

Toward a Yoan philosophy of property and property rights

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INTRODUCTION

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This page investigates the philosophical basis for establishing and maintaining private property rights within a society. "Private property" means that various important rights of control over property are assigned to individuals who may then make decisions over its use based on their own personal **agenda**. This contrasts with other forms of property rights, such as common property and communal property, where decisions are made by a larger community.{ 1 }

While private property rights give great freedom to control the use of property to individuals, all existing property systems also have significant limits on how property, including private property, can be used. All existing systems also have some privately held property, and other property which is held commonly.{ 2 }

Thus the specific rules defining the limitations of private property use and governing the transfer of private property among individuals, and the transfer of resources from common to individual property systems and back are of great importance.

Clearly understanding the philosophical and moral justifications for private property is essential for formulating a set of rules that are morally sound, that is, for choosing the *right* set of rules.

Though there is substantial discussion and disagreement about how to define "property" and "private property," choosing a single formal definition is not necessary for this discussion. The

philosophical justifications will necessarily determine the specific nature and thus the specific formulation and definition of the terms. Since each philosopher uses the terms differently, we will focus more on analyzing the underlying arguments about how **rights of control** (and related duties) over physical and conceptual entities ought to be governed and distributed among people and associations of people.

This broad investigation is also meant to be consistent with how people think about property in our society. Most people simultaneously feel that they have great power over the utilization of things they own, while understanding that there are limitations on those powers as well as inferred responsibilities. For an example we can consider gun ownership, which is illustrative because gun owners are often extremely protective of their rights while simultaneously accepting limitations that imply a general acceptance of the principle that limitations are philosophically justifiable. As an example of responsibilities, it would probably be difficult to find a gun owner who didn't feel that it was his/her responsibility to take reasonable measures to keep the gun out of the hands of unsupervised children. As another example of a limitation that is widely accepted, hand guns can't be held in your hand while walking down the street for groceries, even though doing only that doesn't immediately harm anyone. Thus gun owners who fiercely fight against restrictions on their use of their guns, also seem comfortable accepting limitations, even when those limitations are designed to protect the rights of other citizens in a mostly indirect manner.

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Types of Justification

There are a number of arguments used to justify private property that have been proposed throughout history. All discussions about the **morality** of private property ultimately must reference more fundamental questions about the basis of morality and **political philosophy** in general. In the discussion of property there are two categories of argument that are particularly important: natural rights and consequentialism.

Natural rights arguments say that people have a fundamental right to private property independent of the consequences of systems of private property. A number of different sources for these natural rights have been proposed: **God**, **a priori principle**, or **human nature**. Clearly these arguments ultimately rest entirely on which source they reference. A philosophy of property (or any other political/moral issue) that relies on God for its foundations will clearly be meaningless and suspect to an **atheist**. A philosophy of property based fundamentally on rights derived from human nature must investigate not only philosophical questions but also empirical questions about reasonable assumptions regarding human nature.

Consequentialist arguments, in contrast, hold that private property is justified based on the outcomes for individuals and society (entirely independent of any supposed natural rights). For example, some have argued that given a **utilitarian** perspective, private property is justified because it leads to the greatest good for the greatest number. Consequentialist arguments also have both philosophical and empirical components. Philosophically there is the question of what principles we use to choose between the outcomes. Empirically there is the question of what outcomes any given system of resource distribution will produce.

Analyzing historical philosophical arguments is sometimes made difficult because philosophers' arguments will often float freely among the above justifications, mixing natural rights and consequentialist arguments. While it is potentially legitimate to use both types of arguments as complements to each other, the analysis is made clearer when distinguishing between them, so one of the challenges we face is to untangle each philosopher's use of those arguments so that the underlying assumptions and empirical assertions (and nature of the evidence supporting such assertions) can be clearly discerned and considered.

Because of the wide variety of starting assumptions about the nature of **justice, rights, and morality**, and because these arguments are crucial to all discussion of property, we will spend some time on these initial assumptions before looking at what has been built upon them. We begin the analysis with Hobbes and Locke simply because discussions of property often begin with this pair. And Locke continues to be very influential and frequently cited in discussions of property.

Hobbes

Hobbes' argument for the moral justification of private property seems to be based on a notion that morality comes into existence as the result of the authority of a **sovereign power**. "Just," and "unjust" have no meaning outside of valid contracts, and contracts have no meaning without a sovereign power to enforce them. If that power creates and defends property, then property should be respected, despite the absence of a "natural," or God given right.

"Justice is the constant Will of giving to every man his own." And therefore where there is no Own, that is, no Propriety, there is no Injustice; and where there is no coercive Power erected, that is, where there is no Common-wealth, there is no Propriety; all men having Right to all things: Therefore where there is no Common-wealth, there nothing is Unjust.
(*Leviathan*, Chapter XV)

Hobbes does not seem to believe in any sort of natural rights. Like other aspects of civil systems of morality, law and justice, all notions of property are really the creation of a "sovereign state." For Hobbes then, we do not start with any basic rights at all. All rights are conferred by the state, the sovereign power (which is ultimately established by the social contracts that enable the sovereign to exercise power).

Hobbes does not believe that any rights would be consistently **respected** (or even exist!) without authority to impose penalties for violating those rights.

Hobbes believes that without an authority there are no rights, and thus no right to ownership, but that doesn't mean that people wouldn't *feel* ownership without an authority. Hobbes' use of state of nature theory clearly shows that he believes in human nature, and that the desire to control resources is part of that human nature. But there is a difference between individuals feeling they each *ought* to be the one controlling something and there being a social understanding about who has a *right* to control the thing.

But whatsoever is the object of any mans Appetite or Desire; that is it, which he for his part calleth Good: And the object of his Hate, and Aversion, evill; And of his contempt, Vile, and Inconsiderable. For these words of Good, evill, and Contemptible, are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and evill, to be taken from the nature of the objects themselves; but from the Person of the man (where there is no Common-wealth;) or, in a Commonwealth, from the Person that representeth it; or from an Arbitrator or Judge, whom men disagreeing shall by consent set up, and make his sentence the Rule thereof. (*Leviathan*, Chapter VI)

For Hobbes, the widespread human desire for people to respect moral rules and standards in their actions does not predate the official and forceful establishment of those rules and behaviors. In the state of nature people simply desire to have things, there are no moral feelings about right and wrong at all, and as a result life is "nasty brutish and short." At some point people realize everybody can have more and suffer less if order is established and the waste of **fighting** and **chaos** is avoided. Thus they establish certain moral rules (and support the establishment of a monarch who does), and a state to enforce those rules, which will allow everybody to have more. Only *then* do people start to feel some obligation to follow those rules and to expect others to share that same sense of duty. They then start to feel disappointment, pain, and moral outrage when people transgress the sovereign given rules that define the new phenomenon, property *rights*.

