

Nozick's Lockean Provisos in his Initial Acquisition Theory

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PHIL 547

Term Paper

Nozick's Lockean Proviso

Word Count: 3984

(1045 words from the original essay)

(2889 new words)

April 24, 2004

“*[F]or this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.*” – John Locke (1980, pp. 19)

This paper focuses on Robert Nozick’s two interpretations of the Lockean proviso (above) within his theory of just initial acquisition. The paper is divided into three sections. In the first section, I outline Nozick’s entitlement theory and his theory of just initial acquisition – as they can be found in his classic work *Anarchy, State, and Utopia*.ⁱ In the second section, I consider Jan Narveson’s criticism of Nozick’s first interpretation of the proviso, his criticism of Nozick’s second interpretation of the proviso, and his criticism that both of Nozick’s interpretations of the proviso suffer from the same problematic assumption: they both subtly assume each person has a prior (to initial appropriation) positive right to all things in the world. I then take a position on Narveson’s latter argument: *I argue that* both of Nozick’s interpretations of the proviso do make the subtle assumption Narveson alleges, because each interpretation introduces a compensation-mandating property that requires no effort into the acquisition process.ⁱⁱ In the third section, I present Nozick’s four types of cooperation to mutual benefit from his book *Invariances*. *I argue that* this framework provides further reason for not including Nozick’s two interpretations of the proviso in a libertarian theory of just initial acquisition.

§I.i Nozick’s Entitlement Theory

Nozick’s entitlement theory is meant to explore what justice tells us about holdings (Nozick, 1974: 150). It is designed to be able to assess the holdings of any given person at any given time, and determine which of those holdings, if any, are possessed justly (by that person). If A possesses x, is she entitled to it, or is someone else (or is no one)?

His complete picture of justice in holdings,ⁱⁱⁱ which is able to determine whether any holding is just, is as follows:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone who is entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2. (1974: 151)

What are the principles Nozick mentions in (1) and (2) – (i) the principle of justice in acquisition, and (ii) the principle of justice in transfer, respectively? For Nozick, there are three major topic areas of justice: a) original acquisition of holdings, b)

transfer of holdings, and c) the rectification of injustice in holdings. The principles (i) and (ii) – best expressed while placed in statements (1) and (2), respectively – are meant to be the answers, or “complicated truths,” to the questions that he thinks are inherent in (a) and (b). (1) is meant to answer those questions inherent in (a): by what process(es) can things come to be held?; to what extent does something come to be held by those process(es)?; who can appropriate?; etc. (2) serves a near identical function for (b) by answering the following questions: by what process may a person transfer a holding to another?; how may a person acquire a holding from another who holds it? (1974: 150).

But, this leaves out topic (c) and statement (3). Is there a relationship between them? Yes; however, it is not like (1)(a) or (2)(b), as there is no principle in (3), like (i) in (1) and (ii) in (2), that attempts to answer questions inherent in (c), like (1) answers for (a) and (2) answers for (b). Rather, the relation between (3) and (c) arises from a different process.

The requirement in (3), that all holdings be in accordance with (1) and (2), is often broken, as people steal, enslave, etc. These past injustices in (3) raise topic (c) (1974: 152). And (c), like (a) and (b), comes with its own set of inherent questions: what ought to be done to rectify past injustices?; what do the doers of the injustice owe their victims who have been made worse off by the injustice?; etc.^{iv} And the questions inherent in (c) lead Nozick to (iii) the principle of rectification, though this principle cannot be formulated without some idealizing (1974: 152).

§I.ii Nozick’s theory of just initial acquisition and his two interpretations of Locke’s proviso within that theory

Of the three principles thus far outlined – those that compose Nozick’s entitlement theory: (i) the principle of justice in acquisition, (ii) the principle of justice in transfer, and (iii) the principle of rectification – the principle of concern is (i). For it is while constructing his principle of justice in acquisition that Nozick presents (and makes use of) his two interpretations of Locke’s proviso.

Nozick begins construction of his theory of just acquisition by considering and questioning two popular libertarian theories of just acquisition: a) labour-mixing and b) value-adding.^v It is within (b) that Nozick’s reasoning brings him to his two interpretations of the proviso (as will be shown), so I will eschew consideration of (a) and look only at (b).

Nozick presents (b) as holding that one gains ownership of something when one’s labour adds to the value of that thing, being that one owns the value one creates (1974: 175). But Nozick thinks (b) is flawed in two ways: 1) he thinks it fails to explain why one’s value-added derived entitlement extends to the whole object and not just the portion of the object that has had value added to it, and 2) he thinks it fails to explain why one’s value-added derived entitlement extends to the whole object in cases where the stock of value-addable objects is limited, because, in such cases, any appropriation could have the effect of worsening the position of others.

We will explore (2) since it is where Nozick introduces his interpretations of the proviso.

Nozick feels that the situation of others can be worsened in two ways by limited stock appropriations: A) by losing the opportunity to improve his/her situation by a

particular appropriation or any one and B) by no longer being able to use freely (without appropriation) what he/she previously could (1974: 176).

