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### Should Private Property Rights Have Term Limits?

Isaac Shur

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Should Private Property Rights Have Term Limits?

by

Isaac Shur

Under the Direction of Peter Lindsay, PhD

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2022

## ABSTRACT

Ordinary private property rights to things like land and money are typically assumed to be permanent. In contrast, intellectual property (IP) rights usually have term limits. Copyrights, patents, and trademarks all expire by default sometime after they're formed. I argue that ordinary property (OP) should be more like IP. Certain types of private property rights should be subject to term limits, and after expiration the property should enter a tangible public domain. First, I define private property. Second, I argue the purpose of private property rights is to facilitate access to resources, goods, and services. Conceptions of private property which undermine such access are unjustified. Third, I argue that term limits and the public domain help IP rights fulfill their purpose and could do the same for OP rights. Fourth, I consider specific policy proposals which would put term limits into practice. Finally, I raise and counter potential objections.

INDEX WORDS: Property, Rights, Private property, Intellectual property, Economic justice, Locke

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2022

Should Private Property Rights Have Term Limits?

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August 2022

## **DEDICATION**

For everyone who has ever argued with me. Thank you, and apologies.

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## LIST OF ABBREVIATIONS

**IP:** Intellectual Property

**OP:** Ordinary Property

## 1 INTRODUCTION

Under current U.S. intellectual property (IP) law, the character Mickey Mouse will eventually enter the public domain. The Walt Disney Corporation's copyright on the character will expire, and anyone will have the right to use the character in their creations just as they currently do with characters like Robin Hood or Sherlock Holmes, which are already in the public domain. Most forms of IP rights, like copyrights, patents, and trademarks, are subject to term limits.<sup>1</sup> Private IP rights have come with an assumed expiration date since their inception. America's current system of IP is modeled after two early Modern English statutes, the Statute of Monopolies and the Statute of Anne. Both included 14-year term limits by default, with the latter allowing for a potential 14-year renewal if the author was still alive.<sup>2</sup> Even earlier, statutes in the Venetian Republic included term limits for IP rights.<sup>3</sup>

This stands in sharp contrast to ordinary property (OP) rights, which have typically been conceptualized as permanent. For instance, John Locke argues property rights include the power to bequeath and inherit property, making them effectively permanent.<sup>4</sup> So, unless some change to the status quo is made, Mickey Mouse will become public property, while Disney World will remain private property. I argue that OP ought to be more like IP. Private property rights should be subject to term limits, after which they expire, and objects of property enter a tangible version of the public domain.

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<sup>1</sup> See 17 U.S.C. §102, 35 U.S.C. §154, 15 U.S.C. §1058 for information on copyright, patents, and trademarks respectively.

<sup>2</sup> *Statute of Anne*, Parliament of England, 1710. *Statute of Monopolies*, Parliament of England, 1624.

<sup>3</sup> For this and more historical background, see Himma and Moore, "Intellectual Property," 2018.

<sup>4</sup> Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764). Although Locke's defense of private property rights comes in Book II, Chapter 5, Locke discusses inheritance throughout Book I. See for instance §86-88 of Book I. The *Treatises* hereafter cited as "Locke, *Two Treatises*, Book number, section number," e.g., Locke, *Two Treatises*, Book I, §86-88.

Before beginning this argument, I'll explain what I mean by a "tangible" public domain. For IP, the public domain is really a collection of works with a particular legal status. For OP, I conceptualize the tangible public domain as two things. One, a coffer for funding public programs via liquid assets. And two, an inventory of tangible assets which are to be utilized for public programs. When private property rights reach their term limits and expire, the corresponding resources, goods, and services would either be liquidated or directly repurposed and put towards this set. The goal is not for *all* private property to eventually enter the public domain and stay there. Rather, different types of private property would be subject to different term limits, and some public programs would facilitate the accumulation of private property for individuals. These details will be addressed later. My point here is just to make the goal clear: private property should not be done away with. Instead, it should be limited via term limits in a way which allows more people more opportunities to obtain private property in the long run.

The rest of this paper unfolds as follows. In section two, I give a brief definition of property, and more specifically private property, then explain the differences between competing conceptions of both. In section three, I argue that the purpose of private property rights is to provide people with access to resources, goods, and services. As a result, conceptions of private property which undermine rather than facilitate such access are unjustified. In section four, I examine the justifications for current term limits on IP rights and argue that similar justifications apply to OP. Specifically, IP term limits currently help fulfill the purpose of private property rights, and OP term limits would do the same. In section five, I provide two proposals which would place various term limits on different types of property. In section six, I consider and reject the objection that my argument is too similar to taxation and therefore either irrelevant or vulnerable to common objections to taxation.