According to this reading of Hobbes, people may have feelings of right and wrong predating

forceful government. However, these feelings lack any absolute moral certainty. They do not constitute anything worthy of the term "rights." They are not ordained by God. They do not exist universally and identically in every human being. They are not logically a derivative of other principles which we know to be true. And they are not consistently respected. Perhaps because of some of these inadequacies, while human beings do in fact have preexisting moral feelings, those feelings are not promoted to the level of "rights." Only after there is a government to enforce specific formulations of these existing widespread moral feelings do these feelings find a form that is consistent and meaningful enough to deserve such a term.

So for Hobbes, "rights" come into existence only after a sovereign establishes and enforces them. Human feelings are not in and of themselves sufficient to produce rights. The sovereign is brought into being as the result of an initial realization among people that life can be less nasty, brutish and short with the adoption of a **moral code** and a force strong enough to enforce that moral code. This common adoption and the acquiescence to a greater authority Hobbes labels as a **social contract**.

One aspect of the moral code ushered in by this social contract is the notion of private property, and thus private property is born by the establishment of the social contract that produces and maintains the sovereign power.

Locke

While Locke speculates about life in the "state of nature" before powerful sovereign authority, he starts with very different assumptions about the nature of morality and justice which lead him to entirely different conclusions about the nature of property. Locke makes two crucial assumptions in support of his argument.

First he posits that God has commanded humans to appropriate, because without appropriation it is impossible to survive (i.e. if you can't claim an apple is yours to consume to the exclusion of all others then you cannot eat the apple), and because God wants the world to be utilized to its fullest for "the benefit of life," it is clearly implied that it is God's wish that humans appropriate.

"God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his *property*, which another had no title to, nor could without injury take from him." John Locke, *Two Treatises of Government*, The Second Treatise. Published 1690 (from sect 32)

Secondly, he posits that the one thing that must absolutely belong to someone is their own **body** and thus their own **labor**, which is in a sense an extension of their own body. These two assumptions form the basis for his idea that it must therefore be justifiable to appropriate a common good (the entire world starting as "common to all mankind") by fixing your labor to it. He does add a caveat: the right to own a common good that you have fixed your labor to is limited to those common goods that, once appropriated in this manner, there remains plenty for others to do the same.

"Sec. 27. 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 had 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 joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature 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 joyned to, at least where there is enough, and as good left in common for others." John Locke, *Two Treatises of Government*, The Second Treatise. Published 1690

Locke is recognizing a morality that clearly exists before the establishment of the state when he says "For this Labour being the unquestionable Property of the Labourer." This and other assumptions about human rights rest, in turn, on assumptions about God and our relationship to him.

But though this be a *state of liberty*, yet it is *not a state of licence*: though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The *state of nature* has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but

consult it, that being all *equal and independent*, no one ought to **harm** another in his **life, health, liberty, or possessions**: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such *subordination* among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours. Every one, as he is *bound to preserve himself*, and not to quit his station willfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, *to preserve the rest of mankind*, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

Thus all his thinking about justice and property ultimately goes back to assumptions about people being the property of God, and it being unjust to abuse **God's property**, or to presumptuously interfere with God's right to use and dispose of His property as He sees fit.

From there he argues that since nobody can rightfully possess the person or efforts of another, mixing your labor with a common resource yields a product that is rightfully yours. This is so because anybody else making use of it would deprive you of the fruits of your own labor, which is something only your owner (God) has a right to do. Thus, you must have an undisputed right to claim ownership of the fruits of your labor and to own common property that you have invested with your labor.

He recognizes two limitations to this method of appropriation. First, he says you should not take any more than you can use because God does not like waste.

As much as anyone can make use of to any advantage of life before it spoils, so much he may by his labor fix a property in; whatever is beyond this is more than his share and belongs to others. Nothing was made by God for man to spoil or destroy. (John Locke, *Two Treatises of Government*, The Second Treatise. Published 1690, sect 31)

More importantly, he sets a limit whereby there must be "enough, and as good left in common for others," a caveat which has subsequently been labeled the Lockean Proviso. Though Locke does not refer extensively to the Lockean Proviso in his own writing, it sits at the heart of some of the strongest arguments for his position. Its importance becomes especially clear when Nozick

examines and reinterprets the Proviso as we shall see.

Hobbes and Locke Compared

Hobbes and Locke both at some point employ the idea of social contract in their **political ideas**, and ultimately in their property related thinking. But for Hobbes it comes much earlier in the analysis than it does for Locke. Locke implicitly assumes that morality exists before the existence of the state, deriving, after all, from man's relationship to God, with or without a state. This then applies to human feelings of right and wrong also. Everybody—as an equal before God the owner whose property may not be diminished by any but the owner—has a right to their own person and their own labor. For Locke the state role is to protect *preexisting* rights. For Hobbes however there are no rights at all before the state, and perhaps not even a clear sense of right and wrong. Any moral analysis begins with the formation of the state.

Consistent with that disagreement, they also disagree about the degree to which private property might be respected in people's behavior before the creation of the state. For Hobbes since the right to property does not exist, property would not be respected in a pre-state society. Locke on the other hand sees transgression of property rights as a more unusual occurrence.

It's unclear how far apart they are when considering what the term "right" actually denotes (once those rights have been established). Locke's assumption that people have a "right" to their own labor seems to implicitly reference human feelings about right and wrong, but ultimately seems based on the human need to respect God our owner's divine property rights. Depending on your interpretation of Hobbes you could see rights as referring to a state's enforcement of rules according to a commonly agreed upon contract, or you could see rights as referring to human feelings that come into existence once such a state exists. Since neither philosopher gives us a very clear sense of what right and wrong, and thus what "rights," ultimately are, it is possible to see them both as believing that rights refer to common human feelings, or to see a disagreement where Locke believes they refer to God's directives, whereas Hobbes believes they refer to enforcement.

In many practical ways Hobbes and Lockean analysis are actually similar. Both would agree that for the orderly preservation of property rights some sort of governing intervention is generally necessary, though they may disagree about why; Hobbes sees a general, human, pre-state propensity to transgress others' notions of property, whereas Locke sees it as a tendency of a "noxious few." Further, Hobbes's main contention, that property does not exist without some force to prevent others from appropriating it, probably would not raise any particular controversy with Locke, if seen from a purely practical perspective, especially if one were to replace "property rights" with "the ability to exercise those rights." Locke believes in a "natural right" of private property based on the will/desires/rights of a supernatural God, but not in some supernatural force that will intervene to make sure that right is respected. Setting up systems which protect the rights of property and thus bring *actual* property rights into existence is the job of humans organized into some sort of state or society.

Nozick

Robert Nozick (1938-2002) was an influential **rights theorist** who staunchly opposed any redistribution of wealth by the state to help the disadvantaged. For Nozick, the welfare state was theft; taxation was forced labor. Thus, while he agreed with Locke and Hobbes about the necessity of the State, anything more extensive than a minimal state inevitably violates individual rights. As a major theorist whose ideas are invoked to support far reaching property rights and unlimited acquisition and control of resources by individuals, his notions deserve careful analysis.

