

ARTICLES

On Public Property: Response to Dominiak, Israel, and Fegley

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Keywords: accession, COVID-19, immigration, property rights, public domain, public property

<https://doi.org/10.35297/001c.157668>

Journal of Libertarian Studies

Vol. 30, Issue 1, 2026

In this rejoinder, we return to the question of the ownership status of public property by criticizing Dominiak, Israel, and Fegley (2025). According to these authors, the public domain is legitimately owned collectively by domestic taxpayers in virtue of the so-called accession principle. The present paper demonstrates that the use Dominiak, Israel, and Fegley make of the accession principle is untenable since it (a) runs counter to the very purpose of introducing accession to libertarian theory as another mode of title acquisition, and (b) predicts conflict-generating property claims. We also argue that even if the approach under criticism were correct, it would fail to offer what DIF believe it does: a non-ideal theory comprising policy recommendations for politicians in power. In addition, the paper challenges the second pillar of the approach of these three scholars: their ideas for public property management. As we show, those nostrums are at odds with some elementary insights of Austrian economics.

The question of who, if anybody, justly owns public property (or the public domain)—that is, property claimed by the state—has long attracted the attention of libertarian scholars.¹ Not surprisingly so: After all, the problem yields significant implications for the applied branch of libertarian natural law theory. If, as one side of the controversy has it, the public domain does have legitimate owners—namely, the taxpayers—then the taxpayers possess the right to stipulate the terms of its use, which covers a host of government policies normally conducted within that domain. The state and local governments, as long as they operate as agents of the taxpayers, are thus in a position to impose various regulations that restrict people's freedom to engage in otherwise nonaggressive activities—just as private proprietors are able to do on their respective premises. But if public property is in fact no property at all—a no-man's-land—then all such policies are impermissible under natural law



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¹ A related question to *Who justly owns such terrain?* is *Who "really" owns it?* The latter question is easier to answer. Who really owns anything is the person in a position to prohibit anyone of whom he does not approve from using it and to himself use it as he wishes—limited only by the usual prohibition that interferes with the use of one's own property. Malcolm (1958, 31–32) mentions a conversation he had with his teacher and mentor 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."

since they infringe on the liberty of individuals to do as they please with their own persons and extrapersonal holdings unless some specific propertarian arrangements dictate otherwise.

The libertarian debate over the ownership status of public property was sparked by Hans-Hermann Hoppe. In his seminal treatise *Democracy—the God that Failed*, Hoppe argued that public property is, in libertarian justice theory, legitimately owned by the individuals who, albeit involuntarily, finance its erection and maintenance—the taxpayers. As a corollary, states may—and often ought to—curtail immigration insofar as the inflow of immigrants prevents the taxpayers—the true owners—from using the public domain as they see fit (Hoppe 2007, 130–70; see also Hoppe 2018, 90–91; 2021, 99–132).

This view was subsequently challenged by Walter Block and his numerous coauthors, as well as other writers (Block 1998; Block and Callahan 2003; Gregory and Block 2007; Guenzl 2016; Krepelka 2010; Wiśniewski 2015), who developed the theory of public property as a no-man’s-land. On this account, nobody—domestic taxpayers included—has the right to exclude others from nonaggressively roaming on public property, be they domestic citizens, immigrants, or anyone else.²

The debate was reignited with the advent of the COVID-19 pandemic. As observed by Slenzok (2021; 2023), there exists an intimate connection between the legitimacy of anti-immigration regulations and that of universal antipandemic restrictions (UAPR) such as lockdowns and mask mandates. The justifiability of the latter policies is likewise reliant, to a significant degree, on the ownership status of the public domain. Contra Hoppe, Slenzok argued that the public domain is indeed unowned land, since none of the standard ways of title acquisition envisaged by libertarian theory—homesteading, consensual transfer, production, or rectification—applies to its relationship to taxpayers. (In fact, Hoppe has never explained just how the financial contribution to the public domain vests the taxpayers with a title thereto.)³