## 2 WHAT IS (PRIVATE) PROPERTY?

There's skepticism about whether property can be defined in any useful way, but Jeremy Waldron argues that property is "a system of rules governing access to and control of material resources."<sup>5</sup> Waldron distinguishes between the concept of property and competing conceptions of property.<sup>6</sup> The concept of property is the aforementioned system of rules, but many different systems of different rules are possible. Private property is one such system according to Waldron, and the primary alternatives to it are collective and common systems of property. No existing system of property is purely private, collective, or common. Instead, systems of property contain elements of each of these "ideal types" while being centered around the "organizing idea" of a particular type.<sup>7</sup>

By Waldron's lights, "the organizing idea of a private property system is that, in principle, each resource belongs to some individual."<sup>8</sup> In practice, this usually means tracking correlations between individuals and the control of material resources rather than knowing exactly which objects are owned by which individuals. But the organizing idea of individual ownership is what's used to solve problems about the allocation of resources.<sup>9</sup> In contrast, collective systems address allocation problems primarily by reference to "a social rule that the use of material resources in particular cases is to be determined by reference to the collective interests of society."<sup>10</sup> While in common systems, "rules governing access to and control of material resources are organized on the basis that each resource is in principle available for the use of every member alike."<sup>11</sup>

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<sup>5</sup> Waldron, *The Right to Private Property*, 31-32. For the skeptical view, see Grey, "The Disintegration of Property."

<sup>6</sup> Waldron, 60.

<sup>7</sup> Ibid, 37-56.

<sup>8</sup> Ibid, 38.

<sup>9</sup> Ibid, 38-39.

<sup>10</sup> Ibid, 40.

<sup>11</sup> Ibid, 41.

There are also varying rules within distinct private property systems. As Waldron says, “private property is a concept of which many different conceptions are possible.”<sup>12</sup> For instance, the property systems before and after slavery in the United States were both organized around the idea of individual ownership. But each had different rules about whether individuals could themselves be owned by other individuals. Most accepted conceptions of private property now prohibit individuals from owning one another. The abolition of slavery changed the particular conception of private property practiced in the country, but it did not change the conception from private to some alternative like collective or common.

Abolition constituted a change in what could be owned. But systems of private property can also have different rules about *how* we can own things. For instance, there are different ways one can own money. One can physically possess cash, stick it under their mattress, and entrust only herself for security. Alternatively, one can entrust a bank with this task, in which case one doesn’t own via physical exclusion but rather by having a right to access a certain amount of money from the bank. As Thomas Grey puts it, “we “deposit our money in the bank”, as if we were putting a thing in a place; but really we are creating a complex set of abstract claims against an abstract legal institution.”<sup>13</sup>

In Waldron’s terms, our current private property system has rules about the fungibility of currency and its value as it relates to things like interest rates. This informs how we exercise our private property rights to our savings accounts. Such rules differ from ones like, say, zoning laws about what private landowners can and cannot do with their land. More importantly there are *reasons* for these various rules. We want access to the value of our savings account, not the particular bills we deposited, because the fungibility of money facilitates trade. We want zoning

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<sup>12</sup> Ibid, 31.

<sup>13</sup> Grey, “The Disintegration of Property,” 70.

laws because, for instance, we don't want toxic waste facilities near groundwater or agricultural sites. These rules have purposes and are justified as components of a private property system insofar as they fulfill those purposes. Next, I'll specify what the overall purpose of private property is and examine what rules about term limits (if any) will be justified in light of that purpose.

### 3 WHAT'S THE POINT OF PRIVATE PROPERTY?

The point of private property is to provide individuals with what they need and, once those needs are met, what they want. In other words, a private property system is supposed to facilitate access to resources, goods, and services. To this end, private property rights typically involve rights which allow owners to exclude non-owners. But this exclusion is not undertaken for its own sake. Acts of exclusion are undertaken to facilitate access. To exclude others from my house I could put up a fence, climb a nearby tree, and keep watch with a rifle. If private property rights served merely, or primarily, to facilitate exclusion they would grant me a license to these things but wouldn't necessarily grant me access to my home. This is clearly not how private property rights work. I don't just want to exclude others from my house, I want access to it. When one acts to exclude others by putting up a fence, they do so for the purpose of securing and maintaining access to the land therein.

Recall that Waldron defines various conceptions of property by reference to how they approach problems of allocation, which at base are problems about who has (or lacks) access to resources, goods, and services.<sup>14</sup> Locke also offers an account of how private property rights are formed in order to uphold what he calls "the fundamental law of nature."<sup>15</sup> For Locke, this is not

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<sup>14</sup> Ibid.

<sup>15</sup> Locke, *Two Treatises*, Book II, §16.

merely one consideration which might be overridden by another. He says that “the fundamental law of nature being the preservation of mankind, no human sanction can be good, or valid against it.”<sup>16</sup> It follows that, for Locke, private property rights which don’t facilitate the preservation of humankind are unjustified. It’s not an open question whether people can survive (i.e., preserve themselves) without access to certain resources, goods, and services.

Since Locke believes God “*has given the earth to the children of men; given it to mankind in common,*” he must show “how men might come to have a *property* in several parts of that which God gave to mankind in common.”<sup>17</sup> Locke does this with his labor theory of property, arguing that when one picks apples from a common tree, “*labour* put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right.”<sup>18</sup> The process of original appropriation via labor-mixing is merely a way to specify and individuate a common property right into private rights. It’s a way of figuring out who will have access to what, but the point is to make sure that everyone has access to something so that they can survive, and thus the fundamental law of nature can be upheld.<sup>19</sup>

The details of a private property system must be specified with reference to this purpose. There are numerous possible rules about what people can own, how they can come to own things, and how property rights can be enforced. When deciding which rules to adopt in the existing private property system, we should choose rules which fulfill the purpose of the system by facilitating access to resources, goods, and services. Sometimes, this will mean granting rights

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<sup>16</sup> Ibid, §135.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, §28.