Nozick develops what he calls an **entitlement** theory of justice:

The general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just, then the total set (distribution) of holdings is just. (Robert Nozick, *Anarchy, State and Utopia*, p 155)

In formulating these steps, Nozick is seeking to show how end-result theories of justice and property distribution are flawed. Nozick points out that if an end-result theory of property distribution approves of any given distribution within a society, and then two people in that

society **willingly** engage in a transaction that results in an unacceptable distribution, it is difficult to find grounds to object to the new distribution.

By what process could such a transfer among two persons give rise to a legitimate claim of **distributive justice** on a portion of what was transferred, by a third party who has no claim of justice on any holdings of the others *before* the transfer? (Robert Nozick, *Anarchy, State and Utopia*, p 161)

Nozick fleshes out his entitlement theory by borrowing heavily from Locke, especially his notion of our bodies, and thus our labor, belonging solely to ourselves. He then fuses these ideas with Kant's notion that every interaction with another person must always treat them as an ends in themselves, and never just as a means.

With these ingredients, Nozick develops his libertarian view of property whereby any taxes, and thus any government, beyond the absolute bare minimum of law enforcement is entirely unjustified. Since we own our bodies and all the products of our bodies, to be used as we wish towards our own ends, it would be a failure to recognize us as individual beings with our own ends to take any fraction of our labor (and if our property comes from our labor, our property) without our consent. {3} Taxes consist of a taking without consent, and thus they can be justified only for certain absolutely essential situations which he spells out in some detail.

One of the most defining elements of Nozick's analysis is his development of the idea of *side constraints*. He argues that not only should our government strive to reduce violations of our rights, but it should also be firmly bound never to violate those rights in the process. Thus even if the government could drastically reduce the violations of rights through some course of action, if taking that course would infringe on a single right of a single individual, then the course is unjustified. This he claims is a direct consequence of Kant's **categorical imperative**.

Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their **consent**. Individuals are inviolable.

He points out that Kant's phrasing of the categorical imperative is stronger than "Minimize the use

in specified ways of persons as means." Kant says "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."

The difference is that if you are following the second formulation then you would never treat someone as a means if it was not also forwarding their ends. Every interaction would require furthering that person's ends if the interaction was going to further your ends as well. Neither formulation prevents you from using someone to your advantage if they also benefit, but the first formulation directs you to *minimize* instances where they do not have a net benefit, and the second directs you never to engage in interactions which are not beneficial to the other's end.

While Nozick does not engage in a in-depth defense of the categorical imperative itself, he does pause for a moment to defend his method of using it.

But why may not one violate a person for the greater social good? Individually, we each sometimes choose to undergo some pain or **sacrifice** for the greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results; some persons diet to improve their health or looks; some save money to support themselves when they are old. In each case, some cost is borne for the sake of the greater overall good. Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no [there is no = the government is not a] *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up. (Intentionally?) To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. *He* does not get some overbalancing good from his sacrifice, and no one is *entitled to force* this upon him—least of all a state or government that claims his allegiance (as other individuals do not) and that therefore scrupulously must be neutral between its citizens.

For Locke, we are all equal in the eyes of God as we are all God's property. If we violate one another's rights, we do violence to God's property. Thus, our rights come from ownership by God who treats all His property equally. For Nozick, God has been replaced by a state that must treat all its citizens equally because the State owes its existence to the allegiance it can claim from

individuals. Thus, Nozick's replacement for God (the State) has no a priori power or inherent "rights" and offers no foundation for the rights of individuals, from whom the State derives its secondary power/rights. The similarity is that this "overseer"—whether God whose property is all equally special by virtue of belonging to Him, or the State that is obliged to be neutral between its citizens—in treating all individuals equally provides a basis for a universal set of property rights.

Nozick replaced the supernatural God with Kant's categorical imperative as the unexplained basis or foundational assumption from which all rights are derived. If we take the categorical imperative as a given, we can see that it is always wrong for a government to violate someone's rights. While an individual may sometimes make decisions which trade off progress towards one set of ends in favor of progress towards another set of ends, a government cannot reasonably make such trade offs with the ends of its citizens, because a government is not an actual **social entity** with inherent rights of its own. It is composed of individual people, and thus trading one person's ends for another's, is not subject to the same **calculus of net progress**. Since any trade off for the well being of society, one or more of the individuals is distinctly being moved away from his ends, the interaction does not respect him as an ends in himself, and thus fails the test of the categorical imperative.

Using someone in such a way that they do not get a balancing of the costs with some benefit does not sufficiently respect that person as an separate entity with their own ends. A state, which is bound to be neutral towards each of its citizens is especially unjustified in taking such an action.

Nozick's Reformulation of Lockean Theory

While Nozick borrows heavily from Locke to begin his analysis of property, he also raises some interesting questions.

Why isn't mixing what I own with what I don't own a way of losing what I own rather than gaining what I don't? If I own a can of tomato juice and spill it in the sea so that its molecules mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice? (Robert Nozick, *Anarchy, State, and Utopia*, p. 175)

Why should entitlement extend to the whole object rather than just to the **added value** one's

labor has produced? (Nozick, Robert, *Anarchy, State, and Utopia*, p. 175)

Locke, actually has some partial answers to these questions, which combined with the Lockean Proviso provide the basis for a very strong argument.

Sec. 40. Nor is it so strange, as perhaps before consideration it may appear, that the Property of labour should be able to over-ballance the Community of Land. For 'tis Labour indeed that puts the difference of value on every thing . . . (John Locke, *Two Treatises of Government*, The Second Treatise)

Sec. 43. . . For 'tis not barely the Plough-man's Pains, the Reaper's and Thresher's Toil, and the Bakers [sic.] Sweat, is to be counted into the Bread we eat; the Labour of those who broke the Oxen, who digged and wrought the Iron and Stones, who felled and framed the Timber imployed about the Plough, Mill, or Oven, or any other Utensils, which are a vast Number, requisite to this Corn, from its being seed to be sown to its being made Bread, must all be charged on the account of Labour, and received as an effect of that: Nature and the Earth furnished only the almost worthless Materials, as in themselves. . . (John Locke, *Two Treatises of Government*, The Second Treatise)

Basically, Locke's explanation of why labor upon materials makes the materials yours, is because he is assuming the materials, without the added labor, are relatively worthless in comparison to the value added by labor. This may seem like a dubious assumption, however the Lockean Proviso, perhaps unexpectedly, effectively guarantees that we will *only* be discussing instances of acquisition where this assumption is valid, because the Lockean Proviso states that acquisition is just only when there is a supply that significantly exceeds demand, and if we accept that value is set by **supply and demand**. In such cases, supply and demand valuation suggests that the materials in question must always be worth very little.

The Lockean Proviso states that in order to claim a common good as your own there must be "enough and as good left in common for others." If someone appropriated the entire ocean it would not leave enough and as good for others. So one answer to Nozick, since there would be none left for others, spilling your tomato juice into the sea would not entitle you to its ownership, and thus it would simply be a way of "foolishly dissipating ... [your] tomato juice."

