

Nozick, chapter 7, part 1. Theories of Justice Fall, 2008

(As usual, critical comments and questions about the text are enclosed in double brackets—[[]]. The rest is straight exposition.)

(As usual, these notes are intended to help you engage with the text in your own way, not to substitute for your own close reading and interpretation of the text.)

Nozick: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)" (from "Preface").

Nozick defends the Lockean individual rights theory he espouses by grouping the possible rival principles of distributive justice into broad categories and arguing that whatever falls into some of these categories must be defective. What's left un rebutted is a set of possibilities in the neighborhood of the particular Lockean account he favors.

Principles of distributive justice can be
 historical or nonhistorical
 patterned or unpatterned
 end-state or not end-state

Since the history of how one acquired what one claims as one's property must matter for the validity of one's claim, nonhistorical principles are incorrect (on this topic, see remarks through pp. 150-160).

Any serious attempt to implement any patterned principle or any end state principle conflicts with clearly permissible liberty, so patterned and end state principles are incorrect (pp. 160-164).

What's left: only unpatterned, non-end-state, historical principles. Within this category, only historical entitlement principles have been articulated, and the only articulated version of historical entitlement theories that we have is the Lockean individual rights theory.

The Wilt/Shaquille argument ("How Liberty Upsets Patterns," pp. 160-163)
 It takes the form of a reductio ad absurdum.

1. D1 is just (Assumption: D1 is your favorite patterned distribution.)
2. People voluntarily transfer resources from the D1 starting point; the result is D2.
3. Whatever distribution results by voluntary transfer from an initial just distribution is just.
4. So, D2 is just (from 1, 2, 3)
5. D1 is not the same as D2. (It would be a weird coincidence if this were not so.)
6. Whatever diverges from a just pattern of distribution is unjust. (An advocate of a patterned theory must hold this.)

7. So, D2 is unjust (from 1, 4, 5, and 6)

4 and 7 can't both be true, so something must give. Nozick: give up 6.

Patterned and End-state principles.

The easiest way to understand these ideas is to ask, what information is needed to apply one or the other type of principle.

A current-time slice principle applies to the distribution of people's holdings at a particular time. According to such principles, all that matters is what each person gets.

Consider a three-person society consisting of Al, Ben, and Cynthia.

At a particular time, here is the distribution.

Persons	resource holdings	what the individual gains from the holding (e.g., happiness, utility)
Al	\$10	5
Ben	\$20	0
Cynthia	\$15	10

This is all one needs to know, in order to know whether the distribution is just, according to a current time slice view. In fact this is more information than one needs. It does not matter which particular named individual gets what holdings and benefits. All that matters is to know that there are three individuals in society and one got a certain amount, a second got another amount, a third another.

An end state principle operates on sequences of current time slices and assesses the sequence as just or unjust according to some standard. Examples of end-state principles of distributive justice: Maximize the total sum!, Maximize the average sum!, Maximin!, Leximin!, Equalize!, Equalize at the highest feasible level!, Pareto! To apply some of these principles, we need to know, besides the actual distribution, what distribution would result from any of the various policies that might be chosen. We need a lot of counterfactual information of the form: What would happen if. . .? The principles could be concerned with some measure of resources or some measure of what people gain from resources (utility, or some other measure of benefit). An end state principle could bid us to equalize people's wealth or income or their utility, for example.

A patterned principle maintains that the distribution of people's resource holdings should be proportional to the distribution of scores reflecting the degree to which

they possess some trait the principle singles out as pertinent. The patterned principle holds: "To each according to her _____." Different patterned principles fill in the blank in different ways. Examples: To each according to her moral merit, market contribution, work effort, virtue, deservingness, IQ, beauty, skin color, etc.

To apply a patterned principle, we need information an end state principle has no use for. We need to know to what extent the individuals in society possess the trait the principle singles out as the proper determiner of distribution. We also need to know what resources people get (or perhaps what they get from their resource holdings).

Persons	trait score	resource holdings	(utility or happiness)
Al	20	\$10	5
Ben	30	\$20	0
Cynthia	5	\$15	10

Nozick, p. 156: "Let us call a principle of distribution *patterned* if it specifies that a distribution is to vary along with some natural dimension [or] weighted sum of natural dimensions." In other words, the distribution of resources should mirror the distribution of the pertinent trait across individuals. If the pertinent trait is virtue, resource holdings are to vary according to virtue, and virtuousness of individuals is as recorded above, then the distribution should be shifted, because Cynthia is less virtuous than Al but has more resources. "Vary according to" can be interpreted in different ways, but we don't have to specify the idea in greater detail, since Nozick rejects the idea root and branch.