<sup>19</sup> For a detailed exegesis of the implications of Locke’s fundamental law of nature, see Dick, “Hunger, Need, and the Boundaries of Lockean Property.”

to exclude, as Locke does with his labor theory of property acquisition. But rights to exclude facilitate access for some by denying access to others. Thus, there's a fundamental trade-off to exclusionary property rights. Given this trade-off, rules which grant rights to exclude will surely not be the only ones in the system, nor the most fundamental.

Locke recognized that the right to exclude would not *always* facilitate the preservation of humankind. Which is why he proposed additional rules in the form of his three provisos, each of which limit the right to exclude in some way. The sufficiency proviso requires that after property acquisition, there must be “enough, and as good, left in common for others.”<sup>20</sup> The spoilage proviso stipulates that people can only appropriate through labor “as much as any one can make use of to any advantage of life before it spoils... what is beyond this... belongs to others.”<sup>21</sup> Finally, the oft overlooked charity proviso which declares that it would “always be a Sin in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty... so Charity gives every Man a Title to so much out of another's Plenty.”<sup>22</sup>

In contrast, theories which place undue importance on the right to exclude provide an incomplete account of property. Like Jan Narveson, who claims that “[p]roperty is exclusionary. To say that  $x$  “belongs” to  $A$  is to say that others not identical with  $A$  are not to use  $x$  without  $A$ 's permission.”<sup>23</sup> On this account, one who guards entry to land outside of surrounding fences owns the land even if they cannot access the land within the fences. Narveson is right to point out that “ $A$  becomes the authority on the use of  $x$ ,” when they gain ownership of  $x$  but doesn't see that this is more than merely “the authority to exclude others.”<sup>24</sup> The authority to exclude *can*

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<sup>20</sup> Locke, *Two Treatises*, Book II, §27.

<sup>21</sup> *Ibid*, §31.

<sup>22</sup> *Ibid*, Book I, §42. The implications of this proviso are contentious. Dick (2019) believes it justifies a Lockean welfare state while van der Vossen (2021) denies this. While I side with Dick, that is beyond the scope of this paper.

<sup>23</sup> Narveson, “Property and rights,” 102.

<sup>24</sup> *Ibid*.



facilitate access but doesn't *necessarily* do so. The same goes for related "sticks" in so-called "bundle of rights" views which place exclusion at the center of the bundle.<sup>25</sup> In cases where the right to exclude does more to hinder (rather than facilitate) access to resources, goods, and services, it's no longer a justified component of a private property system.

Yet theories such as Narveson's have become popular, and this has caused philosophers to overlook what Peter Lindsay calls "*inclusionary* property rights – that is, rights *not to be excluded* from resources, goods or services."<sup>26</sup> Recall the trade-off wherein exclusion grants access to some by denying it to others. Conversely, inclusionary rights grant access directly. The right to be included is thus the inverse of the right to exclude. This is the component which Narveson's theory misses. To be "the authority on the use of *x*" one must have a right to access *x*.<sup>27</sup> Narveson's definition is incomplete. Property is exclusion, yes, but it is also access. Property is both the right to exclude, and the right to be included. To own a piece of land is to both exclude others from it and be included in it.

One might argue that this is implied in Narveson's theory. It's simply irrelevant to state explicitly because having the authority to exclude is either more important than the right to be included, or the right to be included is something secondary which follows from the right to exclude. But neither counter succeeds. The former counter has already been refuted in the opening of this section. The right to exclude is clearly not more important than the right to be included, because acts of exclusion are undertaken not for their own sake but rather to secure access, i.e. to uphold the right to be included.

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<sup>25</sup> E.g., Schmitz, "Property and Justice," 2010.

<sup>26</sup> Lindsay, "Re-envisioning Property," 188.

<sup>27</sup> Supra note 23.

The latter counter gets the relationship between inclusion and exclusion backwards. The right to be included is, in part, what justifies the original appropriation of private property. As Lindsay points out, labor-mixing is only one of two components in Locke's labor theory of property acquisition.<sup>28</sup> The other is a right to be included in that which one mixes their labor with. For Locke, the combination of labor and the right to be included together create the right to exclude. The right to exclude follows from the right to be included, not the other way around. So the right to exclude is secondary, in both importance and formation, to the right to be included. As a result, even if Narveson's theory implies that the right to be included is part of private property, Narveson fails to acknowledge the importance of this right by not discussing it explicitly.

Robert Nozick makes a similar mistake in his theory of private property as well.<sup>29</sup> Nozick's account of private property acquisition is supposedly a Lockean one, with the slight modification that one must add value to the property with their labor, not merely labor in some arbitrary way. But Nozick, like Narveson, doesn't explicitly acknowledge that one must have a right to be included in the property to labor on it at all. This leads both philosophers to mistaken conclusions about when the right to exclude can be overridden by competing considerations. The right to be included serves as a partial basis for the right to exclude. Yet the right to exclude, when left unchecked, can undermine the purpose of private property by denying non-owners access to resources, goods, and services. Limitations such as Locke's provisos are justified so long as they serve the overall purpose of private property systems. And they do, because they take seriously the inclusionary component of private property. I'll now argue that term limits on private property rights are justified for similar reasons.

