not to be murdered or kidnapped, are legitimate rights; positive rights, which require others to relinquish their own rights – such as the right to food, clothing, shelter, or friendship – are not legitimate rights. The so-called right to roam fits perfectly into the latter category.

For this scholar, roaming is justified on the basis of a left-liberal desire to eliminate disparities in wealth and happiness. Limitations such as those proposed by Brinkmann undermine this goal. From this perspective, the have-nots have just as much right to access resources as the haves. Therefore, if the goal is to be attained, roaming should not be limited in any manner.

A robust right to roam would extend far beyond the current limitations. If one can trespass onto someone’s field, why not trespass into their house? If trespassing into a home is permissible, why not into someone’s body, such as in the case of rape? This consideration further reinforces a *reductio ad absurdum* critique of the right to roam. If the aim is to elevate the status of the have-nots, why should exceptions be made for houses, curtilage, farmland, or personal boundaries? To do so is to cheat the have-nots out of their rights, at least from the point of the pro-free-roamers.

Brinkman continues: “The right to roam generally excludes motorized transport, but it may extend to biking, horseback riding, swimming, hiking, and canoeing.”⁸ This seems to suggest that the author is creating criteria arbitrarily, without clear rationale. For instance, why are motor vehicles excluded from this “right” while bicycles or horses are not? If this is not arbitrary and capricious, nothing is. It is akin to saying that it is illegitimate to murder a victim with a rifle, pistol, or bazooka, but perfectly acceptable to do so with a knife, arrow, or rock.

Once again, Brinkmann imposes limitations on the so-called right to roam: “All countries with a right to roam exclude houses and their curtilage (the identifiable area belonging to a house, such as gardens, sheds, and patios) from its scope, and it is generally understood that roamers must

7. M. Brinkmann, *Freedom to Roam*, op. cit., p. 209.

8. *Ibidem*, p. 210.

respect the privacy of owners—for example, by keeping a certain distance from houses.”⁹ This portrayal of the thesis is accurate, but it lacks an explanation for why the right to roam is so restricted. If it is truly a right, it is difficult to understand why it should be so limited. The have-nots would likely object to such restrictions. Once private property rights are abolished for land, individuals would be legally entitled to trespass on fields, gardens, and forests. Why should this not extend to homes, cars, or places of business? If trespassing becomes justified, so too could theft. Here is an even more compelling *reductio ad absurdum*: why should the right to roam not extend to people’s very bodies? If A may legally “roam” upon B’s body, then acts like rape, kidnapping, and even murder could be justified. Such implications are clearly unacceptable.

9. Ibidem.

Two models of roaming

Brinkmann continues: “Beyond this shared core, we can broadly distinguish two models of the right to roam: the Scandinavian model, which recognizes strong, far-reaching, and relatively open-ended rights to roam the countryside, and the northern European model, which recognizes only weaker and limited rights to roam. The former is the more interesting, and the one I will aim to defend.”¹⁰ I believe we can identify not only these “two models” but also two additional ones. I will present them in order of their radicalism, specifically in terms of socialistic or interventionist tendencies:

10. Ibidem, p. 211.

1. There is no right to roam at all; private property rights are sacrosanct. “Roaming” is tantamount to trespassing and would be strictly prohibited by law. This model aligns most closely with *laissez-faire* capitalism and free enterprise.
2. The Northern European model, the least invasive of all the roaming models.
3. The Scandinavian model, the one explicitly defended by Brinkmann.¹¹
4. The *reductio ad absurdum* model is one in which private property rights disappear entirely, allowing everyone to “roam” wherever they wish without restriction. This would include the “right” to trespass into homes and even into other people’s bodies (e.g., rape).

11. At the very end of his article, the author calls this assessment into question.

Next, Brinkmann asserts the following: “In the Scandinavian model, ... the *allemansrätten* is often seen as a common right, predating the legal system. Thus, most of the rules governing the *allemansrätten* are not actually found in positive law, but rather at the level of social convention.

Consequently, guidance on the allemansrätten tends to be framed vaguely, in terms of open-ended guidelines, and often appeals to common sense and respect for nature and others.¹² This is highly problematic. According to this concession, the right to roam is not truly a right but rather a “social convention.” But what exactly is a social convention? It refers to widespread habits, folkways, common expectations, social rules, and prevailing practices within a society. Examples include men proposing marriage to women on bended knee, men opening doors for women, buying them flowers, tipping hats to them,¹³ shaking hands when introduced, or women curtsying when meeting royalty.¹⁴ If the right to roam is merely a social convention, it is not genuinely a right. A person refusing to adhere to this convention would not face legal sanctions but would instead be viewed as surly, impolite, or unconventional; they would not be jailed for denying roamers access to their property.