Nozick: Maintaining a pattern in existence over time requires a continuous, clearly wrongful interference with individual liberty (the Shaq/Wilt story). The same objection will apply to any end-state principle such as equality of holdings. To maintain equality, people must be blocked from carrying out many innocent acts they want to perform, that would result in departures from equality. [[Question: Must this be so? If the pattern is loose, the interference with liberty may not be so great. Also, one might hold that whether any restriction of individual liberty to achieve some good (equality of distribution, smoothly flowing highway traffic, capable national defense, whatever) is worthwhile depends on the value of what is gained compared to the disvalue of the individual liberty lost (adjusted by assessment of the distribution of those gains and losses).]]

If end-state and patterned conceptions of distributive justice are ruled out, only non-end state, non-patterned, historical principles can be acceptable. Nozick suggests one family of such views: historical entitlement. According to historical entitlement, one's holding of resources or goods is morally justified if and only if

Either

1. One acquired the good in an unowned state by a fair process, a just initial acquisition.

OR

2. One acquired the good by voluntary transfer (sale or gift) from someone who was entitled to it according to (1).

OR 3. One acquired the good from someone who acquired the good by voluntary transfer according to 2, or someone who acquired the good by voluntary transfer from someone who acquired the good by voluntary transfer according to the preceding clause, or (go through any number of iterations) (see Nozick, p. 151).

A good could be in unowned state either because it had always been unowned or it had been appropriated and then some rightful owner abandoned it, waiving her property rights over it.

There could be one supposes various rival versions of historical entitlement theory, but the only version currently on offer is the Lockean individual rights view, which Nozick accepts.

Nozick does not fully specify the Lockean view, but he comments on the Lockean idea of just initial acquisition. This process must satisfy what he calls the Lockean Proviso. He distinguishes a strong and a weak version of the Lockean proviso and opts for the weak version. Nozick, p. 178: "A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened." The idea is that the right to private property is not supposed to be fundamental, but derived, within Nozick's Lockean theory. I am not generally at liberty to act in a way that infringes on others' rights, but if I claim unowned land as my private property, I worsen the situation of others by depriving them of the liberty freely to use it, but I also compensate them fully for this loss by doing things to the private property that improve the situation of nonowners. For example, I appropriate land and grow oranges on it, and the opportunity to buy orange juice from me outweighs the loss of the value to each of them of the right freely to use this land. If this Proviso is not satisfied, or comes to be unsatisfied, my property right in the thing diminishes or evaporates.

[[In Lockean theory one does not generally have the right to act in a way that violates others' rights provided one compensates them. I do not have the right to claim the role of your king, denying you various liberties, provided I compensate you by using my kingly power to protect you from others who might violate your rights. Why is the situation different when it comes to the right of free use of common land that private ownership takes away? We must be thinking of the right of free use of unowned land as from the start provisional, liable to give way

whenever someone first claims the land as private property. But why then is there **any** requirement to compensate, why not think stuff is just there for anyone to appropriate, first come first served? On the other side, why think that satisfaction of the Lockean Proviso as Nozick interprets it is enough to justify initial acquisition? Full private ownership is a complex bundle of rights, one might try to unbundle the package and claim that some but not all of them accrue to the first appropriator. One might also distinguish private appropriation under scarcity and private appropriation under nonscarcity. Nozick's account as he notices, if it is to justify private ownership in a robust way, must apply to scarcity as well as nonscarcity scenarios.]]

[[Notice the possibility of justifying something very close to the Nozickian system of private property rights by a forward-looking nonhistorical argument such as utilitarianism. The argument would go along this line: instituting and maintaining a private ownership system make us all better off in the long run. If we tinker with the system, say by expropriating present owners, we give the wrong incentives to the geese that we were counting on to keep laying the golden eggs, and this would make things worse, not better, in utility terms, in the long run. On this non-Nozickian account, history does not per se matter. We pay attention to history only in so far as doing so improves the future. Trying to correct for ancient injustices and figure out whether long-past first appropriation was just is not useful; we cannot get clear answers to these questions, so we are better off leaving present possessors their property with a statute of limitations on corrective and reparatory justice claims based on past wrongdoing. Depending on the factual premises she accepts concerning what policies would do most to promote future happiness, the utilitarian could be a conservative, as described, a liberal, or a revolutionary communist. Whatever works.]]