2 Consider submarginal land that has never been homesteaded by anyone. It is extremely difficult to see why—at least on the libertarian principle that homesteading confers ownership—the taxpayers or anyone else should own such lands. Examples include Interior Alaska, land in the Rocky Mountains, and vast stretches of Siberia. Suppose someone, maybe a Martian, lands in one of these places and begins the homesteading process; then, along comes a representative of the government who orders him to leave, as an illegal immigrant. The latter queries the former, But what libertarian law did I break? The obvious point is that he has not broken one. Yet, according to Hoppe (2007; 2018; 2021), who claims that the government properly owns all the land within the borders of the country—in trust for the citizenry, of course—the illegal immigrant must depart. To say the least (it is strange that an anarcho-capitalist such as he would rely on a government), this conclusion is contradicted by libertarian homesteading theory.

3 A parallel debate concerns the proverbial “bum in the public library.” Those who favor government ownership in trust for the citizenry maintain that we should “throw the bum out of the library,” since he makes it all but impossible for ordinary folk to access the library’s benefits. Those who take the opposite side of this debate support the bum (some do so willy-nilly, but others view it as a way of pointing to inadequate government provision for libraries). What about littering on public highways? Block ([1976] 2008) defends this position. But would it be all right to go beyond littering on such amenities? What about throwing broken glass or thumbtacks on them? The libertarian should not go so far, since this would constitute a threat of bodily harm against innocent highway users.

Accordingly, “the state (and everyone else) has a duty not to impose UAPR that extend to public property, since to do so would be to infringe upon individuals’ self-ownership rights” (Slenzok 2023, 297). Of course, UAPR that extend not to public but to private property (such as restaurants and gyms) are out of the question to begin with since they violate self-ownership and all other property titles involved.

A slightly different, although essentially congruent, stance was defended by Walter Block (2020; 2021; 2025). Block emphasized that if COVID had been contagious and virulent enough to spread and kill *across* property domains, then UAPR would have been legitimate. Still, Block concurred with Slenzok’s core contention that the public domain is a no-man’s-land and that this fact engenders severe limitations on the state’s power to restrict freedom of movement within that domain, with respect to both anti-immigration and antipandemic measures.

A noteworthy challenge to this position came recently from Dominiak et al. (2025). In their view, where Block, Slenzok, and other partisans of the “no-man’s-land” account of public property err is in their failure to acknowledge the fifth mode of title acquisition in libertarian theory: accession. Whenever, claim our polemicists, a mixing of properties belonging to different agents occurs in an involuntary and nonculpable manner, the owners of the mixed pieces of property retain valid titles to their respective parts of the newly created resource. This is said to be the case with public property: Having been erected thanks to the financial contributions of the taxpayers, it is now their common property, with all the attached incidents of ownership, including the right to exclusive possession. Hence, while UAPR covering private proprietorships are patently unjustifiable, with respect to the public domain, there was some room for state authorities to legitimately regulate human interaction for the sake of protecting health (although not in the all-encompassing fashion employed by most governments during the recent pandemic).

Stated more generally, “the management and regulation of the public domain should . . . be in line with the preferences of the taxpayers” and “should resemble what we can see in private arrangements of collective property management, such as residential subdivisions or condominiums” (Dominiak et al. 2025, 72). While this falls short of the libertarian ideal of the full “privatization of everything,” it is meant to furnish a libertarian “nonideal theory,” informing policy recommendations “where perplexed and unjust conditions cannot be corrected right away or be erased from history” (Dominiak et al. 2025, 65).

