

## Does the Lockean Proviso undermine Nozick's account of distributive justice?

Nozick's account of distributive justice depends on some interpretation of the Lockean proviso concerning initial acquisition. Therefore, in this paper, I will examine exactly which interpretation of the Lockean proviso is compatible with Nozick's overall account, and whether an interpretation can be found which satisfies the conditions of justice (note that 'justice' is a matter of controversy between egalitarians and libertarians).

The Lockean proviso at issue is the so-called 'sufficiency proviso', which holds that we can appropriate natural resources only if we leave 'enough and as good' for others. This proviso is ambiguous, so I will begin by analysing it, before turning to a summary of Nozick's overall account of distributive justice. I will then canvass objections to Nozick from Brock, Cohen, Otsuka and Waldron before concluding with the impact of the Lockean proviso on Nozick's account. If a way can be found to make the Lockean proviso fit within Nozick's theory without making the proviso trivial, then Nozick's account is preserved. If not, then Nozick will need to abandon some features of his account, or concede that his account is not compatible with the Lockean proviso.

Now, to analyse the Lockean proviso. Locke introduces his sufficiency proviso in this way:

Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person. This no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.

—Locke, 1988, Ch. 5, §27, pp287–288

Interestingly, Locke's position offers something to both camps – i.e. egalitarians and liberals could both find support for their view in this passage. Firstly, Locke describes the earth as "common to all men" (an egalitarian point). Next he asserts a strong right of

self-ownership, followed by a strong entitlement to own what we mix our labour with, which excludes the claims of others (a liberal point). Locke concludes this passage with the qualification “enough, and as good left in common for others.” (prima facie, a point in favour of an egalitarian view). Therefore, the Lockean concept of distributive justice, and in particular his sufficiency proviso (“enough and as good”) is ambiguous enough to be appealed to by both libertarians such as Nozick, and egalitarians such as Cohen.

Let us focus on “enough and as good” for the moment, since this proviso presents the greatest difficulty for Nozick’s account. In my view, ‘as good and enough’ clearly permits compensation – since ‘as good’ is a comparative, not a stipulation of identity, one could fulfil the proviso by leaving *equivalent* resources rather than the strictly egalitarian demand of leaving *identical* resources for others. Further, if one recalls that Locke wants to avoid requiring universal consent for initial appropriation (§25), it is clear that he would not have intended a demanding proviso, open to vicious regress (more on this point below). Also, Locke’s discussion of property concludes (§50) with his view that the acceptance of money – or other non-perishable means of exchange – constitutes an implicit consent to the possibility of inequality. This comes closer to Nozick’s preference for unpatterned distribution than egalitarian models of equal distribution. Whether unpatterned distributions are inherently just is another question that will come up in objections below.

Nozick reinterprets the Lockean proviso as follows:

A process normally giving rise to a permanently bequeathable property right in a thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.

—Nozick, 1974, p178.

This demands much less than Locke’s ‘enough and as good’, since all the first appropriator is required to ensure is that those who have not yet appropriated are left no worse than they were in the ‘state of nature’ before the appropriation. Further, those who have not yet appropriated, in Nozick’s account, only have a claim to ‘use’ – not to appropriate. This weaker proviso is somewhat controversial, since it could allow ‘slave labour’ – see objections from Cohen and Otsuka below.

Having introduced the Lockean proviso and Nozick’s restatement of it, I will now review some major features of Nozick’s overall account of distributive justice. ‘Justice in holdings’, as Nozick terms it (he rejects the term ‘distributive justice’ as question-