Easements

We then address a very important philosophical issue related to land: easements. According to our author: “But while both the right to roam and easements grant access to others’ private land, easements are highly localized and vested in particular people for a particular purpose. For example, if A’s land became directly connected to a public road, their right to traverse B’s land would cease; nor could A stray freely from the path that is strictly necessary for them to reach public roads.”¹⁵ Brinkmann favors easements, yet another violation of private property rights, albeit reluctantly due to their limitations. In contrast, how would a regime of free enterprise address this challenge? Hint: Assuming there are no tunnels under B’s land, no bridges over it, no helicopters for A, and A is not an exceptional pole vaulter, the correct answer is not that A is trapped on his land or that he is barred from re-entering if he finds himself outside the “donut.”¹⁶ How, then, can this task be accomplished? First, B would not be allowed to homestead land in the “donut” format. If B did, he would control the internal portion—the hole in the middle—without having mixed any of his labor with it.¹⁷ If he wanted to own land in this format, he would be legally required to allow access to and from the homestead on this acreage.¹⁸ But suppose A was there first. This is highly unlikely. Currently, no one purchases a home or business without title insurance; people want to ensure that the vendor is the legitimate owner of the property being sold. Under a regime of economic freedom, access insurance would be added to the bill of sale. Moreover, the seller – such as a private road owner¹⁹ – would have every incentive to guarantee that no one is trapped inside or excluded from outside his “donut” barrier; he would likely aim to attract such customers.

12. M. Brinkmann, *Freedom to Roam*, op. cit., p. 212.

13. In bygone days when men wore hats.

14. There are also negative conventions, such as the middle finger “salute.”

15. M. Brinkmann, *Freedom to Roam*, op. cit., p. 212.

16. The footnote has been moved to the bottom of the text, click [here](#) to go to it.

17. For the libertarian philosophy, homesteading is the vehicle through which virgin territory becomes privately owned. See fn. 3, supra.

18. The footnote has been moved to the bottom of the text, click [here](#) to go to it

19. W.E. Block, *The Privatization of Roads and Highways: Human and Economic Factors*, Ludwig von Mises Institute 2009.

The interests of roamers

As Brinkman states: “Jerry Anderson identifies six relevant interests of roamers: (i) transportation, (ii) enjoyment of nature, (iii) physical health, (iv) mental health, (v) connection to history and culture, and (vi) sense of community.”²⁰

These half-dozen elements certainly justify and explain the benefits of roaming, at least from Brinkmann’s left-liberal point of view. There can be no controversy regarding that claim. However, these benefits apply equally to cars, vacations, educational tours, picnics, and so on. Yet no one claims that these benefits should be available to all for free or that others should be compelled to provide them. The counterargument would seem to be: “Let the roamers buy roaming rights!” While this list of benefits explains why people would enjoy roaming, it does not justify the notion that these benefits should be provided at the expense of others.

However, Brinkman mentions “a ready-made and widely accepted theory of rights at hand that allows us to make the connection: the interest theory of rights. According to this theory, if an interest satisfies certain criteria—for example, if it is important enough, broadly shared, and feasible to protect through legal means—then it grounds a corresponding right.”²¹ But this argument proves too much. For this “theory” would also justify positive rights²² to essentials such as food, clothing, shelter, and entertainment – things that are indeed quite “important.”²³ Certainly, the desire for these is “broadly shared”; it would be rare for someone to eschew them, particularly if they were offered for free. Is it feasible to “protect through legal means” the forced transfer of these amenities from some people to others? In one sense, yes: egalitarians have often enacted legislation mandating such redistributions. However, they are not “feasible” in the sense that such measures typically lead to economic disarray.²⁴ Happily, Brinkmann rejects this theory as a foundation for forced wealth transfers. He does so on the grounds that these three arguments cannot undergird roaming rights:

“1. Strength criterion: The relevant interests must be morally important enough to justify imposing duties on others.

2. Neutrality criterion: The relevant interests must be compatible with the state remaining neutral between different conceptions of the good life: all reasonable people must be able to agree that these interests are worth protecting and serving through the state.

20. M. Brinkmann, *Freedom to Roam*, op. cit., p. 212.

21. *Ibidem*, p. 213.

22. The footnote has been moved to the bottom of the text, click [here](#) to go to it.

23. The footnote has been moved to the bottom of the text, click [here](#) to go to it.

24. The footnote has been moved to the bottom of the text, click [here](#) to go to it.

3. Necessity criterion: If the relevant interests are meant to justify a right to X, then X must be practically necessary for serving the interests—there can be no alternative institutional scheme that similarly serves the interest but has significantly lesser moral costs.”²⁵

Unfortunately, our author implies that if Anderson’s half-dozen justifications for, to be blunt, theft, could be satisfied based on these three criteria, then it would be perfectly acceptable for legislation to mandate such actions.

Moral importance? Practically everything is important to someone. Neutrality? Are there not libertarians who would vociferously object to robbery? Necessity? We already have an “alternative institutional scheme” capable of creating these benefits: the free enterprise system. Not only can such arrangements fulfil Anderson’s desiderata, but they can do so far more efficiently and effectively than the socialist nostrums advocated by Brinkmann.