In this rejoinder, we revisit the problem of public property ownership by debunking the case mounted by Dominiak et al. Our argument proceeds as follows: First we deal with the accession-based account of public property as jointly owned by taxpayers. We show that the underlying construal of the accession principle contradicts the very idea of accession as a means of title

acquisition in libertarianism and entails conflict-generating property claims—anathema to libertarian justice theory. Then we zero in on the second pillar of the approach under criticism: Dominiak et al.'s solutions for public property management. We demonstrate that, as a result of its being conflict-generating, their account also gives rise to insurmountable economic problems. Finally, we submit that even if the theory in question were correct (which it is not), it would still not furnish what our three colleagues claim it does: a nonideal theory comprising libertarian policy recommendations that could be put into practice by people in power.

Accession, Joint Ownership, and the Nature of Property

The accession principle is something of a novelty in libertarian justice theory. It has only appeared in a fully articulated form in recent works by Dominiak (2022; 2024). Still, Dominiak attributes its discovery to the likes of Rothbard and Block—namely, to their ponderings concerning scenarios where one individual, being nonculpably unaware of the resource's ownership, improves another's car, erects a building on their land (Rothbard 1998, 59), or sculpts a “magnificent statue” from their material (Block 2019, 106–7). Dominiak (2024, 3) argues that whichever party—the laborer or the owner of the material or land—the claim to the improved car, the building with the parcel on which it stands, or the statue is ascribed to, the resulting title acquisition must be guided by some principle. And that principle, whatever its finer details, must be different from the tried and tested means of property acquisition recognized by libertarian philosophy—that is, homesteading, voluntary transfer, production (which normally requires the consent of all producers involved), and rectification—none of which applies to the above scenarios. To Dominiak's mind, the principle in question should properly be called *accession*. Specifically, according to Dominiak (14), “the final work accedes to the owner of the most prominent factor, whichever factor it is, while the other party is compensated in money for providing the accessory.” Thus, for instance, the title to the statue accrues to the sculptor (provided the statue is truly “magnificent” and thereby more valuable than the marble it was made of) and not to the material owner, who must settle for reimbursement.

The validity of Dominiak's reconstruction of the accession principle is certainly up for debate. At any rate, it represents a commendable contribution to libertarian theory, with immense potential to spur further exploration of its quandaries. In this rejoinder, space constraints prohibit us from directly tackling this principle itself. Fortunately, rejecting the public property theory

set forth by Dominiak and his colleagues does not require doing so. It suffices to examine the way they *apply* the accession principle to the public domain problem.⁴

In their article, Dominiak et al. take the accession principle to entail that the juridical claim to the locations financed through taxation should be bestowed upon the victimized taxpayers. To substantiate this contention, our authors introduce one more variation of the concept of accession: *aggressive* accession (Dominiak et al. 2025, 61). Following Rothbard and American civil law, they hold that the state

voluntarily took up the work of employing the construction companies to produce the facilities, knowing that the money used for this purpose belonged to the taxpayers, who pledged no remuneration to the state for doing this work. Thus, the state's functionaries voluntarily worked for the taxpayers, acting in this respect as the taxpayers' "volunteer servants or agents" (3 N.Y. 379, 380), who, via the employment of the construction companies, made a new "species [that is, the facilities] in the name of the owner" (3 N.Y. 379, 380) of the money and who therefore lost all the factors of production—acquired for this purpose and embedded in the facilities—to the taxpayers, without any compensation for their work. Simply put, the aggressors knew that the money was not theirs and that there was no reimbursement for the service of investing it. They decided to invest anyway. Now the fruits accrue to the money owners and no compensation is due for the investment service.