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<sup>28</sup> Lindsay, "Re-envisioning Property," 191.

<sup>29</sup> Nozick, "Anarchy, State, and Utopia," 1974.

## 4 THE CASE FOR TERM LIMITS

Consider the following three “laborers.” First, a musician who composes a melody. Second, a scientist who invents a new medicine. And third, a farmer who plants crops on previously unoccupied/unclaimed land. By most common accounts of property rights, it seems like some type of labor is performed and a property right is created in each of these cases. Yet under current U.S. law, none of these property rights last for the same amount of time.<sup>30</sup> The musician can file for copyright to secure lifetime ownership of the melody plus 70 years of ownership to her next of kin. 70 years after her death, the melody will enter the “public domain,” available for anyone to hear or play without interference. The scientist can file a patent application, which (if approved) will allow her to be the only one with the formula for the medicine for 20 years. After that, the formula for the medicine will enter the public domain, and anyone with the means to craft and distribute the medicine may do so.

In contrast, once the farmer plants her crops she may put a fence around the land, call it hers forever, and pass it down to her children who may do the same for generations. This is a flaw with the current system of private property in the U.S. There are good reasons why private IP rights like copyrights and patents expire by default. I’ll explain these reasons in the first subsection and argue similar reasons apply to OP in the second.

### 4.1 Why Do Private IP Rights Have Term Limits?

For both copyright and patents, term limits are justified because they balance short and long-term benefits in a way that facilitates access for all, over time. As David Schmitz says, “respecting the property system has to be a good option for just about everyone, including those who arrive

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<sup>30</sup> Supra note one.

too late to be part of the wave of first appropriators.”<sup>31</sup> Term limits respect the contributions of this first wave and compensate them appropriately. But they also provide opportunities for following waves of potential property owners.

The IP laborers ought to be able to enjoy the fruits of their intellectual labor. Financial compensation is surely not the only reason why people make art and invent new things, but it is one reason. And financial stability is often what allows people to do these things even if they have other motivations for doing so. But once the original creator dies, they can no longer be compensated. Their chosen parties might still benefit from the creator’s work for some time, but eventually intellectual works enter the public domain, and for good reasons.

First, existing IP facilitates the creation of new IP. Invention and artistic creation are iterative processes. Although there are ways to take inspiration from privately owned works without violating IP laws, this is often a gray area. Legal battles ensue, and these take up resources which could be used more efficiently elsewhere. The use of public domain works avoids these costly gray areas. The ease and scope of how existing IP can be used as inspiration expands considerably once a work enters the public domain. New intellectual works are indebted to the ones which came before them, and future works will be indebted to new ones all the same. Thus, term limits on private IP rights serve dual, backward, and forward-looking purposes. A public domain takes seriously where existing IP came from, and where new IP will come from.

Second, great minds think alike. People can have the same ideas independently of each other. I might write the next great American novel independently, only to discover that it is far too similar to an existing book which I genuinely had no knowledge of. Or I might figure out a formula for medicine only to then find out that someone else already discovered the same

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<sup>31</sup> Schmidt, 84.

formula and patented it. I performed intellectual labor, I did not merely copy someone else's work, and yet I won't be compensated. While the public domain doesn't solve this problem for all cases, it does reduce the amount of them considerably. In cases where great minds have thought alike, those who arrived in later waves of laborers can still be compensated if previous copyrights and patents have expired.

As previously noted, the term limit is much shorter for patents than copyright. While art and media might be a necessary component of a life worth living, things protected by patents are often more literally matters of life and death. Take our second laborer, the scientist who invents a new medicine. Although the same backward-forward reasons are present, the forward-looking reasons are weighted much more heavily here. The scientist ought to be compensated, but sick people ought to get medicine. Patents might make that difficult, because they allow patent holders to be the sole provider of their IP. The scientist might then charge considerably higher than market price because the sick people might have no alternatives. So, the term limit on patents is much shorter.

If copyright and patents were permanent, then IP rights would *not* be “a good option for just about everyone... [especially] those who arrive too late to be part of the wave of first appropriators.”<sup>32</sup> We don't want these rights to *merely* compensate people for their labor on the private level. We want the musician and scientist to profit from their work, but we also want access to good music and effective medicine. Term limits on IP rights balance these desires by compensating laborers in the short term while facilitating access to IP over the long run. Permanent IP rights would only accomplish short term compensation without facilitating access to IP over the long run. There's no reason to think OP would be any different.

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<sup>32</sup> Ibid.

## 4.2 Why Should Private OP Rights Have Term Limits?

Permanent OP rights allow owners to deny access to non-owners indefinitely, which can undermine the original purpose of private property rights. Currently, in the absence of term limits for private OP rights, some people have access to many more resources, goods, and services than they need while others lack sufficient access to the things they need to live even moderately good lives. Take two basic necessities: food and shelter. In the U.S., there is rampant food waste yet hunger and food insecurity, and a considerable homeless population is denied access to a glut of vacant homes.<sup>33</sup> These are of course complex issues with many contributing causes.<sup>34</sup> But, as I'll show, the permanence of the right to exclude is clearly one of them.