Interest theory

In the view of our author: “this interest (theory) ... might justify, say, a right to a public system of roads.”²⁶ It is difficult to see how this could be the case. Public roads are perilous: in the U.S., nearly 40,000 people die on them each year. This hardly seems to serve their “interest” nor in that of the many more who sustain serious injuries on traffic accidents. According to a different theory, a significant proportion of these fatalities and hospitalizations could be prevented if streets and highways were privatized.²⁷ Of course, under a system of private enterprise, no one would be free to “roam” on these roads unless they were offered as a loss leader. More likely, everyone would have to pay a toll to use them. Which scenario promotes greater human welfare: being free to roam on others’ roadways, with the associated risk of injury and death, or paying for services and enjoying significantly greater safety?

It turns out that supporters of Brinkmann’s theories “want to avoid extreme proliferation of rights.” This is more than a little curious. Why should roamers have any limits whatsoever? If roaming is a means of addressing inequalities,²⁸ it is unclear why any limits should be imposed. For egalitarians who seek to enforce their schemes through coercion, there seems to be no justification for restricting this quest.²⁹ “Once again, we want to be conservative, both philosophically and practically, in multiplying rights. Rights take primacy in our moral reasoning, imposing side constraints on how we can act and (in the case of positive rights) duties of provision. Given these considerations, it is morally

25. M. Brinkmann, *Freedom to Roam*, op. cit., p. 213.

26. Ibidem, p. 214.

27. W.E. Block, *The Privatization of...*, op. cit.

28. “Inequities” in the modern parlance.

29. That is to say, there is nothing morally objectionable about voluntary egalitarianism; that is, private charity.

preferable to deal with transportation-based interests in roaming by allowing easements, rather than by granting a general right to roam.”³⁰

Brinkmann adopts a very moderate stance here. Left-wing radical critics might accuse him of cowardice. For them, positive rights like the right to roam on other people’s property, essentially, the right to trespass, are seen as beneficial. These rights are believed to help address existing disparities in wealth and income. While only locals might benefit from such rights, this is no justification, at least from a “progressive” perspective, for limiting these “rights.”

Brinkmann asks us to imagine a rural town in which the only plausible way to get to the market or to the factory or to church is by walking through the holdings of a large landowner.³¹ Yes, only locals are likely to require trespassing “rights” in this case, but what about visitors? Are they to be legally restricted in their ability to invade a large landowner’s property? This hardly meets the demands of so-called woke “rights.”

Our author once again compromises needlessly when addressing the enjoyment of nature. He acknowledges that to “explore nature, walking, biking, and camping in nature are an important element of welfare for many. Let us accept, perhaps generously, that this interest satisfies the strength criterion.”³² But once again, he compromises his own principles. Instead of using this argument to support unrestricted roaming, he settles for advocating public parks. However, these spaces often prove unsafe for visitors. As Thomas Sowell puts it, “It is hard to imagine a more stupid or more dangerous way of making decisions than by putting those decisions in the hands of people who pay no price for being wrong.”³³ The issue is that if a public park is unsafe or lacks amenities such as clean bathrooms, those responsible for managing it face no financial consequences. In contrast, private parks must compete for customers, which compels them, almost as if guided by an invisible hand, to strive to meet customer needs.

Another, more moderate plan than unrestricted roaming is for the government to incentivize large landowners to allow public access to their lands. This approach presents two significant problems. First, it would exacerbate income inequality. Taxing the entire populace to provide financial incentives to the wealthy is clearly not a solution that egalitarians would support. Second, taxation itself is theft,³⁴ and, we are truly concerned with moral principles, this policy should not be one of our primary choices.³⁵

30. M. Brinkmann, *Freedom to Roam*, op. cit., p. 214.

31. Ibidem.

32. Ibidem, p. 215.

33. T. Sowell, *Wake up...*, op. cit.

34. In the view of Rothbard “Taxation is theft, purely and simply, even though it is theft on a grand and colossal scale which no acknowledged criminals could hope to match.” See: M.N. Rothbard, *The Ethics of Liberty*, New York University Press 1998, p. 162. Also Joseph Schumpeter states: “The theory which construes taxes on the analogy of club dues or of the purchase of the services of, say, a doctor only proves how far removed this part of the social science is from scientific habits of mind.” See: J.A. Schumpeter, *Capitalism, Socialism and Democracy*, Harper Press 1942, p. 198.

35. The footnote has been moved to the bottom of the text, click [here](#) to go to it.



Moderation

Brinkmann's attempt to take a moderate stance deserves some commendation. He rejects unrestricted roaming on grounds such as mental health concerns, nosiness, gossip, communal bonds, tranquilizing effects, and the significance of "identity-forming surroundings in which one grew up." However, these reasons are relatively weak, and it is difficult to give him much credit for his dismissal of them. The most significant issue with his so-called moderation is that he supports roaming on other grounds, which constitutes a clear violation of private property rights and an endorsement of trespass. It is akin to supporting Jonathan Swift's "modest proposal"³⁶ only if it does not go too far. For example, he might reject it if it excludes babies not of Irish descent. Both Swift's proposal and the idea of unrestricted roaming are so preposterous that partial rejections of excess cannot be considered true examples of moderation.