The view that the aggressor forfeits his claim to whatever property he added to the stolen goods seems uncontroversial. But it is a non sequitur to infer from this view and from the notion of accession that the public domain should be treated as the common property of the taxpayers. This should be clear, at least to the libertarian, if one recalls the function (or at least one of the functions) of property rights: We need ownership rights because, absent a superabundance of goods and the perfect harmony of wants, there is no other way of averting interpersonal conflicts but to assign decision-making domains

⁴ Let it be noted that Dominiak's account of accession rests on several tacit assumptions many libertarians find implausible. To exemplify, ascribing the title to the final product to "the owner of the most prominent factor" (Dominiak 2024, 14) presupposes that the most prominent factor can be identified in the first place, which in turn presupposes that value can be intersubjectively measured. Other libertarians (e.g., Kinsella 2008) dismiss the Lockean premise that labor is an ownable resource—a contention underlying Dominiak's treatment of some of the mentioned cases. If the sculptor's labor, as a nontangible being, is not an ownable thing mixed with the marble and embedded in the statue, what is the basis for the sculptor's claim to the statue he made from material that belonged to somebody else? Still others may charge that Dominiak relies on an overly physicalist construal of ownership in general, giving rise to the very notion that two distinct pieces of property continue to exist in the final output (see Christmas 2021). In the case of the statue, one may side with the Proculian school in Roman law by holding that the sculpture, having an essence (Aristotelian form) distinct from the material it was made of, is an entirely new good, while the marble, as a self-standing material, simply ceased to exist (see Dominiak 2024, 16; Lorenzen 1925). Be that as it may, such intricacies need not bother us here. As will be seen shortly, the rendition of the accession principle that Dominiak et al. propound runs counter to the very idea of not only accession but also property rights as libertarian philosophers properly conceive of them.

over scarce resources to individual actors.⁵ As Hoppe (2021, 10) taught us, “in the realm of scarcity, there must be rules that regulate not only the use of personal bodies but also of everything scarce so that all possible conflicts can be ruled out. This is the problem of social order.” This belief is shared by a number of prominent libertarian thinkers (see Barnett 2014; Kinsella 2009; Steiner 1994; Christmas 2021). Curiously enough, one of them is none other than Łukasz Dominiak himself. In his article introducing the concept of accession to libertarianism, our learned colleague says the following about the purpose of his theoretical endeavor: “If libertarianism wants to distribute exclusive property rights—as it does—to indivisible things produced from inputs supplied outside a contractual relationship by two or more parties, it must embrace some version of the accession principle” (Dominiak 2024, 22–23). As Dominiak (12n54) aptly explains, such an apportionment of rights is necessary because “property rights are needed to distribute individual domains of freedom, avoid deadlocks and escape conflicts over scarce resources and co-ownership is notoriously bad at this.”

Well, we could not have put it any better. If we did not need property rights precisely to “distribute individual domains of freedom,” then the sculptor and the marble owner, or the builder and the landlord, could just as well settle for joint ownership of their respective final outputs, and that would be that. And yet, to the reader’s surprise, involuntary co-ownership, despite being so “notoriously bad” at resolving conflicts and safeguarding freedom, turns out to be exactly what Dominiak et al. interpret accession theory to imply for the public domain. Moreover, they do so for no apparent reason—after all, one premise of the accession theory is that the resource in question is “indivisible” (Dominiak 2024, 22). But the public domain *is* divisible. It comprises an array of distinct locations, facilities, and organizations that can be privatized—if need be, in proportions corresponding to the financial contributions made by individual taxpayers. Why create a deadlock where there is—and need be—none?

The only apparent way out of this contradiction is to invoke once again the distinction between ideal and nonideal theory. Ideally, so our polemicists might argue, the public domain should be privatized, with the shares accruing to individual taxpayers in proportion to their tax contributions. But as long as there are no prospects for the “privatization of everything” in sight, we should opt for the second-best solution: state management of public property conducted in a way that mimics the workings of the free market as closely as humanly possible. After all, nonideal theory is supposed to guide our judgment precisely “where perplexed and unjust conditions cannot be corrected right away or be erased from history” (Dominiak et al. 2025, 65).

⁵ It is a subject of yet another libertarian controversy whether conflict avoidance is a matter of justice or mere pragmatism. The authors cited above, including Dominiak himself, subscribe to the former view (see also Slenzok 2022; 2026). For the opposite perspective, see Block (2023, 289).

