

Nozick's natural rights doctrine, the basic idea Notes for THEORIES OF JUSTICE

1. Each person has a moral right to live as she wants, do whatever she chooses, with whatever she legitimately owns, provided she does not thereby harm nonconsenting others (in certain ways that violate their moral rights).
2. Each person has the moral right not to be harmed by others (in certain ways that violate her moral rights in her person and property).
3. Each person is the full rightful owner of herself.
4. Each person has the moral right to acquire full permanent bequeathable property rights in hitherto unowned parts of the earth.

Objection: As an interpretation of Nozick, this can't be quite right, because property rights cannot be understood as merely rights not to be harmed in certain ways. Consider entirely harmless trespassing. A property right is the right to exclude others from the use of what is owned; if you own the thing, others may not use it without your consent (whether or not their using it would harm you). Or perhaps we might say, according to 1, one has no moral right to trespass on other people's property (since one does not legitimately own it), and according to 2, one does not have the moral right that others not trespass harmlessly on property one legitimately owns. So according to the numbered points above, one does not have a moral right to engage in harmless trespassing, but on the other hand, when one harmlessly trespasses, the person whose party you are trespassing on has no moral right that one not engage in this conduct. This combination of claims is not inconsistent, but is perhaps weird.

Some examples: In each case, is the behavior described something the agent has a natural moral right to do, on Nozick's view?

- a. physical assault (Tom hits Sally).
- b. physical assault, with consent of the victim.
- c. Damage to property. (Sally's factory emits pollution, which falls on Tom's land, withering his crops.)
- d. Offensive conduct. (Tom wears loud shirts, or goes naked, causing Allen distress.)
- e. Theft. (Sally steals Tom's shirt.)
- f. Breach of contract.
- g. Fraud. (Tom sells dirt to Allen. He tells Allen it is medicine that will cure whatever ails him.)
- h. Dangerous drug sale. (Tom sells marijuana, or tobacco, or alcohol, or heroin, or cocaine, or methamphetamine, to Sally.)
- i. Paternalism. (Tom stops Allen from jumping off a tree branch, or a cliff, in order to prevent harm to Allen.)
- j. Harmless malicious conduct. (Tom, a believer in voodoo magic, utters words that he believes will cast a spell on Sally, causing her to be killed.)
- k. Competitive harm. Tom formerly sold back rubs to Allen for \$3. Fred offers to give Allen superior back rubs for \$2, and Tom loses his business.)

- l. Bad Samaritanism. Sally is drowning. Tom passes by, could help her, but does not.
- m. Entrepreneurial Bad Samaritanism. Sally is drowning. Allen passes by in his speedboat, offers to save Sally from drowning in exchange for her life savings. She agrees to this deal.)
- n. Free riding. The farmers in a valley are beset by bandits. A protective scheme is organized. Each day, one farmer stands guard all night at the entry to the valley. In this way, all those living in the valley are protected from bandits. Tom, a farmer in the valley, declines to join the scheme, but continues to enjoy its benefits.
- o. Discrimination. Tom operates a factory on his land, but refuses to hire anyone who is not white-skinned for skilled jobs in his factory.
- p. Risky conduct. Tom operates a nuclear reactor in his basement, for fun. There is a large chance the lab will blow up, which would kill Tom's neighbors. (See Nozick, chapter 4.)
- q. Necessity. Tom builds a cabin in the Sierras on land he owns and erects a NO TRESPASSING EVER sign on it that is plainly visible to anyone who approaches. Sally is hiking in the mountains, encounters an unexpected blizzard, stumbles on Tom's cabin, could trespass and live or refrain from trespassing and freeze.
- r. Voluntary slavery contract. Tom voluntarily signs a contract with Allen. According to the contract, Tom agrees to become Allen's indentured servant (or permanent serf, or permanent slave).
- s. Natural monopoly. (Dick operates an electric utility company, which sells electricity to the residents of San Diego. No firm offers a competitive substitute for what he is selling, so he charges a monopoly price.)
- t. Extortion. (Tom threatens to break Allen's arm unless Allen hires Tom's brother in his firm.)
- u. Moralism. (The state legally prohibits a type of conduct on the ground that it is intrinsically immoral without making any claim that the conduct in question harms nonconsenting others. Examples: Tom is gambling, or engaging in bestiality—having sex with animals but let us stipulate in ways that cause no harm to any animal. The animals are fully anaesthetized, say. These types of conduct are deemed to be harmless wrongdoing, but still wrongdoing, and prohibited by the state.)

Some legal cases. In each case, what response is Nozick's libertarianism committed to?

France, 1855. *Keller v. Doerr*. (Doerr erects a false chimney the sole purpose of which is to spoil the view of the surrounding landscape enjoyed by his neighbor Keller.)

Hinman v. Pacific Air Transport. (Hinman, a landowner, sues Pacific Air Lines for trespass, because airplanes are flying over his property.)

Del Webb v. Spur Industries (1972). Spur Industries had been operating a feedlot for years in a remote area.. Del Webb buys up surrounding land, starts a housing development, sues Spur Industries for creating a nuisance, the feedlot. The judge ruled that Del Webb had moved to the nuisance, but that the public, the present homeowners had a legal right not to be subject to the nuisance, so an injunction was granted against the feedlot—so it had to close down—but the cost of closing down the fee lot had to be paid by the developer Del Webb.

Intentional harmless trespass, I can't locate the citation. A is delivering an appliance to B's home by truck. The only way for the large truck to reach B's home is by driving across C's land. C

declines to allow the truck to proceed. He won't negotiate. B drives the truck across C's land anyway, and C sues for trespass.