In our author's view: "The right to roam would correspond to a diminished set of landowners' rights to control their property, while it would leave other rights pertaining to their land intact."³⁷ On the contrary. Other rights would also be abrogated. While the owner could still transfer or sell the property, the value of the land would likely decrease if it were subject to roaming rights. Additionally, their right to reap benefits from would be reduced. Under roaming rights, strangers and trespassers could, with impunity, trample on their holdings. If that would not reduce their ability to garner benefits from their acreage, then nothing would.

Brinkmann writes as follows: "The right to roam provides roamers—generally speaking, the have-nots—with increased opportunities to exercise their autonomy, while it takes a small smidgeon of that ability away from owners who already have ample opportunities, and much more opportunity than justice demands, to realize their autonomy."³⁸

Utility comparisons

The flawed concept of interpersonal utility comparisons emerges here in a problematic and irrational manner. On what basis does Brinkmann make this assertion? He assumes not only the validity of a diminishing marginal utility curve of wealth, an assumption that is generally accepted, but also that the rich and poor adhere to the same curve and that cardinal utility is a meaningful measure. While it may be understandable to claim that I derive 10 utils of satisfaction from vanilla ice cream and only 5 from strawberry, it is absurd to suggest that I can quantify my preferences in this way, let alone compare them to those of others. To argue, for example, that Brinkmann values the

36. According to Jonathan Swift the starving Irish should sell their children to the rich British, so that the latter could eat the former as food. One can hardly publicize the plight of the Irish in a more dramatic way than that. His goal was to shed light on how wealthy landowners mistreated the Irish. See: J. Swift, *A Modest Proposal*, 1729, <https://extra.shu.ac.uk/emls/iemls/resour/mirrors/rbear/modest.html>, (access 07.07.2024).

37. M. Brinkmann, *Freedom to Roam*, op. cit., p. 219.

38. *Ibidem*, p. 222.

same product at 20 utils, and therefore enjoys it twice as much as I do, is nonsensical. Does he possess some form of happiness measurement apparatus unknown to the rest of us? For all we know, the wealthy may experience indignation at the sight of roamers encroaching on their property, while the roamers themselves may derive little to no real enjoyment from this intrusion, apart from the satisfaction of antagonizing the property owner. The broader issue is that we too readily assume roamers derive benign utility from their actions; no one is harmed, and they gain personal satisfaction. Yet, it is equally plausible that, in some instances, the primary benefit roamers receive is derived from the discomfort they cause their victims, who indeed suffer as a result.

In our author's view, "... it must matter that we live in a world characterized by extreme distributive injustice."³⁹ But where is the evidence for such a claim? If "distributive injustice" merely refers to the unequal distribution of wealth and income, then, naturally, his claim holds. Yet, this raises the question: why the subterfuge? Why the evasiveness? Why not confront the issue directly? If his argument hinges on the well-known fact of current economic inequality, why not simply state that? Why couch it in terms of "distributive injustice" or imply some moral failing in the unequal distribution of resources? This philosopher must do more than play with semantics. If he wishes to assert that inequality constitutes an *injustice*, it is incumbent upon him to demonstrate why inequality is inherently unjust. Yet, he makes no effort to do so, nor does he seem to perceive any obligation to engage with this fundamental issue.⁴⁰

But the argument, as presented, is too simplistic. A primary issue is that instituting a right to roam is a relatively minor remedy for addressing inequality. Brinkmann goes on to aver: "The poor have a claim, at the bar of justice, to have their life chances improved..."⁴¹ But again, this line of reasoning simply will not suffice. One could argue the very opposite: is it a logical contradiction to assert that, in the name of justice, the poor already possess too much, and that a more equitable world would require the transfer of wealth from the poor to the rich? Certainly not. Yet, this philosopher continues to sail smoothly along his egalitarian course, apparently without pausing to consider that his foundational premises are in desperate need of philosophical justification. Here is yet another problematic statement of the author: "The autonomy that owners possess under robust right-to-exclude schemes makes them akin to small-scale tyrants over a part of the world."⁴²

39. Ibidem.

40. Robert Nozick effectively countered this notion with his Wilt Chamberlin example. See: R. Nozick, *Anarchy, State...*, op. cit.

41. M. Brinkmann, *Freedom to Roam*, op. cit., p. 222.

42. Ibidem.

Personal property

Let us examine the right to roam not on wealthy individuals' physical property but rather on their personal property, their bodies. Suppose a poor man rapes a rich woman. She, by definition, is a "tyrant" over her own body; she is, after all, an *owner*. Under right-to-exclude schemes, she alone "tyrannizes" over her person, deciding who may access it and who may not (in this case, the poor rapist). This scenario could be seen as a prima facie case of "distributive injustice" demanding redress. Yet, Brinkmann does not address this issue.⁴³ He is nowhere when the call to rape rich women, men too, goes out. A great lacuna on his part. According to our author: "all land, like all other resources, is fundamentally co-owned, with no land being exempt from distributive claims."⁴⁴ However, there are many other "resources" besides land – houses, factories, stores. People themselves are also "resources." Thus, Brinkmann's philosophy seems to open the door to supporting rape.