Another answer is that spilling your tomato juice into the ocean makes the ocean worth no more

than it was; juice added to the ocean makes it worth not one iota more than before. Thus, if the labor you added to a piece of land was to sing and talk to it for 10 years, there would be no value added and thus you would have no claim to it. Someone else could come along and take the land without taking the fruits of your labor because there wouldn't be any fruits. If through your labor you could change the entire ocean into fresh water and this were to make it more valuable than before, you would then have a claim to the ocean that would be limited by the Lockean Proviso. But no value added, no claim.

"As much and as good," interpreted literally, in a world with logarithmically increasing population implies an infinite, or practically infinite supply of a resources. Its unclear whether Locke appreciated this implication. Taken literally Locke's proposition is very strong (though inapplicable in an overpopulated world). If you were truly leaving as much and as good for everybody else, what problem could anybody have with your appropriation? You have deprived them of nothing. Further, what right could they possibly have to your resultant creation? The only value in the creation is your own added labor, and Locke's intuitive argument that you own your own labor would seem to give you complete rights to all the value. Thus the answer to Nozick's second question is simply that, in the Lockean analysis, entitlement to the whole object, in such cases *equals* entitlement "just to the added value one's labor has produced."

Locke's entire argument for how private property may be acquired, while very strong, might also seem superfluous, because after all, if you are taking from an effectively **infinite resource**, why should you need to mix your labor with it at all to claim a portion? Should it not be enough just to claim it? No matter how much you take you have left enough and as good for everybody else. The answer to these questions is to remember that there are no truly infinite resources and even relatively unlimited resources require access to obtain them; and access is also often limited. Indeed, one reason to maintain that you must mix your labor would be to make sure that *nearly* infinite resources were not rapidly depleted. I.e., if there is vastly more of a resource than all people can make use of, but people claim it without actually making use of it, then it could quickly become depleted. Requiring people to mix their labor reduces their acquisition to only what they can actually make use of and thus enables an oversupply to remain an oversupply for at

least the near future.

Though a condition of truly infinite supply would eliminate the relevance of Locke's theory of acquisition, it does provide a useful starting point for more generally relevant questions, like how does one appropriate material that is clearly *not* in effectively infinite oversupply? By ruling out any concern about the unlikely scenario of infinite supply, this analysis can highlight the crucial consideration for all other scenarios as we move from overabundance to scarcity. What are the justifications for whatever moral system we use for distributing *limited* resources? I.e. for depriving some people while privileging others?

It seems that Locke did not intend a literal interpretation of his words, given that he continues on by examining those cases where the proviso can be reasonably violated. He explicitly recognizes that in practice, especially in highly developed countries like those in Europe, common property and land is generally always in short supply. He used the vast undeveloped expanses of land in America to show that even though there isn't as much and as good left in common for others in Europe, the increased productivity of the resources justified that situation^{4} (i.e. the un-farmed land in America, at the time, did nobody any good), and the landless citizens essentially consented to the situation as they benefit from this increased productivity, the bounty of which they are in a better position to trade their labor for. Thus Locke posits a kind of social contract whereby the Lockean Proviso can be circumvented, and indeed, Locke implies that it ought to be circumvented under these conditions.

Nozick prefers a less literal interpretation, which simultaneously makes Locke's general argument more relevant and more vulnerable to the criticisms Nozick himself has leveled.^{5}

His interpretation of the Lockean proviso is that one may acquire property only if it does not cause "net harm" to others. Nozick specifies that by "Net Harm," he means other people being left poorer than they would be if the acquisition of the property was not permitted. But he explicitly excludes harm in the form of lost opportunity to acquire those resources by mixing their own labor with them. Here it seems Nozick is really charting his own course since the Lockean Proviso, interpreted literally, seems intended to protect against exactly this sort of harm, i.e., reduced

opportunities for other people as the result of dwindling availability of resources. He does not provide a rationale for why someone should be allowed to acquire in such cases.

Problems with Nozick

The most important questions about Nozick's view stem from his most fundamental assumptions about rights and justice.

Strict Self Ownership

Nozick argues that we own, absolutely, ourselves and all derivatives of ourselves. Throughout his work there are a number of possible bases for this argument. In one case he supports the idea with the example of a kind hearted slave owner who is good to his slaves.^{6} Even in this instance, we can still agree that slavery is wrong. Thus it is not the consequences of slavery that we object to, but the condition itself. Why would that be unless we had a fundamental right to self ownership? This argument seeks to establish the right of self ownership based on an implicit appeal to a universal, natural, human sentiment.

However, the argument he builds on top of that foundation reveals flaws in his initial assumption. We object to any and all forms of slavery, therefore anti-slavery is a right. Slavery is **forced labor** without self determination to benefit another person. Re-distributive taxes without self determination amount to forced labor to benefit other people. Therefore, it's a violation of our anti-slavery right to be taxed for re-distributive reasons.

Because the initial principle was formulated based on an appeal to universal human sentiment, any conclusions are valid only if they continue to conform to universal human sentiment. If we postulate a moral principle supported by the way people feel, and then use that moral principle to argue for something which people generally feel is wrong there seems to be a big problem with our argument. Either, our initial postulation of the principle did not accurately capture people's feelings, or, people feel conflicting things, and therefore we will need either to seek some other justification for our principles or to come up with a way of valuing or weighing the import of

conflicting feelings.

What is unstated, but implied by Nozick's argument is that we object to any and all forms of re-distributive taxes because *such taxes violate our anti-slavery feelings*, as Nozick construes them. The implicitness of his dependence on a very strict "anti-slavery" sentiment intrinsic to humans, serves to hide the fact that no such strict sentiment exists! By labeling it "anti-slavery" he is attempting to make its truth unarguable, but rather he obfuscates the very substantial differences between slavery and state welfare for "the truly needy." Most people do not consider the state immoral just because it has welfare programs for those in dire straights. And most people feel there is a role for the state to play in redistribution of wealth in certain circumstances, e.g., social security and making sure the elderly are not left destitute. Since there is clearly no universal objection to re-distributive taxes we must reject a universal "anti-slavery" sentiment (as formulated by Nozick).{7}

Clearly the feelings at work here are more complicated and more subtle than Nozick's absolute and one-dimensional self ownership. We find slavery abhorrent in any form, yet we don't feel that a democratically elected government taxing us is slavery. It qualifies under *Nozick's* criteria for slavery, but his criteria are incomplete. Have we ever heard of a slave system where the slaves elected their owner? Is it possible to own entities that can choose to be owned by someone else? This seems to defy some basic principles of ownership, for instance that the owner has certain exclusive rights to the owned.

The evidence that Nozick's argument is logically flawed is the overwhelming acceptance—to varying degrees, it is true—of the very thing he is arguing to abolish: the welfare state.

What about Other Rights?