begging), is unpatterned and historical. This means that Nozick emphasises the justice of the *processes* by which holdings are acquired, rather than the overall distribution which *results* from such processes. Nozick's view is that an account of 'justice in holdings' has three elements: justice in acquisition and justice in transfer, (Nozick, 1974, p151) plus a principle of just rectification. Note that 'rectification' on this account is not intended to equalise unequal distributions of resources. Rather, rectification is merely intended to rectify holdings that have come about via unjust processes, perhaps as a result of fraud or theft. For Nozick, a holding is just if its origin is just; inequality is irrelevant, provided the holdings people have are the result of just processes. By setting up his account in this way, Nozick emphasises the 'injustice' of undoing just transactions between consenting parties. Voluntary transactions such as paying extra admission to watch a famous basketball player (Nozick's 'Wilt Chamberlain' example) would quickly upset an equal distribution of resources. According to Nozick, "liberty upsets patterns" (Nozick, 1974, p160). Nozick is also committed to the view that the world is not owned in common, and is 'up for grabs' in a state of nature: "Things come into the world already attached to people having entitlements over them." (Nozick, 1974, p160). He is concerned to defend individual property rights against unwarranted interference such as taxation. In his view, a violation of one's right to property counts as a violation of one's right of self-ownership (Nozick, 1974, p169). Thus, a key feature of Nozick's overall account is that justice does not require equality. In discussing objections, we will see how this commitment fits with the Lockean proviso.

Brock (1995) identifies two key difficulties for Nozick. Firstly, she argues that the 'some have laboured' argument is insufficient to secure the desert of permanent property rights. Secondly, she argues that property rights are 'permanently shadowed' by the requirement to leave enough for others. Brock further argues that cases of dire need such as water holes drying up – 'catastrophes' in Nozick's parlance – may be more frequent than one imagines. Therefore, concludes Brock, Nozick's arguments for property rights are weaker than he thinks.

How might Nozick respond to Brock? Firstly, he might point out that he is not committed to the very strong property right attributed to him by Brock. For example, he is sceptical about the viability of a purely labour-based entitlement to property: his tomato juice example points to an ambiguity in the notion of 'mixing one's labour' with an object (Nozick, 1974, p175). Secondly, Nozick has dismissed the 'strong' Lockean proviso, because he says it leads to a vicious regress: the appropriation of the ultimate instance of a resource is unjust because it leaves too little, penultimate because it prohibits ultimate, antepenultimate because it prohibits penultimate, and so on... on this

account, it seems that no appropriation is permissible (Nozick, 1974, p176). Because, as noted above, Nozick is making use of a weaker Lockean proviso – the ‘not worse than’ proviso, this leaves open the possibility of compensation where the final instance of a resource is appropriated. This blunts the force of Brock’s objection, since it could minimise the number of cases where property rights are ‘trumped’ by the needs of others. Brock might counter this with cases where no compensation will serve in place of the actual resource itself. For example, one would not accept an ice cream or an air conditioning unit in place of water if one was dying of thirst in a desert. In such a case, there is no ‘as good as’ resource available for compensation. Nozick might meet this objection by asserting that the success of the market economy in meeting needs shows that in many cases, people *are* happy to be compensated with alternative resources (absent ‘catastrophe cases’). Nozick also distinguishes between preserving the possibility for others to *appropriate* (too demanding) and preserving the possibility for others to *use* a resource – the latter being easier to meet. As a further line of response to Brock, Nozick might also recall Locke’s ‘spoilage proviso’, unmentioned by Brock. This proviso argues that a) some kind of appropriation must be allowed in order to avoid idle starvation and waste and b) that one may not appropriate more than one can consume before it perishes – the spoilage of excess resources constitutes unjust appropriation. Nozick might argue that this provides an extra reason to allow initial appropriation, and also serves as a constraint against excess appropriation. Given the lines of response open to Nozick, I do not find Brock’s arguments decisive.

Cohen (1995, Ch. IV) acknowledges that Nozick’s argument relies on a weak reading of the Lockean proviso which allows for compensation. But Cohen challenges Nozick’s assumption that ‘no worse than the state of nature’ is an adequate condition to deliver justice. Cohen argues that, in deciding which theory of distributive justice to apply, merely requiring that our theory improves on nature is too weak. According to Cohen, we should instead choose the system that delivers the best overall welfare – in his view, this is egalitarian co-ownership. Nozick might respond by saying this insistence on a ‘patterned’ distribution is unwarranted – for Nozick, justice merely requires us to ensure that we do not worsen people’s condition below that of a state of nature. Anything more than this is optional – compelling an egalitarian system requires as much argument as an unpatterned distribution. A further objection from Cohen is his challenge to Nozick’s assumption that the state of nature consists of unowned property which is ‘up for grabs’. This challenge is not decisive, for Nozick could argue that no feature of external resources implies that they *are* owned in common (that said, Locke begins *his* argument at §25 by stating that the world is owned in common). A final