Brinkmann advocates for "the fundamental co-ownership of all land." But why limit this principle to land alone? Is he implying a Georgist perspective?⁴⁵ The reductio ad absurdum here is compelling. If land is to be subject to such co-ownership, then why not extend this principle to human bodies as well? Additionally, why not include houses, cars, factories, hotels, shopping malls, and so forth? The potential list of items subject to this principle could be virtually endless.

Our author asks us to consider "... why we should symbolically remind ourselves of social equality through control rights concerning land in particular. After all, there are many different ways in which we could institute symbolic reminders. There is no deep, a priori answer to be offered in response, only a series of observations based on the common workings of human society. First, insofar as we all need space to live and realize the many valuable activities of human life, land appears as a finite and scarce precondition for achieving valuable lives. Second, most societies tie economic wealth, security, and social recognition closely to land ownership. Inequality in land ownership—and our inability to access private land in particular—is one of the most visible ways in which wider social and economic inequalities express themselves in many societies. All this makes land a focal resource worth regulating for the left-liberal."⁴⁶

Land has historically been a significant factor in economic production, especially in places like Wyoming in the modern era, or everywhere else before the Industrial Revolution. A large portion of GDP used to derive from land. However, in contemporary times, the contribution of land to GDP is much smaller, with labor now accounting for a much larger share. But labor equates to people. Fol-

43. For clarity, let it be understood I advocate no such practice. This is a mere reductio ad absurdum.

44. M. Brinkmann, *Freedom to Roam*, op. cit., p. 224.

45. For a criticism of this doctrine, see: W.E. Block, F. Foldvary, *To Tax Land or Not to Tax Land?*, 2015, <https://www.youtube.com/watch?v=ir9471FNsh0>, (access 07.07.2024); M.N. Rothbard, *The Logic of Action Two: Applications and Criticism from the Austrian School*, Edward Elgar Publishing 1997.

46. M. Brinkmann, *Freedom to Roam*, op. cit., p. 226.

lowing this logic, one might argue that everyone should be allowed to “roam” on other people’s bodies. Similarly, consumer durables and capital goods also represent wealth. For instance, a Rolls Royce today symbolizes wealth more strikingly than a few acres of farmland.

My debating partner continually offers various justifications for roaming. For example, he argues that it serves as a symbolic reminder of a crucial liberal principle, the fundamental co-ownership of the world. Additionally, he seriously proposes “to give everyone ownership of an equal plot of land on the moon.”⁴⁷ Brinkmann further elucidates roaming: “Under a roaming scheme, you cannot unilaterally say no to others entering your property. (Note, however, the many exceptions: you can still say no to others invading your privacy or diminishing the economic viability of your land, etc.) Thus, we all lack a certain kind of strong autonomy over our own property.”⁴⁸ But this is a logical fallacy. Suppose there are two areas, identical in every conceivable way except that one, Area A, allows roaming by outsiders, while Area B strictly prohibits it. Can we seriously believe that the “economic viability” of each area would be the same? Which one would a rational buyer value more? Clearly, it would be Area B. Now, let’s assume that Brinkmann himself is the purchaser and that he is not a hypocrite. His support for roaming is not merely philosophical; he is a genuine advocate for this practice and would allow it even on his own property. For him, and others who share his views, the value of Areas A and B would be equal. However, for everyone else, who might prefer not to allow roaming, Area B would be more valuable. Thus, roaming would indeed decrease the “economic viability” of the property where it is permitted.⁴⁹ There is also the issue of safety. If trespassers are allowed on private land, even with the restrictions Brinkmann proposes, property owners will likely feel less secure compared to a scenario where trespass is strictly prohibited.

Autonomy

Brinkmann “can even imagine scenarios in which the right to roam is perceived opposite from the way it is intended, in a fashion detrimental to left-liberalism. Perhaps the right is interpreted, for example, as a symbol of disrespect for autonomy, or in favor of state paternalism, or as some other form of overbearing state interference.”⁵⁰ This is quite intriguing. One of the central tenets of “left-liberalism”⁵¹ is its “disrespect for autonomy.” What about the autonomy of the landowner who would be overwhelmed by trespassers under a legal regime that compels him to accept them as roamers, effectively as junior partners and partial co-owners? Moreover, “state paternalism” could be considered the hallmark of “left-liberalism.” How else can we interpret policies like social security?⁵² Similarly, “overbearing state interference” is often associated with this political economic philoso-

47. Ibidem, p. 227.

48. Ibidem.

49. Could Brinkmann be referring to something other than the sale price of real estate when he talks about “economic viability”? One might wonder if there is a symbolic dimension to his interpretation. However, in terms of price, roaming does indeed lower it, at least for most people.