This rebuttal misfires on three counts. First and foremost, immigration and pandemic policies are among those problems whose complexity casts the brightest light on the inability of collective arrangements to resolve disputes over scarce resources. People have very different opinions about the multifarious trade-offs involved, such as the choice between health risk and the enjoyment of life or that between the comforts of living in an ethnically homogeneous community and the economic benefits that immigration brings about. If you introduce mask mandates in what Dominiak et al. (2025, 69) call an “essential public domain” (such as a hospital or government office that citizens have to enter), some taxpayers will be satisfied, but others will find the restriction excessive given their own health conditions and levels of risk aversion. If you curtail immigration, some taxpayers will suffer from—to employ concepts popularized by Hoppe—forced disintegration from the potential immigrants. If you instead let all the willing immigrants in, others—immigration skeptics—will be subject to forced integration (Hoppe 2007, 179).

Crucially, note that this last problem arises—contra Hoppe—only under the notion that the public domain is a collective property of the taxpayers. By contrast, in the no-man’s-land account advanced in the present rejoinder, no ownership titles to the public domain are held that could come into conflict with each other. Hence, no coercion—at least in the standard libertarian sense of rights violation (Dominiak 2018; Kinsella 2009; Rothbard 2006, 27)—occurs, and immigration skeptics have no legitimate complaint against the policies they disapprove of. But things are different with immigration enjoyers: Although they do not hold titles to the public land, they do own their bodies and private possessions. They should therefore be perfectly free to interact with immigrants as they see fit, which obviously presupposes that the immigrants are likewise free to traverse the public land in order to reach them. Public ownership, on the other hand, is indeed “notoriously bad”—in fact, impotent—at escaping deadlocks such as the conflict of titles to the public domain that are putatively held by both the pro- and anti-immigration individuals (Gregory and Block 2007, 37). Jakub Bożydar Wiśniewski’s (2015) succinct summary of the issue is spot on: “Claims of all those who were expropriated for the creation of the public domain come into immanent and permanent conflict with each other.”

Second, as much as the centralized state (or the local governments) might want to emulate the free market, given the collective nature of the property title that our authors wish to ascribe to the taxpayers, some kind of democratic majoritarianism seems inevitable when it comes to deciding what to do with this or that parcel of public land. Even if, as our colleagues appear to suggest, franchises were distributed in proportion to tax contribution, that would still amount to a unilateral imposition of will by one group of contributors over the others. For in contrast to consensual co-ownership in marriages or joint-stock companies, the co-ownership characteristic of the public domain is

involuntary, which taints all subsequent decisions reached by the collective as likewise involuntary.⁶ In brief, the solution championed by Dominiak et al. is not only nonideal, but we also fail to see how it even qualifies as a reasonable compromise.

Third, the whole point of theorizing about accession is that what is mixed in the final product (the statue, the building, etc.) is extended (i.e., physical). We need to decide the fate of the statue as a whole since both the marble and the labor (in the sense of energy spent) are still there and cannot be torn apart without destroying the sculpture.⁷

According to Dominiak et al. (2025, 63), the fact that the money used to erect the public domain is paper (fiat) money is ethically and juridically tantamount to a scenario where state-owned highways are made of expropriated gold. Why? Unlike gold, which is an extended material that various artifacts may consist of, money (whether paper or commodity money) is not physically present in a public highway, sidewalk, town hall, or sports arena; therefore, no mixing occurs that would give rise to the title's accruing to taxpayers in the first place. Again, while the accession theory was originally aimed at adjudicating between competing claims made by owners of factors of production, the account laid out by Dominiak et al. artificially creates a conflict where none exists.

In a word, Dominiak, Israel, and Fegley strangely misconceive Dominiak's own theory. Whatever its merits and demerits, the purpose behind the concept of accession—in light of both Dominiak's programmatic pronouncements and the fundamentals of libertarian property theory—is to resolve interpersonal conflicts by delineating individual spheres of freedom. By contrast, the idiosyncratic account of accession fleshed out by Dominiak et al. produces conflict by creating a common sphere of collectivist planning. As we will show, Austrian economics suggests that this move is likely to exacerbate conflict and unfreedom.