To prevent the worsening of others by appropriation in cases of limited stock, Nozick introduces a caveat: the Lockean proviso. The proviso states that so long as there is “enough and as good left in common for others,” the appropriation in question is just.

Nozick introduces two possible interpretations of the proviso and bases them on the two ways of worsening mentioned – (A) and (B).

His two interpretations of the proviso are: i) stringent and ii) weak. They are as follows:

A *stringent* requirement that another not be made worse off by an appropriation would exclude the first way [(A)] if nothing else counterbalances the diminution in opportunity, as well as the second [(B)]. A *weaker* requirement would exclude the second way [(B)], though not the first [(A)]. (1974: 176)

For the stringent interpretation of the proviso to be met, both types of worsening, (A) and (B) would have to be compensated for. That is, any person wishing to appropriate a particular thing would have to compensate others who, by their appropriation, lost the opportunity to appropriate that particular thing, or who, by their appropriation, lost the opportunity to appropriate anything at all (worsening type (A)). They would also have to compensate all potential users of the thing for their lost access to the thing (worsening type (B)). For Nozick, the stringent requirement is not to be followed, because it would lead to a scenario where all private property ownership is disallowed. This is mainly because worsening type (A) considers not “enough and as good” to include people who are left with nothing to appropriate. And the only way to right that person’s unjust situation would be to negate the last appropriation to occur (or so Nozick implicitly assumes), since it is that last appropriation which leads to the current injustice. But once you disallowed the last appropriator’s appropriation, you would have to disallow the next to last appropriator’s appropriation since the last appropriator would be left in an unjust position where they could not appropriate. And this would continue until first appropriator’s appropriation would be disallowed, in effect barring all private ownership.

The weaker interpretation of the proviso requires only that worsening of type (B) be compensated for. That is, potential users of the thing to be appropriated would have to be compensated by the appropriator *only* for their loss of access to the thing to be appropriated, but not for their lost opportunity to appropriate the thing to be appropriated. This would make private property possible as one could adequately compensate potential users in two ways: 1) by leaving them some (of whatever was appropriated) to use as before,^{vi} and 2) by the social benefits that private property creates.^{vii}

§II Narveson’s criticisms of Nozick

Narveson finds fault with both of Nozick’s interpretations of the proviso – the stringent and the weak.

Narveson rejects the stringent interpretation (which requires compensation for both loss of opportunity to appropriate and loss of access) because he rejects loss of opportunity as a way in which a person can be validly harmed.^{viii} According to him, there are:

“...innumerable mutually incompatible uses of anything. Someone’s realizing one of them rather than any of the indefinitely many others that consequently go unrealized cannot, just as such, count as an interference with anyone’s liberties” (Narveson 2002: 121).

Anytime a person acts upon a thing, they abolish another’s opportunity to do that same action upon that same thing as well as the opportunity to perform an infinitely large number of other actions upon that same thing. If A eats apple x, he not only eliminates B’s opportunity to eat x, but he also eliminates B’s opportunity to throw x, bake x in a pie, step on x, blow x up, etc. And if we consider eradicating the opportunities of others to act upon a thing by acting upon the thing ourselves as a type of harm mandating compensation (independent of extenuating circumstances like theft), then we harm others simply by living. Any time we interact with our environment to sustain ourselves we are, in some respect, doing wrong to others by preventing them from following suite, or choosing a difference course, with the same resources we consume.

A potential reply to Narveson may be that his criticism captures only half of Nozick’s point concerning how lost opportunity can cause harm. Nozick’s stringent interpretation of the proviso suggests that lost opportunity to appropriate causes harm not only where one loses the opportunity to appropriate the object in question (i.e. the opportunity to act upon the same thing), but also where one loses the opportunity to appropriate anything at all. Even if Narveson’s criticism is true in saying that ‘lost opportunity to appropriate the same thing does not cause harm,’ it fails to answer Nozick’s claim that harm can potentially be caused where one loses the opportunity to appropriate anything at all.

The obvious counter to this reply is that Narveson doesn’t have to say anything at all. Both he and Nozick agree that losing the opportunity to appropriate anything at all is not a type of harm mandating compensation (as we saw in the last section with Nozick’s argument that correcting this type of “harm” would nullify all private ownership). To formulate his own argument criticizing this portion of Nozick’s stringent interpretation would be redundant since Nozick does it himself.^{ix}

Narveson also rejects the weaker interpretation of the proviso – which holds that lost access is a type of harm mandating compensation – because it conflicts with the requirements of his own theory of just acquisition. Narveson holds that someone privatizes a thing when they *use* that thing *first* in “ways that require ongoing access to it” (2002: 119) such that “Others coming on the scene must be able to have publicly ascertainable evidence of the first users presence and activities” (2002: 120). According to his notion of ownership, it is nonsensical to compensate someone for what they had access to prior to appropriation (even if they did use it at one point). Either they used it (and still do use it in ways that require ongoing access to it) so they own it, or they didn’t (and don’t) so they don’t, or they did (and don’t) so they don’t.^x

Narveson also levels a third criticism at Nozick; it attacks both of Nozick's interpretations of the proviso in one blow. Narveson argues that both interpretations suffer from the same problematic assumption: by saying that an appropriation of a thing in nature harms the position of others (by worsening type (A) and/or (B)), one subtly assumes that others possess a prior (to initial appropriation) positive right to all things in nature (2002: 123). And this is problematic because libertarianism, the political philosophy for which Nozick is constructing a just theory of initial acquisition, recognizes only negative rights. To assume a positive right is to contradict the broader framework of the theory within which he is working.