50. M. Brinkmann, *Freedom to Roam*, op. cit., p. 228.

51. E.g. cancel culturalism, wokeism, socialism, communism, coercive egalitarianism, statism, “progressivism.”

52. The footnote has been moved to the bottom of the text, click [here](#) to go to it.

phy, characterized by a multitude of taxes, regulations, prohibitions, and compulsions. It cannot be denied that such policies, while not always leading to economic collapse, often result in economic stagnation. There is ample empirical evidence showing that nations with greater economic freedom not only have higher per capita incomes but also experience faster growth rates.⁵³

Brinkmann's next error is his assertion that people cannot be "highly socially equal to each other" given that there "is an extreme difference in wealth between them."⁵⁴ This claim is false. Relatively poor professors can be social equals to individuals of far greater means. Sometimes, the situation even reverses: the wealthy may be admirers or followers of the less affluent. In the Orthodox Jewish community, impoverished scholars and rabbis are considered far more than just "socially equal" to individuals who are financially better off. The same holds true in Catholicism, where priests, despite taking a vow of poverty, are held in high esteem within their community.

To be fair to this author, he does state the following: "The argument of this paper is thus one internal to left-liberalism (which, I should add, I am not myself committed to in many respects)."⁵⁵ Thus, it would be inappropriate to attribute all the aforementioned errors solely to him. In effect, he is not advocating for roaming or any similar position. Instead, he is engaging in an academic exercise, attributing these views to left-liberals and evaluating them from a, shall we say, neutral perspective. If this is accurate, then the criticisms directed at him are not just his own but apply to all who support left-liberalism, not just Brinkmann personally.

Conclusion

The right to roam may seem appealing from the perspective of the roamer, who gains more freedom than otherwise available. However, roaming is fundamentally an act of trespass, nothing more and nothing less. It constitutes a direct assault on private property rights, which are the very foundation of a civilized society. This paper aims to bolster support for private property rights by critically examining and challenging the notion of the right to roam. What are the recommendations or suggested actions based on the conclusions drawn from this paper? It is to repeal laws that allow roamers to trespass onto private property owned by others.

Footnotes:

6. See on this: D. Gordon, *Locke vs. Cohen vs. Rothbard on Homesteading*, Mises Institute 2019, <https://mises.org/mises-wire/locke-vs-cohen-vs-rothbard-homesteading>, (access 09.07.2024); W.E. Block, *Property Rights: The Argument for*

53. J. Gwartney, R.W. Lawson, W.E. Block, *Economic Freedom of the World, 1975-1995*, The Fraser Institute 1996.

54. M. Brinkmann, *Freedom to Roam*, op. cit., p. 229.

55. Ibidem, p. 230.

Privatization, Palgrave Macmillan 2019; R. McMaken, *How the Feds Botched the Frontier Homestead Acts*, Mises Institute 2016, <https://mises.org/mises-wire/how-feds-botched-frontier-homestead-acts>, (access 09.07.2024); W.E. Block, P.L. Nelson, *Water Capitalism: The Case for Privatizing Oceans, Rivers, Lakes, and Aquifers*, Lexington Books 2016; P. Bylund, *Man and matter: how the former gains ownership of the latter*, "Libertarian Papers", 2012, Vol. 4, No. 1, pp. 73–118; W.E. Block, M.R. Edelstein, *Popsicle Sticks And Homesteading Land For Nature Preserves*, "Romanian Economic Business Review", 2012, Vol. 7, No. 1, pp. 7–13; H.-H. Hoppe, *Of Private, Common, and Public Property and the Rationale for Total Privatization*, "Libertarian Papers", 2011, Vol. 3, No. 1, pp. 1–13; S.N. Kinsella, *Homesteading, Abandonment, and Unowned Land in the Civil Law*, Mises Institute 2009, <https://mises.org/mises-wire/homesteading-abandonment-and-unowned-land-civil-law>, (access 09.07.2024); S.N. Kinsella, *What Libertarianism Is*, in: *Property, Freedom, and Society: Essays in Honor of Hans-Hermann Hoppe*, eds. J.G. Hülsmann, S. Kinsella, Ludwig von Mises Institute 2009, pp. 179–196; S.N. Kinsella, *What Libertarianism Is*, 2009, <https://www.stephankinsella.com/2009/08/what-libertarianism-is/>, (access 09.07.2024); S.N. Kinsella, *Van Dun on Freedom versus Property and Hostile Encirclement*, 2009, <http://www.stephankinsella.com/2009/08/van-dun-on-freedom-versus-property-and-hostile-encirclement/>, (access 09.07.2024); S.N. Kinsella, *Thoughts on the Latecomer and Homesteading Ideas; or, why the very idea of "ownership" implies that only libertarian principles are justifiable*, Mises Institute 2007, <https://mises.org/wire/thoughts-latecomer-and-homesteading-ideas-or-why-very-idea-ownership-implies-only-libertarian>, (access 09.07.2024); S.N. Kinsella, *The Blockean Proviso*, Mises Institute 2007, <https://mises.org/mises-wire/blockean-proviso>, (access 09.07.2024); S.N. Kinsella, *How We Come to Own Ourselves*, Mises Institute 2006, <https://mises.org/mises-daily/how-we-come-own-ourselves>, (access 09.07.2024); S.N. Kinsella, *Thoughts on Intellectual Property, Scarcity, Labor-ownership, Metaphors, and Lockean Homesteading*, Mises Institute 2006, <https://mises.org/wire/thoughts-intellectual-property-scarcity-labor-ownership-metaphors-and-lockean-homesteading>, (access 09.07.2024); P. Bylund, *Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership*, Master thesis, Lund University 2005; W. Block, R. Epstein, *Debate on Eminent Domain*, "NYU Journal of Law & Liberty", 2005, Vol. 1, No. 3, pp. 1144–1162; M.S. Rozeff, *Original Appropriation and Its Critics*, 2005, <http://www.lewrockwell.com/rozeff/rozeff18.html>, (access 09.07.2024); S.N. Kinsella, *A libertarian theory of contract: title transfer, binding promises, and inalienability*, "Journal of Libertarian Studies", 2003, Vol. 17, No. 2, pp. 11–37; W.E. Block, *On Reparations to Blacks for Slavery*, "Human Rights Review", 2002, Vol. 3, pp. 53–73; W.E. Block, *Earning Happiness Through Homesteading Unowned Land: A Comment on 'Buying Misery with Federal Land' by Richard Stroup*, "Journal of Social, Political, & Economic Studies", 2000, Vol. 15, No. 2, pp. 235–253; W. Block, G. Yeatts, *The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's "Toward a Better Distribution of Land: The Challenge of Agrarian Reform"*, "Journal of Natural Resources & Environmental Law", 1999, Vol. 15, Issue 1, pp. 37–69; H.-H. Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Kluwer Academic Publishers 1993; E.F. Paul, *Property Rights and Eminent Domain*, Transaction Books 1987; C. Watner, *The Proprietary Theory of Justice in the Libertarian Tradition*, "Journal of Libertarian Studies", 1982, Vol. 6, No. 3, pp. 289–316; M.N. Rothbard, *For a New Liberty*, Mises Institute