The Economics of Accession

Dominiak et al. (2025, 66) have modeled their approach on existing propertarian arrangements such as “concurrent ownership (tenancy in common, joint tenancy, and tenancy by the entirety), family property, entity property (for example, corporations, partnerships, common interest developments such as residential subdivisions, condominiums, cooperatives, and land trusts), fee simple estates, and life estates or leaseholds.” Note, however, that all those legal forms have one feature in common that government property haplessly lacks: They are voluntary. Their participants are free to either opt in or opt out. This, as every student of Austrian economics

⁶ This is why libertarian justice theory normally recognizes consensual joint ownership but vehemently rejects all nonconsensual forms.

⁷ The underlying physicalist outlook on labor is not without problems, but we refrain from debating it here for the sake of argument.

full well knows, makes a world of difference for economic calculation (see Machaj 2018; Slenzok and Dominiak 2024, 345–47). Mises (1990) famously argued that in a socialist economy (i.e., in a system where voluntary transfers of property rights are ruled out entirely), there can be no rational cost calculation regarding means of production. Rothbard (2009, 952–53) extended this analysis to output: As long as state-owned entities operate in a free-market environment, they can calculate costs based on market prices of factors, but they cannot ascertain whether their product meets the consumer’s demand, since their activities are coercively financed by taxation.

Those fundamental insights are by no means lost on our intellectual opponents: Fegley (2021; 2025) recently penned a series of brilliant articles demonstrating how calculational problems loom large in the government provision of police services and that “these issues cannot be resolved through reform of government provision of policing, but only through a system of competitive provision” (Fegley 2025, 1; for the central role played by involuntariness in the calculational failures of state-owned enterprises, see also Slenzok and Dominiak 2024, 345–47). Alas, “a system of competitive provision” is definitely not what Dominiak, Israel, and Fegley offer with respect to the public domain in their coauthored work. Instead, they champion—albeit as a “nonideal” solution—precisely what produces insurmountable calculation issues: public property. Stated more precisely, their argument is riddled with something very much akin to what Rothbard (2009, 946) termed “the fallacy of government on a ‘business basis.’” As Rothbard (2009, 946–52) pointed out, governments cannot operate in a business-mimetic fashion for the simple reason that they are not businesses but governments, and as such they are confronted not only with calculational issues but also with very different incentive structures. Freed from the discipline of the profit-and-loss mechanism, state-owned entities tend to respond to problems by calling for increases in public spending, prices, or both. And whether the consumer desires the output in the first place is decided not by markets but by politics and its usual wheeling and dealing with interest groups. How our learned colleagues wish to tackle this perennial problem in their scheme is another question left completely unanswered in their otherwise thought-provoking article.

In a similar vein, let us take one more swing at the issue of the sculptor who fashions marble owned by someone else. Dominiak et al. will apportion the value of the final product between the two contending parties, in proportion to the value imparted into it by each party.⁸ In this, they are, unbeknownst to themselves, channeling Coase (1960). In the view of that Nobel Prize-winning author, there are two states of affairs. First, the world of zero transactions costs.

⁸ That is what Dominiak et al. say in their joint article, but Dominiak, the originator of the accession doctrine, is of a different opinion. According to him, the whole statue should be assigned to the sculptor, provided that it is worth more than the marble alone (Dominiak 2024, 14).

Suppose that A values a certain item at \$5, while B sees its worth as \$500. Necessarily, in equilibrium, despite the judge's determination of ownership, the item will end up in B's possession because if A wins the lawsuit concerning ownership, B will bribe A out of it at some intermediate price—say, \$200. A will earn a profit of $\$200 - \$5 = \$195$, and B will gain $\$500 - \$200 = \$300$. So far, so good. Neither Coase nor anyone else thinks this is the real world; rather, it is akin to perfect competition in economics or a perfect gas or a frictionless system in physics.