objection from Cohen is that in allowing compensation, transfers and a market in labour, Nozick pays too little heed to the harm caused by working for another. One could imagine a small group of people owning all the world's resources, and meeting Nozick's 'not worse than' proviso by providing a 'slave wage' to the propertyless. Under Nozick's account, the propertyless masses would have no option but to accept this outcome. Given Nozick's commitment to strong rights of self-ownership, this 'slavery' objection is significant.

Otsuka (1998) argues that he can provide an alternative account to both Nozick and Cohen, which will reconcile self-ownership and equality. Otsuka says that Nozick has defended self-ownership at the cost of equality, while Cohen has taken the opposite view. According to Otsuka, Nozick wrongly gives 'labour + resources' cases the same treatment as 'labour only' cases. The two are quite different, argues Otsuka, since in the 'labour + resources' case, Nozick's argument against taxation (or other redistribution) depends on a controversial premiss of world-ownership. That is to say, to hold a strong entitlement to resources, we must somehow come to own objects external to us – for Otsuka, this view requires supporting argument. Otsuka also argues for a distinction between a genuinely compulsory tax on all produce and one which only applies to 'luxury goods'. According to Otsuka, the latter kind of tax is hard to characterise as 'forced labour' since one could readily avoid it. Given such concerns, Otsuka (p79) modifies Nozick's proviso from 'as long as others not worse off than state of nature' to 'all have equality of access to welfare'. Otsuka claims his proviso preserves self-ownership better than Nozick, because it avoids the threat of forced labour by the propertyless.

In my view, Otsuka points up some helpful ways of improving Nozick's account. However, I do not believe that Otsuka effects a complete reconciliation between self-ownership and equality, because he places significant restrictions on making bequests, which I believe would be opposed by Nozick, and, for that matter, Locke – viz. Locke's sanguine acceptance of the inequality which stems from adopting money in §50: "Gold and silver [...] may be hoarded up without injury to any one" (Locke, 1988, p302). This sanguinity about 'hoarding up' is incompatible with Otsuka's view of bequests.

I will now turn to Waldron (2005) who considers Nozick's claim that property rights 'fill the space of rights', and the implications of this for claims to welfare. As Waldron puts it:

...Nozick is saying that, in the real world, the resources that would have to be used to satisfy [material] needs may already be owned by private individuals [...]

the property rights that particular individuals have over particular things “fill the space of rights, leaving no room for general rights to be in a certain material condition.”

— Waldron, 2005, pp81–82

Waldron exposes a major problem for Nozick’s theory. If Nozick is really claiming that ‘property rights come first’, Waldron claims, Nozick cannot make use of the Lockean proviso. This is because Locke’s view is that resources are provided as ‘means to our preservation’. Thus, for a Lockean, welfare precedes claims to property rights – this contradicts Nozick’s earlier claim. How might Nozick respond to this objection? He might argue that his theory maintains strong property rights, even while allowing for acts of charity in response to catastrophes. Further, in allowing initial appropriators to *choose* how others are compensated, Nozick might argue, his theory maintains the rights of ownership more fully than a compulsory system of sharing or redistribution.

## Conclusion

I conclude that Nozick’s account of distributive justice is threatened by a strong reading of the Lockean proviso. But a very strong reading of the Lockean proviso is problematic, given the problem of regress highlighted by Nozick. It is possible to maintain Nozick’s view of distributive justice with a weaker reading of the Lockean proviso. This weaker reading contains some fundamental assumptions that are open to argument. Namely, that: property rights entitlements precede claims of welfare; all justice requires of us is to ‘not worsen’ the condition of others, and that equivalent compensation will suffice for the taking of the last supply of an external resource. These controversial claims are where the real argument between libertarians and egalitarians lies.

## References

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