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16. For a further explication, see: W.E. Block, *Rejoinder to Dominiak on the Necessity of Easements*, “Ekonomia – Wrocław Economic Review”, 2021, Vol. 27, No.1, pp. 9–25; D. Todd, *British Columbians fight U.S. billionaire for the ‘right to roam’ in the wild*, 2019, <https://vancouver.sun.com/opinion/columnists/douglas-todd-british-columbians-fight-u-s-billionaire-for-the-right-to-roam-in-the-wild>, (access 09.07.2024); Ł. Dominiak, *Must Right-Libertarians Embrace Easements by Necessity?*, “Diametros”, 2019, Vol. 16, No. 60, pp. 34–51, DOI: [10.33392/diam.1241](https://doi.org/10.33392/diam.1241); Ł. Dominiak, *The Blockian proviso and the rationality of property rights*, “Libertarian Papers”, 2017, Vol. 9, No. 1, pp. 114–128; W.E. Block, P.L. Nelson, *Water Capitalism...*, op. cit.; W.E. Block, *Response to Feser on libertarianism*, “Etica & Politica / Ethics & Politics”, 2016, Vol. XVIII, No. 3, pp. 547–572; W.E. Block, *Rejoinder to Carnis on Private Roads*, “Libertarian Papers”, 2010, Vol. 2, No. 3, pp. 1–10; W.E. Block, *Van Dun on Freedom and Property: A Critique*, “Libertarian Papers”, 2010, Vol. 2, No. 4, pp. 1–11; S.N. Kinsella, *Homesteading, Abandonment...*, op. cit.; R. Long, *Easy rider*, 2007, <http://aaeblog.com/2007/09/11/easy-rider/>, (access 09.07.2024); S.N. Kinsella, *Thoughts on the Latecomer...*, op. cit.; W.E. Block, *Libertarianism, Positive Obligations and Property Abandonment: Children’s Rights*, “International Journal of Social Economics”, 2004, Vol. 31, No. 3, pp. 275–286; H.-H. Hoppe, *Eigentum, Anarchie und Staat: Studien zur Theorie des Kapitalismus*, VS Verlag für Sozialwissenschaften 1987, pp. 82–83.

18. Nor would this constitute a positive obligation on his part, which is anathema to libertarians; rather, this requirement would be better understood as compelling him not to violate the Blockian proviso. See on this: Ł. Dominiak, *The Blockian proviso...*, op. cit., pp. 114–128; W.E. Block, J.A. Butt, *Forestalling, Positive Obligations and the Lockean and Blockian Provisos: Rejoinder to Stephan Kinsella*, “Ekonomia – Wrocław Economic Review”, 2016, Vol. 22, No. 3, pp. 27–41, DOI: [10.19195/2084-4093.22.3.2](https://doi.org/10.19195/2084-4093.22.3.2); W.E. Block, *Response to Feser...*, op. cit., pp. 547–572; W.E. Block, *Van Dun on...*, op. cit., pp. 1–11; S.N. Kinsella, *The Blockean...*, op. cit.; W.E. Block, *Libertarianism, Positive...*, op. cit., pp. 275–286.