Now comes the difficulty. What is Coase's advice to the judge in the real world who must determine the legitimate owner of this item that is now owned by A? It is to give it to B forthwith! Why? Because Coase has a fetish for maximizing wealth. If A keeps his property, wealth remains the same at \$5. If B, the plaintiff, is awarded it, wealth catapults to $\$500 - \$5 = \$495$.

But there are more holes in this analysis than in a dozen slices of Swiss cheese, several of them parallel to the errors committed by Dominiak et al. First, how can the Coasean judge know the prices at which the two contending parties value the item under contention. This can only be approximately established by demonstrated preference. For example, if X sells a shirt to Y for \$10, we can only deduce that the latter valued it at more than this amount and the former at less. But even here, we cannot rationally attribute any specific valuation to either party. Matters are far worse in the case of A and B, as well as in that of the sculpture and marble owners, since none of these items has been subject to commercial interaction. Second, both Coase and Dominiak et al. turn the judge into a central planner, and we all know the history of that type of economic mismanagement (Mises 1990). Third, there is the elemental issue of justice. A is the legitimate owner of the good in question. To seize it from him on the grounds that GDP will rise is nothing less than pure theft. A similar analysis applies to the marble statue. Its legitimate possessor is the owner of the unadorned marble. The sculptor who knowingly uses this article for his artistic purposes is nothing more and nothing less than a criminal trespasser—and if it is by accident, then he is a tortfeasor. In no system of justice worthy of the name should he be given part ownership of the marble statue. If anything, he should be compelled to pay the marble owner a penalty fee for vandalism.⁹

The False Promise of Libertarian Realism

Let us forget what has been said so far and assume everything proceeds as our polemicist colleagues have proposed. The government, having recognized its own wicked, criminal nature, ceases to craft policies regulating the public domain for all its fanciful goals. The rulers now have only one standard of excellence in mind: responding to individual preferences as much like competitive markets as humanly possible. They relinquish all remuneration

⁹ For the Block–Demsetz debate on the Coase theorem, see Block (1977; 1995; 2000); Demsetz (1979; 1997); see also Block (2010).

for their services because, all in all, they are criminals and are owed nothing. Furthermore, while Dominiak et al. do not make this point explicitly, it stands to reason that all tax recipients would be immediately disenfranchised since only taxpayers contributed financially to the common pool. All state employees, “bums,” and “welfare parasites” (Hoppe 2018, 95) would no longer have any say over the functioning of the public domain.

Even though all this sounds exhilarating in comparison to the status quo, the question instantaneously arises, Why don’t our repentant rulers, converted to libertarianism, go one step further and simply abolish the state, or at least (if the libertarianism they have been converted to is minarchism) privatize all public property that is not essential to military, police, and judiciary operations? The question is rhetorical: Dominiak et al. do not have their imaginary politicians and bureaucrats do that, because their whole model is designed as an “exercise in libertarian nonideal theorizing” (Dominiak et al. 2025, 64). We submit, however, that policymakers acting on the hardcore libertarian belief that the state is a criminal organization that does not legitimately own the infrastructure it controls hardly counts as a realistic nonideal scenario. Our critics claim to propose solutions for the world we live in, but these prove just as incompatible with our own statist world as Block’s inquiries into the privatization of roads or water capitalism (Block 2009; Block and Nelson 2015).

One may object that the above charge has already been falsified empirically: Javier Milei, who has been president of Argentina since 2023, is a self-proclaimed libertarian of the orthodox, anarcho-capitalist stripe. While Milei, from a mixture of political and economic considerations, has not yet sought to turn his country into a stateless territory, he nevertheless strives to reform Argentina toward the libertarian ideal. Perhaps, then, Dominiak et al.’s model might be instrumental at least for the likes of Milei?