A related criticism is the question of why "self-ownership" trumps all other imaginable rights. Is **survival** a right? It's unclear why self-ownership is the only important right in Nozick's view. His best answer to this question seems to be that he believes that it is never OK to violate someone's rights, even in order to preserve someone else's (this is a side constraint discussed earlier). Thus

even if someone has the right to survival, and thus to food, taking food from someone who has an abundance in order to give to a starving person, would violate the rights of the well off and therefore would be immoral. However, its not clear why you could not simply reverse the order, and say that even if someone has the right to keep their possession, keeping food from a starving person is a violation of their right to survival, and thus would be immoral. The act of keeping food from a starving person, no matter how justifiable in order to preserve the right of possession, requires violating someone else's right to survive, and according to Nozick its never OK to violate someone's right, even to preserve someone else's. In order to defend this position it seems he would have to spend some time defining how you know which rights come first, as well as justifying whatever formula he came up with.

Practical Problems

Finally his **utopia** seems vulnerable to some very ugly practical problems. In a world without any sort of re-distributive taxes, it seems like a reasonable possibility that eventually the entire world would be owned by a very small number of people (some would argue that this is already the case) or even a single person. He includes some very limited protections against this in the form of weak anti-monopoly sentiments. But considering that even with our current re-distributive system and anti-monopoly laws as well as anti-monopoly sentiments we are continuing to head toward an extreme concentration of wealth, it seems unlikely that his vastly weakened protections would suffice. Regardless of whether or not someone deems this scenario likely, it is clearly a possibility, and thus would need to be accounted for in any theory of justice.

What if Nozick's right respecting society ends up essentially being a formula for reducing the world's citizens to share croppers on the great Oligarchical Farm? Shall we completely ignore horrifying ends? What about the virtual slavery conditions caused by being forced to sell one's labor to the only employer in town? What happens when there simply is only one small, elite class of owners that one can work for? Any theory of justice which holds that there are absolute rights which can never be violated in order to achieve preferable ends should be highly suspect. Any particular formulation of rights has at least a *possibility* of leading to a **devastatingly undesirable society**. If a radical respect for people's rights would lead us to a world where only a single person

is better than miserable, then what use do we have for such rights, and the theories that propose them? Nobody would choose to live in such a society (except perhaps that single person). Thus all reasonable theories of justice must have at least some situations where ends considerations can override rights considerations. This leads us naturally to consider Consequentialism.

Consequentialism

Consequentialism is the idea that the moral quality of actions is determined by their consequences. There are many variations, including its most well known variant, utilitarianism. As shown in the previous section, any theory which does not incorporate some degree of consequentialism should be highly suspect. But what about a theory consisting of entirely consequentialist arguments? Could such a theory satisfy most of our intuitive notions about private property rights, and give us a sound basis for our current system, and/or guide us in correcting its shortcomings?

Consequentialist Justifications for Private Property {8}

The consequentialist justification for private property is that it improves the lives of citizens in our society. There seems to be good evidence that property benefits our society as measured by a number of different metrics. Many people believe that private property is an extremely effective way of promoting the efficient use and care of property to increase the overall **wealth of society**. Political and economic systems which have attempted to do away with private property are widely seen as drastically reducing the overall average utility within a society by reducing people's incentive to work, and thus their productivity, and finally the availability of goods and services essential to fulfillment and happiness.

There also seems to be some credible evidence that private property as implemented in western market economies give significant benefits to even the worst off. For example, the U.S. has a system of private property which promotes general productivity, as well as welfare which taxes a portion of the excess production and uses it to provide essential means of survival to the poor in various forms such as food stamps. As a result deadly starvation is rare in the U.S. and has been for many decades. In this system, private property is an essential element in a vibrant economy

that allows even the extremely poor to reap some benefit. If it could be shown that in countries which have attempted to reduce individual property rights, such as communist China or Russia there have been chronic shortages of goods and service, including food, sometimes even resulting in famine, that would be evidence that even the worst off may be better off in a private property system. While these anecdotal examples do not prove what the best consequentialist economic system may be, they do suggest that there may be a strong consequentialist justification for private property.

Consequentialism can also be used to support a strong defense of private property *rights*. While a consequentialist argument cannot support absolute rights of the kind proposed by Nozick, it can support rights which would be violated only in the most extreme circumstances, and that would thus be sufficient to satisfy people's intuitive sense of ownership and property rights.

Consequentialists arguing for strong property rights simply have to point out that if human beings have natural feelings of ownership, {9} then violating those feelings would clearly be harmful to their sense of well being. The stronger the feelings the greater the harm. If the feelings are sufficiently strong then witnessing the violation of other peoples property rights would cause people to worry about their own, causing them significant **emotional distress**. If this emotional distress is significant enough, then it would only make sense to violate *anybody's* rights under special circumstances. I.e. it would not be sufficient to simply say "if we violate this person's rights a little and cause him a quantifiable **degree of harm**, but in so doing we can do 10 times that quantity in good for ten other people then the action is justified." In order to make that claim one must take into account the effect that violating the one person's rights will have on the entire society's feelings of security in their rights.

So we can see that consequentialism can actually provide quite a strong defense of property rights. But what about those cases where it does not direct us to protect rights? Is the absence of simple, absolute moral laws a serious problem for a theory of justice, and thus a theory of property?

Nozick's Criticism

Nozick's disapproval of consequentialist arguments focuses on instances where he claims they

would have us violate the rights of innocent people. For example, we are told that:

"Maximizing the average utility allows persons to kill everybody else if that would make them ecstatic, and so happier than average." (Robert Nozick, *Anarchy, State, and Utopia*, p. 41)

As well as:

"... violating someone's rights might deflect others from their intended action of gravely violating rights, or might remove their motive for doing so, or might divert their attention, and so on. A mob rampaging through a part of town killing and burning will violate the rights of those living there. Therefore, someone might try to justify his punishing another he knows to be innocent of a crime that enraged a mob on the grounds that punishing this innocent person would help to avoid even greater violations of rights by others, and so would lead to a minimum **weighted score** for rights violations in the society." (Robert Nozick, *Anarchy, State, and Utopia*, p. 28)

But in these two examples Nozick's application of utilitarianism seems unsophisticated. If we are sufficiently horrified by his example of the intentional violation of personal rights of innocent people for supposed overall greater utility that his argument sways us, is that not evidence in itself that the utility probably does not justify the costs? If allowing the rights of innocent people to be violated horrifies the entire society to such an extent that they would choose not to live in it, then probably it's not a very utilitarian thing to do. In Nozick's *supposed* utilitarian world, the utility of punishing an innocent person would only exceed the damage of mob violence as long as Nozick did not exist or was not allowed to express himself! As soon as someone like him pointed out the injustice, the horror—that Nozick clearly knows he is generating and then trying to manipulate in order to make his point—would cause great distress. Nozick, in using it as an example, is counting on its causing considerable distress as a hypothetical example, not to mention if it was a reality we were living with. Providing a sense of security and justice is part of achieving happiness. Not taking into account the costs to overall happiness of violating widely held principles of justice is clearly a very bad application of utilitarianism. Rather than critiquing *utilitarianism*, Nozick is critiquing his own invention, *simpleminded utilitarianism*.