22. Murray N. Rothbard criticized “positive rights” in his comment on Isaiah Berlin: “Thus, Berlin’s fundamental flaw was his failure to define negative liberty as the absence of physical interference with an individual’s person and property, with his just property rights broadly defined. Failing to hit on this definition, Berlin fell into confusion, and ended by virtually abandoning the very negative liberty he had tried to establish and to fall, willy-nilly, into the ‘positive liberty’ camp.” See:

M.N. Rothbard, *The Ethics of Liberty*, New York University Press 1998, p. 216. For further critiques of positive liberty, or positive rights, see: W.E. Williams, *Rights Versus Wishes*, 2016, <https://www.lewrockwell.com/2016/04/walter-e-williams/rights-vs-wishes/>, (access 09.07.2024); K. Selick, *Housing rights case illustrates why positive rights are phony rights*, 2014, <http://business.financialpost.com/2014/12/29/housing-rights-case-illustrates-why-positive-rights-are-phony-rights/>, (access 09.07.2024); J. Katz, *Why Libertarians Should Reject Positive Rights*, Mises Institute 2009, https://mises.org/libertarian-papers/why-libertarians-should-reject-positive-rights?d7_alias_migrate=1, (access 09.07.2024); D. Gordon, *Liberty and Obedience*, by Randy E. Barnett, Mises Institute 2004, <https://mises.org/mises-review/liberty-and-obedience-randy-e-barnett>, (access 09.07.2024); I. Mercer, *Stealing Our Words*, Mises Institute 2001, <https://mises.org/mises-daily/stealing-our-words>, (access 09.07.2024); R.T. Long, *Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism*, "Social Philosophy and Policy", 1993, Vol. 10, No. 1, pp. 166–191; W.E. Block, *The U.S. Bishops and Their Critics: An Economic and Ethical Perspective*, The Fraser Institute 1986. It is my contention that Brinkmann is guilty of the same error as Berlin.

23. One wonders, of course, whether or not they would be important "enough." At the risk of violating the economic insight of marginalism (W.S. Jevons, *The Theory of Political Economy*, Macmillan and Co. 1965; C. Menger, *Principles of Economics*, Free Press 1950; L. Walras, *Principe d'une theorie mathematique de l'echange. Memoire lu a l'Academie des sciences morales et politiques*, Librairie de Guillaumin 1874), it would appear that these items are more important than the half dozen garnered by roaming. On subjectivism, Friedrich A. Hayek had this to say: "And it is probably no exaggeration to say that every important advance in economic theory during the last hundred years was a further step in the consistent application of subjectivism." See: F.A. Hayek, *The Counter-Revolution of Science*, 2nd ed., Liberty Press 1979, pp. 52–53.

24. For rejections of coercive egalitarianism, see: D. Gordon, *Capitalism Isn't a Modern Invention. It's Medieval*, Mises Institute 2021, <https://mises.org/library/capitalism-isnt-modern-invention-its-medieval>, (access 09.07.2024); D. Gordon, *Egalitarianism and Blind Men*, Economic Policy Journal 2020, [https://www.economicpolicyjournal.com/2020/04/egalitarianism-and-blind-men.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+economicpolicyjournal/KpwH+\(EconomicPolicyJournal.com\)](https://www.economicpolicyjournal.com/2020/04/egalitarianism-and-blind-men.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+economicpolicyjournal/KpwH+(EconomicPolicyJournal.com)), (access 09.07.2024); W.E. Williams, *Is Income Inequality Fair?*, 2019, <https://www.lewrockwell.com/2019/03/walter-e-williams/is-income-inequality-fair/>, (access 09.07.2024); W. Block, *Contra Tanner on Wall Street, financiers, inheritance and egalitarianism*, "The Journal Jurisprudence", 2019, Vol. 38, pp. 27–38; L.H. Rockwell Jr., *Thomas Sowell Dismantles Egalitarianism*, 2019, <https://www.lewrockwell.com/political-theatre/thomas-sowell-dismantles-egalitarianism-youtube/>, (access 09.07.2024); N. Heller, *The Philosopher Redefining Equality*, The New Yorker 2018, <https://www.newyorker.com/magazine/2019/01/07/the-philosopher-redefining-equality>, (access 08.07.2024); L.H. Rockwell Jr., *The Menace of Egalitarianism*, Mises Institute 2015, <https://mises.org/mises-wire/menace-egalitarianism>, (access 08.07.2024); W.E. Block, *Block Discovers New Source of Inequality*, 2014, <https://www.lewrockwell.com/2014/06/walter-e-block/walter-block-discovers-a-new-source-of-inequality/>, (access

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