Probably not. It is no coincidence that the policies pursued by Milei are a far cry from the resolutions set forth by our colleagues, and Argentina’s nonlibertarian majority is not the only variable to blame. The problem is that it is difficult to fathom how a state leader could strip the beneficiaries of the public sector of their voting rights, or how the rank system (in which votes are proportional to tax contribution) could be instituted in any modern democracy. But without those crucial moves, the model concocted by Dominiak et al. would reduce to nothing but the old democratic majoritarianism. Politicians elected by the general public—consisting of, among others, government bureaucrats, “bums,” “welfare parasites,” state-paid intellectuals, and politicians themselves—would decide whether one could smoke, drink a beer, or even walk unmasked with one’s children on a public street. That is not a libertarian solution for the world we live in—it is exactly the world we already live in (see Gregory and Block 2007, 29–30). To be clear, this is by no means to dismiss the very idea of a nonideal libertarian theory. Instead, our argument is that the

case made by Dominiak et al. is a wrong-headed exercise in that theory because it solidifies rather than diminishes the power of the state, and diminishing the state should be the overarching goal of any political strategy worthy of the name “libertarian.”

Dominiak et al. believe that the power of governments over the public domain should be strictly limited, but it is hard to see (these authors do not bother to address this problem whatsoever) how the state is supposed to be kept within those limits. Public property management is just another government program—and government programs are notorious for transgressing their initial limits. There is no reason to think that antipandemic or anti-immigration policies are any different (Gregory and Block 2007, 37–38; Guenzl 2016, 167–72; Slenzok 2021, 296).

Even worse is that there are plausible grounds to suspect that “government on a business basis”—or government on the basis of “concurrent ownership. . . family property, entity property. . . fee simple estates, and life estates or leaseholds” (Dominiak et al. 2025, 66)—is even more ill-suited to constrain government license than bills of rights, constitutions, or checks and balances, whose historical records are infamously unimpressive (Jouvenel 1949; Rothbard 2000, 70–80).

Although the stipulation that “the right of the people to keep and bear Arms, shall not be infringed” (U.S. Const. amend. II) is clear and straightforward, the US government nonetheless managed to tinker with that right in all manner of ways. What is one to expect, therefore, from desiderata such as that “the management and regulation of the public domain should. . . be in line with the preferences of the taxpayers” or that “management should resemble what we can see in private arrangements of collective property management, such as residential subdivisions or condominiums” (Dominiak et al. 2025, 72)? It is incumbent on Dominiak, Israel, and Fegley to elaborate on how the observance of such postulates can be legally and realistically safeguarded. To us, it seems a daunting task.

Conclusion

The case formulated by Dominiak et al. is perhaps the most sophisticated rationale for recognizing the public domain as the collective property of taxpayers—far superior to the original, somewhat sketchy, argument found in Hoppe (2007). But as the foregoing analysis has demonstrated, it ultimately collapses on three interrelated grounds: (1) It is inconsistent with the underlying theory of accession, most significantly by generating decision-making deadlocks; (2) it overlooks the well-known economic problems that every form of public management faces; and (3) it fails to deliver a nonideal theory that could be implemented under any conditions short of a full-blown

libertarian revolution. As a result, it lends justification to unlibertarian policies and—if ever implemented—would likely fuel further expansion of the Leviathan.

We have focused in this article on the errors we think we see in Dominiak et al. But they are accomplished theoreticians, and we criticize them only provisionally. Hopefully, they will respond to the present essay so that together we may move that proverbial one-millionth of an inch closer to the Truth with a capital *T* of this matter. We must close by congratulating them on an intellectually powerful article. We cannot think of any other authors who could have made a stronger case for their thesis, which we nevertheless regard as flawed.

Submitted: November 16, 2025 CDT. Accepted: December 19, 2025 CDT. Published: March 05, 2026 CDT.

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