

More Questions on Nozick, chapter 4

Regarding Nozick's two questions

Why not always prohibit Lockean boundary crossings without prior consent of the person whose border is to be crossed?

and

Why not always allow any individual to cross any Lockean boundary provided full compensation is paid to any rightholders whose boundaries are crossed?

1. Suppose we take the hard-line position. It is always forbidden to infringe anyone's Lockean rights unless prior consent of the rightholder is obtained.

a. Consider pollution activity.

An individual's actions cause very small amounts of harm to very large numbers of people. These may be very common. It may be unfeasible or impossible to obtain the consent of all persons affected by one's actions. (Some of these people will be future people, with whom no one can negotiate and make deals.)

For this range of cases, Nozick's Lockean rights doctrine may be very restrictive of individual liberty. Almost any nontrivial act I take may be strictly forbidden.

b. Consider actions one might take that impose risk of crossing a boundary. Carrying out my activities, of driving, building a house, operating a factory, etc., let's say are pretty safe, but impose some risk of harm on others. What should a Lockean libertarian say about this? Does imposing risk of harming someone wrongfully count as a violation of the person's Lockean rights?

If we say no, then we get counterintuitive results. (Suppose I play with a nuclear reactor in my basement, for fun. By luck, no harm is done, but there was a 90 percent chance my activity would cause a nuclear explosion destroying my neighborhood. If I violated no one's rights, then it would have been wrong to block me from engaging in this activity, despite the huge risk of big harm I was imposing on my neighbors.)

If we say yes, there are also problems. If imposing risk of wrongful harm is itself a rights violation, then huge numbers of actions that will turn out to be harmless get counted as forbidden according to Lockean natural rights doctrine.

Either way, there are problems.

2. Suppose we take the soft line position. It is always OK to infringe a Lockean right provided full compensation is paid to all affected rightholders. Nozick in chapter 4 suggests some nontrivial reasons to reject this position.

3. The situation might seem to call for compromise. Some rights are normally not permissibly infringeable without prior consent, but if the costs and benefits of standing

fast by this position become too burdensome, this position is relaxed. Some rights are normally infringeable provided full compensation is paid, but of the costs and benefits of standing fast by this position become too burdensome, this position too is relaxed (or tightened). Sometimes compensation is not required, and sometimes what is normally a liability right reverts to a property right.

As stated, Nozick's natural rights doctrine is rigid. You have the rights you have, period, and the rights do not expand or disappear depending on the costs and benefits of sticking by them. To allow rights to be eroded in this way involves movement toward the utilitarianism Nozick and the Lockean natural rights tradition advocates reject.

But the discussion in this note challenges this rigidity. Some take this problem to be a reason to reject a Lockean position altogether. Another possibility might be explored: Maybe tradeoffs can be incorporated in a natural rights doctrine.

Consider Aggregation: for any wrongful harm of any magnitude, however large, that might be imposed on one individual, if enough people would suffer some harm, however tiny, unless the first individual is imposed on, it is morally permissible to impose the big harm on the one individual

In the essay "Tradeoffs" Judith Thomson firmly rejects Aggregation,. But in order to reject it, she ends up embracing the High-Threshold thesis, which arguably is so counterintuitive in its implications as to be clearly unacceptable.

Aggregation in effect says all rights claims are capable of being overridden by cost/benefit considerations. All rights trade off against harms and benefits to individuals. If the costs to nonrightholder of not violating a right are "too big," the right, whatever it is, should be violated.

Aggregation versus the rejection of Aggregation is NOT EQUIVALENT to Consequentialism versus nonconsequentialism. You could be a firm nonconsequentialist and believe that morality requires us not to do whatever will bring about best consequences but instead to respect rights, and also accept Aggregation. (For that matter you could be a consequentialist and Accept Aggregation. In Rawls's terminology, such a consequentialist accepts that some principles take strict lexical priority over others.)

Accepting Aggregation would not by itself resolve Nozick's chapter 34 issues. We would need to figure out what harms acceptably trade off against what other harms and benefits. The question is not just whether rights are rigid or spongy side constraints. If they are spongy, exactly to what degree is any given right spongy?