Furthermore, if the potential to have their fundamental human rights violated is *not* horrifying to

citizens, or is only mildly uncomfortable, why *should* our society respect these rights at the cost of things we *do* find important? In the absence of Locke's God who lays out an absolute morality for us, what justification could we have for upholding (without the slightest flexibility and at enormous cost to our society) individual "rights" which nobody much cared about? A consequentialist view can strongly protect rights, but in those cases where it does not, Nozick offers us no compelling reason why it should.

As discussed earlier, his best answer seems to be that we should respect people as ends in themselves. He bases his argument around the,

"... underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable." *Anarchy, State, and Utopia*, Robert Nozick, p. 30

Thus, building a society which attempts to maximize happiness treats people as a means to the ends: a **society of maximized perfection**. In order to treat people as ends in themselves, however, we need always to respect each person's right to self ownership, and thus ownership over their labor and consequently rightly acquired possessions. If we choose to violate these rights to any degree then we are not respecting people as fully human, we have begun to see them as objects, tools to be used to construct our perfect society. If we tax for **welfare programs** we are enslaving the working citizenry.

One of the many problems with this argument is that Nozick's society is even more vulnerable to his own criticism: building a society where people's "rights" (self ownership, property, etc...) are upheld even at the cost of enormous suffering is treating people (the suffering) as a means to the ends of a perfect (right respecting) society. If for the single-minded goal of respecting property rights, we support a vastly unequal distribution of resources that makes it impossible for extremely poor people to feed themselves, aren't we effectively sacrificing them in order to achieve this idealized rights based utopia? Aren't we then treating them as **disposable objects**?

Nozick's notion of rights seems to be based on a world without space or time. Consider that the enormous suffering—and resultant violation of the *right* to survive and the *right* to be free of

chronic suffering (e.g., hunger) and the *right* to not be controlled by the whims of those who control all vital resources—of extreme poverty in a world where only a few own nearly everything is not *immediately* caused by the actions that led to the acquisition of property. If it did, then Nozick might also see such actions as unjustified. The suffering is a *later consequence* of a condition (much wealth and vital resources in the hands of a few, while many have little or nothing). Since Nozick specifically rejects the consideration of consequences, this critique cannot be applied to his logic.

In addition to Nozick's untenable notion that we only need be concerned about people's *property* rights, he seems to suggest that we need only consider effects in a timeless universe without space, i.e., that the results of an action over time or distance are considered "consequences" and only the *immediate* local effects of an action need be considered when determining if rights are being violated. And the "immediate" really means zero time or distance. All of Nozick's concerns about violating rights are the immediate effects on the people in the immediate vicinity of an action.

Where is the justification for this elimination of space and time? For example, in Nozick's world, an *owner* would have the *right* to burn down *his own* forest on *his own* land, despite the **pollution**, **global warming**, and **oxygen depleting** concerns of others. That is, the government would not have a utilitarian right to stop the owner because of the consequences of his actions on the greater good. But this is only because the consequences are not immediate and local. We can safely assume that even Nozick would not suggest that the same *owner* would have the *right* to set off *his own* nuclear device on *his own* property, if that would immediately irradiate the neighboring town. Like many self-serving arguments used by **resource holders** to avoid considering the consequences of unlimited ownership, Nozick's logic is dependent on the existence of an overly simplistic, i.e., nonexistent world.

Indeed it seems that consequentialist arguments offer strong support of rights precisely in those circumstances that the rights absolutists point to as they try to inflame passions to justify their position. If consequentialism can provide us with a good guide to property rights, it should lead to violations of individual rights only in those circumstances where rights absolutists fail to provide any compelling arguments for why we *should* protect rights. If, at this other end of the spectrum

that rights absolutists ignore, respect for various rights is not important to our feelings of well being, then, by definition, we do not care about them, and should not expend great effort in protecting them.

While a great deal of debate can occur in the middle ground (where our rights are important to us and the consequences of protecting them are problematic), living in a complex world with conflicting values and ideals is a human problem that must be faced and struggled with, not eliminated by focusing on simplistic, extreme examples that support our desired conclusions and pretending the world lacks complexity. Arguments for absolutist rights often refer to ideas like Kant's categorical imperative, or various formulations of the **golden rule**, which ultimately refer to our feelings about how we want to be treated. If we feel OK about our "rights" being violated under certain conditions—especially when we believe that others will have to share the burden of those violations more or less equally—then arguments based on appeals to how we feel about things fail to support absolutist right claims. And we can even feel OK about *extreme* rights violations under extreme conditions. For example, during WWII, property rights violations were almost universally supported by the American people, including the most sacred property right of all, self-ownership and the right to life. So, we feel fine with rights violations when the rights are relatively unimportant, and we also tend to feel that extreme rights violations can sometimes be justified in extreme circumstances when the consequences of protecting those rights are also great.

In this way the consequentialist arguments match very closely with common intuitive understandings of rights. We desire to be secure in our rights, but we are willing to **compromise** if the right in question is of little importance to us or when maintaining the absolute sanctity of a right would require the sacrifice of other things we hold as or more dearly.

Questions for a Consequentialist Theory

A utilitarian formulation of the consequentialist justification for private property would be that it leads to greater happiness for a greater number of people. As previously discussed, if people have a natural desire for private property, depriving them of it would only be justifiable if it was necessary to allow a feature of society which provided more good than the harm of depriving

people of a natural desire. Similar arguments can be made for why we should respect property *rights*. In support of consequentialist theory, people's natural desire to own, use, and maintain property has been shown to be an extremely effective way to maximize the utilization property, thus resulting in greater overall productivity and wealth. Any system which deprived people of property would seem to need an alternative way of motivating people to the same or greater degree, or provide some other good which compensated society for the underutilization of property. {10}

Can Entitlement Theory and Consequentialist Theory Co-exist?

If consequentialist theory can support property rights, is it also possible that it would naturally lead to a set of principles which would satisfy a weakened version of Nozick's entitlement theory?

While aspects of Nozick's entitlement theory seem sound, there is no reason to assume that there are ideal "just" transactions with fully clear impacts over time and space. Indeed, if we eliminate Nozick's oversimplification in which time and space are eliminated, there are *no just transactions*. No transactions could possibly benefit both parties to the same degree. If one party is able consistently to get greater benefit from a series of transactions—and that is clearly indeed the case as people are not equal in their ability to perceive and negotiate beneficial exchanges—ultimately everyone will end up working for the more skillful negotiator who will own everything. This, despite the fact that each individual transaction would be "just" under Nozick's rules.