There is enough space for the homeless and enough food for the hungry. However, if the homeless and hungry were to try to dwell in vacant homes and take excess food, they would be denied on the grounds that such resources do not belong to them. To gain access to these resources, they would have to either purchase them or rely on owners voluntarily renouncing their right to exclude. Since owners are not excluding others because they themselves would otherwise be homeless or hungry, this is clearly a situation in which the purpose of private property is being undermined. People are being denied access to resources, but not for the sake of securing access for others. Instead, the homes remain vacant and food is eventually wasted. Moreover, this situation has continued indefinitely over time, with private owners maintaining the right to pass down property over generations.

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<sup>33</sup> See "Food Loss and Waste" from the U.S. Food and Drug Administration for current and historical data. For pre- and post-pandemic data on hunger in the U.S. see "Understand Food Insecurity" and "Hunger in America" respectively, both from *Hunger and Health: Feeding America*. Current estimates put the number of homeless at 580,466 and the number of vacant homes at 15,639,000. See "'State of Homelessness: 2021 Edition,'" from the National Alliance to End Homelessness, and "Quarterly Residential Vacancies and Homeownership, Second Quarter 2021," from the U.S. Census Bureau. For pre-pandemic numbers see Sylvester, "Fact Check," 2019.

<sup>34</sup> One of which is surely the Coronavirus Pandemic. But the sources cited here contain data on these subjects which shows these were issues even before the pandemic.

The problem is not (necessarily) that property rights conflict with some other value like equality or exploitation. Rather, the problem is that our current conception of private property lacks sufficient limits on the right to exclude others from OP, which has in turn prevented private OP rights from addressing allocation problems. Inequality and exploitation might reflect these problems. But where socialist, communist, or Marxist arguments seek a shift from private property to alternative conceptions of property, my aim here is to propose rule changes about the length of private property rights. I.e., a shift from one conception of private property to another. And I propose this in light of things which are problems by classically liberal, Lockean standards. The permanence of exclusionary rights has led to the sufficiency, spoilage, and charity provisos going unfulfilled, and the fundamental law of nature being violated for the sake of exclusionary property rights. Private property rights are not fulfilling their inclusionary purpose. Liberals, libertarians, and capitalists of varying stripes should be concerned by these issues precisely because private property rights are being violated. It's just the *inclusionary* right that is being violated, rather than the exclusionary one.

Recall that for IP, term limits helped to fulfill Schmitz' stipulation that various generations have good reasons to respect the overall property system. The public domain addresses the inherent trade-off of access which comes with the right to exclude. Private owners secure their own right to be included in the short term by denying access to others, then over the long-term property enters the public domain which either facilitates access for non-owners directly or facilitates the acquisition of private property, thus turning non-owners into owners. The right to exclude is utilized to uphold the right to be included without the former infringing upon the latter. This is precisely how a public domain for OP could address issues like non-owners being denied access to food and shelter.

Moreover, just as the public domain of IP can be used to facilitate the creation of new intellectual works (and thus new private property rights to those works), so too can the public domain of OP. For instance, one public program which might be funded is a universal basic income. People would have a private, exclusionary right to the income which they receive through such a policy. The result would resemble Thomas Paine’s proposal for a “national fund” in *Agrarian Justice*.<sup>35</sup> Other examples include public grants for research, investment, and development. Tangible assets could be granted, auctioned, or raffled off to private individuals. In this sense, the public domain continually cycles property through inclusionary and exclusionary statuses. This helps prevent either type of right from becoming too dominant. For a more detailed examination of this, I now turn to policy proposals.

## 5 POLICY PROPOSALS

First, some preliminary notes. Not all forms of IP rights expire.<sup>36</sup> Similarly, as the proposals will show, I don’t argue that *all* OP rights should expire, especially not rights to personal property such as clothes, cell phones, toothbrushes, etc. Second, just as systems of private property without term limits can have many varying details, so too can systems with term limits. As Waldron points out, “[o]nly so much can be done at the philosophical level, and philosophers do their discipline no service by insisting, for example, that traditional arguments such as Locke’s... should be rejected because they are not conclusive on the details of property arrangements.”<sup>37</sup> Objections to the details of term limits are not the same as objections to term limits in general.

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<sup>35</sup> Paine, *Agrarian Justice*, 15-16. Paine argues this follows from the fact that adding value to land through labor simply doesn’t entitle one to the land, only the fruits of the labor itself. This argument cuts against traditional theories of property, whereas I claim such a proposal follows from a proper reading of those theories.

<sup>36</sup> *Supra* note one.

<sup>37</sup> Waldron, 60-61.



My goal is merely to provide some potential instances of what I take to be a necessary shift *away* from permanent exclusionary rights. Disagreement about the exact length of term limits is inevitable. The details of these policies are flexible, so term limits synergize well with the sort of policy experimentation advocated for by proponents of deliberative democracy.<sup>38</sup> And democratic institutions will surely be a key component to shaping term limit policies.

### 5.1 Intergenerational Term Limits: “Lifetime Plus N”

My first proposal is modeled after copyright, and targets land and real estate specifically. Term limits could be instituted in the following way. Starting at a specific point in the future, property rights to land/real estate will become temporary. The time between now and then should give current owners considerable notice about this change. Then, current private land and real estate owners will maintain their right to exclude for the remainder of their lifetimes and be able to bequeath that right to another party. But that party will only maintain their inherited right to exclude for “N years,” after which the property will enter the public domain.

Previous advocates for temporal limits on private OP rights have argued for simple lifetime limits. Michael Otsuka argues for an interpretation of Locke’s sufficiency proviso on which leaving ‘enough and as good’ entails that “individuals possess only lifetime leaseholds on worldly resources... [and] whatever worldly resources they improve.”<sup>39</sup> D.W. Haslett argues that inheritance runs counter to capitalist values like “the ideal of distribution according to productivity... the ideal of equal opportunity... [and] the ideal of freedom in the broad sense.”<sup>40</sup> Haslett therefore argues that the practice of inheritance should be abolished, effectively placing a lifetime limit on private property rights.

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<sup>38</sup> E.g., Anderson, “The Epistemology of Democracy.”

<sup>39</sup> Otsuka, “Appropriating Lockean appropriation on behalf of equality,” 8 (open access version).

<sup>40</sup> Haslett, “Is Inheritance Justified?”, 151.

However, these proposals have their drawbacks. Mainly, that death is often sudden and unforeseen. Severing property rights at or around time of death will thus be logistically challenging. Institutions will have to deal with unscheduled and irregular influxes of property into the public domain. My proposal helps avoid such issues with the “N years” period. When private owners die, their property can be flagged and the exact future time at which it will enter the public domain can be noted, which addresses the need to liquidate and redistribute tangible assets. Of course, this will not solve logistical problems entirely, and one might argue maintaining a public domain will be logistically infeasible despite this “N years” period. This concern will be addressed in the next section.

Additionally, there are some circumstances where we might think a limited form of inheritance would be justified. For instance, Haslett notes exceptions to his argument such as allowing children and spouses to inherit the property of their deceased parents and partners, respectively.<sup>41</sup> This seems sensible, since children and spouses are often dependent upon their parents and partners. Yet one might also worry that exceptions to the rules could create loopholes in the system and allow property owners to effectively make their property rights permanent once again by continuously funneling property rights down chains of people legally classified as dependents. Or one might have the opposite worry, that such exceptions might be underinclusive of the situations in which limited inheritance would be justified. Consider two lifelong friends who share resources and dwell together. It seems like these people should be allowed to have a similar property arrangement as spouses despite their lack of romantic connection.

In contrast to Haslett, my policy proposals can avoid these issues. Instead of allowing for exceptions and needing to decide which circumstances will and will not be exceptional, the need

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<sup>41</sup> Ibid, 138-139.

for some limited form of inheritance is addressed by the “N years” period. This will allow families and close friends alike to pass property down across a generation. But this will not lead to the indefinite extension of private property rights because those inheriting property will only be entitled to it for “N years.” There is still the matter of deciding on the appropriate value of N. It might even be the case that an ideal policy would allow for limits on some property to be “2 lifetimes plus N years.” As discussed in the opening of this section, the precise length is beyond the scope of this paper. But allowing for some level of inheritance across a limited number of generations without making exceptions to the general framework of the argument is another advantage of my argument over Haslett’s. (And by extension Otsuka, who’s argument categorically prohibits any instances of inheritance, no matter how limited.)

## **5.2 Intragenerational Term Limits: “Diminishing N Years”**

My second proposal is modeled after patents and targets passive wealth generation. Two paradigmatic examples of this are capital gains and income from rental agreements. Labor might be done incidentally to such sources of income, but the income is not earned as a result of such incidental labor. For instance, a landlord might make repairs on a property, a stock trader might file paperwork, but neither receives a check because of those activities. Rather, they receive it through passive ownership of property (either tangible real estate or shares of companies). Both would still receive such income if no repairs or paperwork were required.

So, say one purchases a property. For  $N_1$  years, they collect rent from tenants as one currently can. After that, for the next  $N_2$  years they can only collect half as much. After that, their exclusionary right to the property expires. Unless they begin to dwell there themselves, the property would enter the public domain. Or imagine a similar situation with shares of stocks and income from capital gains, but with a key difference. It seems more sensible for the ownership of

shares to be relinquished to employees of the company rather than enter the public domain. (And for those shares to have been purchased from the employees in the first place.) Thus, with these term limits, ownership of stocks would constitute a cyclical transformation between states of traditional shareholder ownership of firms and collective worker ownership of firms.

While this particular policy departs from the tangible public domain, it still instantiates the general framework of the argument by placing timed limitations on the right to exclude for the sake of upholding the right to be included. Collective ownership allows employees of corporations to be included in resources they would otherwise be denied access to, just as the public domain allows members of communities to be included in resources they would otherwise be denied access to. So, this variation in intragenerational term limit policy details is just a result of the same argumentative framework being applied to different types of property.

## **6 OBJECTIONS AND REPLIES**

I'll now consider two potential objections to my argument and provide a reply to each. First, I'll consider the objection that my policy proposals are too similar to taxation, and thus either irrelevant or vulnerable to the same critiques as taxes. (By addressing this objection, I will also preemptively address the objection that my policy proposals are not feasible.) Second, I'll consider the objection that my policy proposals would result in owners letting the condition of their property deteriorate to an unacceptable level.