If we start with the notion that there are no truly just (i.e., precisely equally beneficial) transactions, we can revisit his question of how, starting with a just distribution, and if only transactions that *appear* just are allowed to happen, how can it be that the resulting distribution is unjust? Though Nozick argues against the possibility that a just transfer of property would include a degree of redistribution, his notion of "redistribution" apparently is limited to "from the richer to the poorer." Once this bias is eliminated, it becomes clear that any transactions, including those that are truly beneficial to both parties, are going to benefit one party more than another, i.e., the

benefit can never be *exactly* equal. Thus, *all transactions include some redistribution of property/wealth/resources*. The "redistribution" to the richer and/or the more skilled negotiator is apparently OK in Nozick's world. Only redistribution in favor of those who were disadvantaged by ability or circumstances seems unfair to him. Thus, Nozick can insist that a transaction can not have limits set from outside the parties engaging in the transaction. But what would happen if we lifted that restriction from his argument? Would that be enough to reconcile entitlement and consequentialist theories?

To satisfy Nozick's entitlement theory we need to have a system of just acquisition, a system of just transfer, and a system for rectifying violations of these two systems. To satisfy a consequentialist theory we need those systems to naturally arrive at attractive (or perhaps as-attractive-as-possible) ends.

The question then becomes, is it not possible that because human nature is such as it is, desiring for a sense of fairness/justice, consistency, and safety in ownership, and if self-interest is the most effective means of motivating productivity, that the system that produced the best outcome would be one where, despite compromises of individual rights for the greater good, a **system of just transfer and acquisition** was fundamentally respected?

A Simple Principle of Just Acquisition: Compensate the Commons

It seems that Locke and Nozick are overlooking the most obvious method of resolving the question of how something may move from common ownership to private ownership. Given that there are now few, if any, resources available, the appropriation of which does not deplete the supply available to others, we are no longer looking at resources where the supply far outstrips the demand, i.e., we are rarely looking at resources of no intrinsic value. If a valuable resource, held in common, is appropriated by someone, why should that person not have to **compensate the commons** with equal value? This is an alternative to only taking resources that leave plenty available, i.e., in the latter case, the commons is not depleted. In the proposed model of "compensate the commons," despite the fact that there are now no unlimited resources, the

commons can remain undepleted, if it is replenished with equal value. Thus, resources can be appropriated and the commons not depleted, *as if* there were unlimited supply.

Following Locke, Nozick, as well as consequentialism, there seems very little justification to allow someone to take common resources that are not effectively infinite, without compensating the commons for their worth. Thus in this case it should not be your addition of labor that makes them yours, but your purchase of them, a purchase that can be paid—as in any business loan—over time with the expected value obtained from the merging of one's labor with the resource in question.

Perhaps the largest problem for a property rights system based on combining entitlement and consequentialist theories is simply that the initial acquisition of property occurred without any compensation to the commons for its worth. This is especially true when you take a long term view of the worth of land. Property in Manhattan might have been relatively worthless three hundred years ago, but clearly it is quite valuable *now*. And the wealth produced by that land over just three hundred years is worth astronomically more than the perpetual ownership price paid back then. Thus the value of *perpetual* ownership is vastly more than the value of a time limited ownership, i.e., rental. The original acquisition of property in this sense vastly under compensated the commons. If the appropriate value would have been paid, the typical citizen would be wealthier (as a function of the fact that the commons was wealthier) and the early owners' descendants would likely not be as rich (as a function of the fact that their ancestors did not make such a killing off of the deal). In this way a consequentialist theory which seeks to distribute wealth more evenly (and thus increase overall happiness) could potentially be more consistent with an entitlement theory which sought to follow consistent rules and to respect property *rights*.

Another advantage is that this approach would **eliminate waste** and **maximize productivity**. The only way to get a fair price over long time periods for a durable common good is to rent it. While continuing ownership of land requires that the title holder be able to be minimally productive in order to not need to sell the land to others in order to survive, there is no evidence that the ability *to maximize* productivity is correlated with ownership. If, however, the one with rights to use a

resource had to pay market-based rent for continued ownership of that right, then only those who could maximize productivity would be able to afford to retain control of a resource. The owner of the rights to the resource would have to make sure it produced what it was capable of because they would have to make the rent payments. Poor users of a durable resource would not be able to hog resources that weren't producing and they would have to be returned to the commons to be rented by someone who can make better use of the resource. There are vast resources lying fallow in the hands of the wealthy whose ownership in perpetuity of the resource enables them to allow much of their holdings to be relatively unproductive.

How Does Fairness Incorporate Future Generations?

The Lockean Proviso, that we must leave "enough and as good" for others has some interesting implications. If there are 100 plots of land in a kingdom that are large enough to support a family, and 150 people who want a plot, is it OK to take one? The first person to take a piece might argue that there is plenty left for others, but well before the 100th person staked a claim, the argument would have become untenable. If everybody is appropriating immediately one after another it hardly seems like you could make a reasonable claim that the order of appropriation was morally significant. Having got there moments later, am I less entitled to my share? Where would you draw the line, was the 98th person justified? The 97th, etc. Thus you would have to view any taking of a plot of land as unjustified in this situation, and Locke may have agreed. What happens if you start with 100 plots and 100 people who want a plot, but after the distribution 1 more person comes along and asks for a plot. Does it matter the he/she was not there at the beginning? There doesn't seem to be any justification for claiming so. If you don't have to be there when distribution starts, then what about someone who is born after the distribution? It would seem that we must consider the rights of future generations when evaluating whether "enough and as good" is left for everybody else.

Since presumably the successive generation will also need to use the commons, and without a reason to exclude them as members of the commons, when applying the Lockean Proviso, transfer of common property to private property needs to respect successive generations. Particularly, permanent rights to commons's durable property should not be granted when the future values

cannot be accurately assessed and paid for, and when payment cannot be reliably distributed to the commons of future generations. Since in practice it is almost always impossible to guarantee these conditions past a few generations, permanent rights should never be granted to any commons property whose expected lifetime is greater than a few generations. Instead exclusive access should be granted for a time limited period, i.e., it should be rented with the rents adjusted periodically by the market.

Is It Conceivable that a Consequentialist Theory Requires an Entitlement Theory?

If we assume that people produce, and thus contribute to overall utility, to the extent that they are rewarded for their production then it seems that appropriate rewards would be a requirement for increasing the overall utility of a society.

But what would the appropriate rewards schedule be? Big contributions requiring greater motivation should be rewarded more than small contributions. Small contributions should be rewarded more than no contribution. The best method seems like it would be to reward people precisely in proportion to their contribution. I.e., each person should be paid proportionate to the value added by his or her work.

Economists believe that markets are excellent ways of allocating resources and pricing people's work according to its value to society. Even if markets do not reflect perfect prices—and even if they are sometimes unreliable indicators of value—if they comprise the best pricing method available, then it would seem that a consequentialist theory would support the implementation of markets.

To the extent that markets are useful in some areas, but fail in others, governments should seek a policy of promoting the utility maximizing allocations of markets, while limiting the utility minimizing allocations of markets.