### **6.1 Taxes or Term Limits?**

One might point out similarities between my proposals and more straightforward accounts of redistribution through taxation, and thus either argue term limits are a trivial reconceptualization of taxes or reject them for the same reasons that taxation is often rejected. But this would be a

mistake. Taxation is typically justified in opposition to property rights, as is the case in Murphy and Nagel's *The Myth of Ownership*.<sup>42</sup> Instead, these term limit policies are novel proposals which ought to be considered in light of new discoveries about what property is, and ought, to be. This side-steps typical anti-taxation arguments like Schmidtz' rejoinder to Murphy and Nagel.<sup>43</sup> Waldron undertakes a similar project to mine but appeals to a less popular and intuitive Hegelian theory of property, allowing opponents to fall back on Lockean theories, like Nozick's.<sup>44</sup> In making a Lockean case for term limits, I've now shifted the burden back onto Nozick and his advocates.

The potential problem raised by Bas van der Vossen can also be avoided. van der Vossen argues that people "who acquired property, but are liable to lose it if others choose to rely on redistribution, will find their rights insecure."<sup>45</sup> van der Vossen's concern is legitimate. It's logically possible that "[i]f redistribution undoes subjection for the propertyless, it may recreate it on the other end."<sup>46</sup> But there's no reason to think redistribution will *necessarily* do this, and there's two reasons to think it can be avoided.

First, since the point of private property is to solve allocation problems, individuals cannot object to so-called "redistribution" of property so long as such policies don't frustrate those problems, but rather address them. Those who lack access to the resources, goods, and services required to live reasonably good lives face a severe allocation problem which well-off folks do not. Moreover, those who have much more than they need, or in some cases could reasonably want, are not having their rights violated so long as they maintain sufficient access to

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<sup>42</sup> Murphy and Nagel, "The Myth of Ownership," 2002.

<sup>43</sup> Schmidtz, 88-98.

<sup>44</sup> Waldron, 1988.

<sup>45</sup> van der Vossen, "As Good As "Enough and As Good"," 198.

<sup>46</sup> Ibid.

resources, goods, and services. Even if it's not immediately clear where *exactly* the line between severe lack and severe abundance is, it's abundantly clear that some people are far above it while others are far below it.

Second, the property being “redistributed” here is going toward the public domain, which gives *everyone* access to resources, goods, and services. Those who have acquired property will not find their rights insecure precisely because the point of term limits is to fulfill inclusionary rights via the public domain. It's not sensible to claim these policy proposals would leave former owners wanting. Those who lose private rights to expiration still have inclusionary rights to the resources, goods, and services in the public domain. And because expired private property enters the public domain, that pool of resources, goods, and services *necessarily expands* anytime someone finds their private property expiring.

This is another advantage of intragenerational term limits over straightforward taxation. Because expired private property enters the public domain, it's goal oriented.<sup>47</sup> Tax revenue need not be put toward social programs which are in principle available to all. It could fund overseas military intervention, unnecessary pay raises for public servants, or other mechanisms of government which don't help fulfill the inclusionary purpose of private property rights. Term limits direct funds and assets toward fulfilling this purpose by categorically contributing specifically to the public domain. Whereas other justifications for taxation remain either value neutral on how that revenue is used, or else require further justification regarding what the revenue ought to be used for.

Admittedly, these differences are theoretical. When put into practice, a tangible public domain of OP might end up looking very similar to a robust social safety net funded by taxation.

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<sup>47</sup> Collective ownership is similarly goal-oriented, but with the scope of the goal being limited to the employees of a corporation rather than extending across an entire community.

But the theoretical differences are nonetheless philosophically important, as argued above, and the remaining practical similarities are a point in favor of my argument. These similarities preemptively address a related potential objection, that maintaining a tangible public domain would be logistically infeasible. While putting my (or similar) policy proposals into practice would no doubt require large, complex institutions, we have good reasons to think this is feasible. Similarly large and complex institutions already exist for the sake of collecting taxes and administering social programs. Thus, the public domain is sufficiently different from taxation at the theoretical level to warrant its own philosophical treatment, and yet sufficiently similar at the practical level to mitigate feasibility concerns.

## **6.2 Property Deterioration**

One might object that my proposals will lead to a problem where owners allow property to deteriorate in condition (and thus value) because they know they will not be able to sell the property for a profit. Or, in the case of rental income, landlords will allow rental properties to deteriorate because maintenance costs are not worth the diminishing returns of rental income as that income decreases and eventually vanishes. I call this the deterioration objection, and it seems to work differently for two main classes of property owners: landlords subject to intragenerational limits, and property owners currently in the “plus N” period of intergenerational limits. My responses address each type of ownership.

First, let’s consider owners in the “plus N” period. Here, the objection is that since owners will not be able to sell or bequeath property, they will allow the property to deteriorate due to apathy. The main problem with this objection is that it incorrectly assumes people only have two reasons to care about the condition of their property: selling and private bequeathment. Owners currently have many motivations beyond these two. The most obvious motivation that

one would have for maintaining their property is that they want the place where they live to be in good condition. When, for example, a useful appliance breaks in one's home, one is likely to fix or replace it. This might maintain property value, but the primary motivation would be the actual use of the appliance. I will get my air conditioning fixed in the short term because I want air conditioning, even if this doesn't lead to long term profits.

One might respond that some property owners do not live in the property they own. But even still, there remain additional external motivations for upkeep beyond profit and private bequeathment. For instance, owning property often involves membership in community organizations such as cooperatives and homeowner's associations. These groups typically involve certain maintenance standards which are motivated in large part by communities having preferences about how things ought to be in and around the area. Additionally, private land and real estate ownership is already subject to laws and regulations such as zoning laws and building codes which impose standards of quality on owners.

One can imagine perverse and unacceptable versions of these external motivations. E.g., the history of redlining in the U.S. which excluded black Americans from housing equality for decades through both private associations and public institutions. But all this shows is that not all instantiations of these private and public institutions are desirable or should be acceptable. It does not show that well-formed versions of these institutions are incapable of keeping property at a suitable condition in preparation for its entrance into the public domain. Further, the potential for institutional injustice wouldn't be avoided by keeping private property rights permanent. The misuse of private associations and public institutions is simply a separate concern which exists regardless of whether private property rights have term limits or not.



Next, consider landlords subject to intragenerational limits. The first thing to notice is that most of the motivations which apply to owners in “plus N” periods also apply to landlords, since these aforementioned motivations are primarily concerned with private ownership in general. It doesn’t matter whether someone is owning during a lifetime period or “plus N” period, nor does it matter whether they are collecting rental income or not, or which stage of rental income they find themselves in. Community associations and legal restrictions still apply. But, for private owners who want to rent out space to tenants, there are even more motivations for keeping their property in good condition.

Landlords will want to retain their reputation. In many areas, tenant turnover is fast. Depending on the length of the “N” period and the rate at which it diminishes, a landlord might have several different tenants live in the same unit over several years. If the period is 20 years, for instance, a landlord would likely have tenants move out before that period is over, and thus would want to maintain the property for the sake of attracting replacement tenants. This motivation will extend beyond the “N” period if they plan on acquiring any other properties and renting those out in the future. So, landlords have a good, self-interested reason to maintain rental properties. Tenants will react to poor conditions by taking their money elsewhere.

Finally, bequeathment may still motivate owners to keep property in good condition. If one cares about the community they live in, they have good reason to maintain the condition of property which will soon be publicly available to that community. (Or liquidated or repurposed for the benefit of that community.) To the extent that individuals *don't* care about their surrounding community, this is probably its own sort of problem to be ameliorated. Having a public domain of shared community resources could itself foster such a sense of community. For example, by providing communities with shared spaces to gather like parks and recreation

centers. This potential for community building is yet another positive feature of the proposals I've put forward. Even merely reconceptualizing existing social programs as being part of a "public domain" available to all could draw attention to the extent that our lives and well-being as members of the same community are interconnected. Whereas taxes are often seen as taking away one's property and receiving nothing in return, the maintenance of a robust public domain is a boon to all. Consequently, the maintenance of property which will soon enter the public domain is also a boon to all, including the current owner.

## 7 CONCLUSION

I've argued that by classically liberal, Lockean standards term limits on certain private property rights are justified. But more importantly, these term limits are justified for the same reasons that private, exclusionary property rights were in the first place. As such, term limits are similar to what van der Vossen calls a "natural" act of appropriation, which "is an act that is an extension of the rationale of the wider theory of justified property rights."<sup>48</sup> The rationale for the wider, Lockean theory of justified property rights is to uphold the fundamental law of nature, which means upholding a right to be included in the resources, goods, and services needed to live a worthwhile life. Term limits uphold this right to be included by limiting, but not eliminating, the right to exclude. Thus, they're extensions of the Lockean rationale, and constitute a sort of natural act within a Lockean system of private property.

The point of private property is to provide people with access to resources, goods, and services. This original purpose has been largely forgotten due to the misplaced importance of exclusion in property discourse. As Lindsay puts it, "the distortive lens of the right to exclude

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<sup>48</sup> van der Vossen, "What counts as original appropriation?", 362.

blinds us to our collective obligations with respect to matters of social justice.”<sup>49</sup> As a result, exclusionary practices have pushed the more fundamental right to be included into obscurity, and allocation problems have been exacerbated rather than solved. Term limits akin to those placed on IP are one way in which these problems can be ameliorated.

Private property is often understood as Schmitz explains it, wherein “a right to exclude is not just one stick in a bundle. Rather, property is a tree. Other sticks are branches; the right to exclude is the trunk.”<sup>50</sup> In arguing for the importance of inclusionary rights to private property, Lindsay has recovered “a right of greater conceptual and moral significance to liberal understandings of ownership – a right without which the tree itself would not exist.”<sup>51</sup> Continuing this metaphor, inclusionary rights are the roots upon which private property has grown. The trunk cannot be sacrificed for the life of the branches, but the roots can be sacrificed for neither the trunk nor the branches. The purpose of placing term limits on OP rights is to promote the health of these roots. Denying access to some people on the grounds that others have a right to exclude them is like tearing up the roots for the sake of the trunk.

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<sup>49</sup> Lindsay, 200.

<sup>50</sup> Schmitz, 80.

<sup>51</sup> Lindsay, 195.

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