Thus we have a theory of justice in transfer that tells us that it is always just for two people to to

engage in a transaction where the payment exchanged equals the value of the product or service provided. When the payment exchanged exceeds the value of the product or service there is an injustice which could reasonably be rectified by re-distributive, **progressive taxes**.{11}

What are the conditions under which markets fail to maximize utility? One obvious example is monopoly. Another possible example would be in the labor market for corporate executives, which is important because it relates to consequentialist arguments about distributing property to maximize the utilization of property. There are potentially two main factors which make it very difficult for markets to appropriately set executive salary. One is that executive performance is extremely difficult to measure. There are so many factors which go into the success and failure of a business that it is often difficult to factor out the specific contribution of the executive, and thus the market value of individual executives tends to be based on a high degree of myth, hyperbole, and superstition. Secondly executives often have relationships with the board members (whose boards the executive may sit on) which obscure what their real market value is. In other words, boards are often not looking at market value when deciding on compensation.

To the extent that markets fail to accurately assess executive value, they may be over pricing, and thus over rewarding, executive contribution to society. That reward could potentially be given to other more utility maximizing endeavors and is thus unjust. Thus rectification in the form of progressive income taxes could be justified.

This example highlights a single example of how consequentialist arguments for redistribution can be consistent with our proposed consequentialist theory of justice in transfer, and therefore perhaps also with essential aspects of Nozick's entitlement theory. The question is then, are all instances of extreme differences in wealth, which a typical consequentialist theory would look to rectify, the result of violations of our consequentialist theory of justice in transfer, and therefore reasonably correctable following some theory of rectification? Are extreme wealth incentives for the various wealthy people in our society getting the best utility bang for the buck? Or is it possible that people come upon their wealth by either extensive violation of our proposed principles of justice in acquisition and justice in transfer (or by being lucky to be born into a family that acquired wealth in that manner)?

Nozick's principle of justice in transfer, which is essentially that the two parties merely have to agree, is quite different of course. But when he argues that consequentialist theories seem to violate his entitlement theory formulation he seems to be overstating his case. It's possible that the real conflict is in the specific rules of entitlement which he favors, such as strict self ownership and absolutist property rights, but not in the overall idea of some form of entitlement theory.

Conclusions

Through an analysis of the philosophy of property of a few primarily deontological philosophers this discussion has first uncovered a need for consequentialist arguments regarding property arrangements, and subsequently investigated the possibility of purely consequentialist theories.

Non-consequentialist arguments ultimately must posit a basis for morality outside of human feelings, or attempt to justify drawing moral principles from human feelings on some basis other than the consequences of violating those feelings. Without invoking religious dictates (i.e., relying on empirically unverifiable whisksers that could not stand up against Occam's razor), this is a difficult task. Though, other than looking at Locke's approach, this paper did not examine in depth various attempts at doing so, for instance Kant's attempts at justifying the categorical imperative, it did explore some of the difficulties these non-consequentialist theories run into when applied to the realm of private property rights.

Ultimately it seems plausible that a purely consequentialist theory would satisfy the most common intuitive and important natural notions of justice.

It seems that humans have natural consequentialist as well as natural deontological feelings, and thus, unless we can firmly establish **a basis for morality outside of human sentiment**, any theory of property must respect both sets of feelings. To the degree that consequentialist arguments seem capable of doing so within a single philosophical system, they seem to match human sentiments more precisely, and thus seem to be a better candidate for a philosophical justification of property rights.

Finally, we propose a property rights system that protects ownership (the right to use things and to control the fruits of ones labor) and thus maximizes productivity. In a "compensating the commons" system, we see these rights protected, productivity maximized even further, and wealth and resources more fairly distributed. With inheritance taxes to offset the lack of commons compensation in the past, along with some degree of progressive taxation, we may have the outline of a system of private control, property rights, as well as fairness in access to resources.

Footnotes

{1} Stanford Encyclopedia of Philosophy, [Property](#)

{2} *ibid.*

{3} See *Anarchy, State and Utopia*, p. 170

{4} “for the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are—to speak much within compass—ten times more than those which one yielded by an acre of land of an equal richness lying waste in common...I ask whether in the wild woods and uncultivated waste of America, left to nature, without any improvement, tillage, or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniences of life as ten acres of fertile land do in Devonshire, where they are well cultivated.” (John Locke, *Second Treatise of Government*)

{5} Given that Nozick seems to embrace Locke's general argument its a mystery how he fails to clearly spell out how he resolves the problems his own criticism highlights. Others have wondered the same thing: "It is not clear how Nozick would defend (1) against his own criticisms of Locke."

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{6} See *Anarchy, State and Utopia*, p. 291

{7} This is similar to the Bush Administration's relabeling of the “estate tax” by calling it the

“death tax.” A death tax sounds awful and manages to sway most people into opposing it while an estate tax seemed reasonable to most people for many, many years. Just so, a “safety net” and “universal health care” are things that most people support, while virtually nobody supports “slavery.” It becomes rather obvious that such word games are mostly about marketing ones ideas and making them more appealing.

{8} There are endless possible consequentialist justifications for private property, just as there are endless consequentialist schools of thought. This section does not attempt to do an exhaustive survey of the various possible arguments, but rather a general exploration of the strongest consequentialist arguments for private property.

{9} This argument can also be used to support strong, but not absolute, protection of property rights by people who believe that our feelings of ownership and the right to property are cultural. If the disruption that would be caused by trying to change cultural feelings about rights would outweigh the benefits of changing those feelings then its not worth it. Since any forceful change would likely entail tremendous violence, death, and destruction it seems unlikely that it could be justified. Especially since property seems to provide numerous other benefits, and thus cultural feelings of property rights would, at least for now, also need to be respected because of the consequences of ignoring them.

{10} Various communist and socialist ideologies have promoted property free systems, by arguing against these criteria or arguing their systems meet the need for an alternative motivation. Whether it is truly part of human nature to desire property (and thus naturally harmful to deprive people of property) has been disputed. Supposedly superior systems of motivation have been proposed, and alternative positive qualities compensating for underutilization or alternative motivations that lead to maximizing utilization have been claimed. However at this point we would need to leave the realm of philosophy and enter the realm of empirical exploration. We are doubtful that compelling evidence exists to support the idea that there are alternatives to property rights that fully address the above points. But , as Yoans, we remain open to further empirical evidence.

{11} Because its pretty clear that all initial acquisition of real property failed to compensate the commons adequately, because in no case has the value to future generations been taken into account, it can be well argued that all property holders unduly benefit from their holdings, and that for optimum efficiency, and thus maximum utility, that wealth should be redistributed. The simplest way to accomplish this, with little disruption ,would be with significant, progressive inheritance taxes, i.e., taxing small inheritances not at all, large ones modestly, enormous ones more stiffly, and obscenely absurd ones relatively “harshly.” But first we have to start calling such taxes “inheritance taxes” as opposed to Bush's “death tax.”

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