But why does thinking that 'an appropriation harms the position of others (by worsening type (A) or (B))' assume a positive right to all unowned things? It is because one wants to compensate others for things that they have put no effort into obtaining. And if we take a look at the nature of positive and negative rights we will understand why this is the case.

A negative right demands *only* that someone not be interfered with in some respect (i.e. the right to free speech demands that one's ability to speak and write not be infringed upon). Under a political system^{xi} of purely negative rights, to obtain a thing, one has to do something for it; it is not handed to them (unless the thing is a consensual given a gift, or unless the thing "falls into their lap"). To earn an income, one has to work for it. To receive an education, one has to pay for it. Etcetera. This is because one's only guarantee is that others will not interfere, not that they will provide. One would think, in keeping with this logic, that to *initially* appropriate a thing in such a system one would have to put forward effort.

A positive right, oppositely, requires that someone be given access to, or have produced for them, something (usually material) that is required to achieve a specified end, where they can't obtain that thing on their own (i.e. a right to an adequate level of health necessitates access to healthcare services to achieve/maintain good health). Under a political system that includes positive rights (partly),^{xii} most people obtain a thing by their own effort, but those who are unable to obtain that thing have it provided for them. In keeping with the logic of such a system, one would think that those who are unable to *initially* privatize a thing would have it given to them, or the very least be adequately compensated for not being able to appropriate it (in cases where there is nothing left of the thing in question to acquire).

Nozick's two proviso interpretations, it seems, assume a positive right to unowned things by each attributing to the acquisition process at least one compensation-mandating property that involves no effort. Nozick thinks you can be harmed in way mandating compensation by losing your opportunity to appropriate a thing or by losing access to a thing, even though, by both of those standards, you put forward no effort towards privatizing the thing. It's as if you owned them before the initial appropriator tried to take them.

If we return to the value-added theory of acquisition (within which Nozick introduces his two interpretations of the proviso), and consider that theory independent of Nozick's proviso interpretations, we see that one would *only* be harmed by losing something one did something for, i.e. by having an object one added value to stolen or smashed. The value-added theory of acquisition (minus Nozick's two proviso interpretations) fits within a system of negative rights of no interference, since people

only acquire things they do something for. So why would Nozick introduce compensation-mandating properties that require no effort into that theory when such compensation properties fit best within a system of positive rights? To do so contradicts the broader libertarian paradigm.

Nozick may reply to my criticism on pragmatic grounds. Whether or not one thinks the compensation-mandating properties that involve no effort that are proposed by the two interpretations of the proviso fit best with a political system of positive rights or negative rights is irrelevant, if the interpretations of the proviso are not introduced into the appropriation process, one *could* (in principle) run into an irreconcilable initial acquisition scenario. For instance, imagine a state of nature situation where – for whatever reasons – an appropriator appropriates the entire supply of drinkable water on a small Peloponnesian island – say a spring of water. Further, the appropriator is unreasonably selfish and cares not for the plight of the handful of others that reside on the island. This leaves the handful of others on the island with nothing to drink. If the appropriator's greed extends to the deepest depths of depravity, the handful may face death. Alternatively, under the proviso interpretations, the others would be owed (at the *very* least) enough water to survive, as they would have to be compensated for lost access and/or the lost opportunity to appropriate.

I would reply that monopoly appropriation scenarios, despite common opinion, are not irreconcilable. *Everyone* has a price. And it is up to the others on the island to decipher what the appropriator's price is. There would no doubt be some labour they could perform or some good they could obtain (from the island) that would convince the appropriator to trade for water. The price may be high relative to other appropriation schemes, but if there is interest in staying true to a libertarian paradigm, even monopoly appropriation scenarios are reconcilable.

Nozick of *Invariances* and coordinated action to mutual benefit^{xiii}

In *Invariances*, Nozick claims that ethical norms exist to facilitate or insure cooperation to mutual benefit (Nozick, 2001: 250). Can collective ownership prior to initial appropriation be construed as an ethical norm that facilitates coordination to mutual benefit thus substantiating Nozick's two interpretations of the proviso? After a brief survey of the various types of cooperation to mutual benefit (as Nozick of *Invariances* constructs them) we can take up this question.

But before we conduct our survey, we should consider our earlier ideal of staying true to libertarianism. If we want to keep with it, wouldn't any capitulation to a notion of initial collective ownership sacrifice libertarianism's system of negative rights, regardless of whether Nozick of *Invariances* provides a rationale for it? That depends on how one thinks rights arise. If, like Nozick of *Anarchy, State, and Utopia*, one holds that negative rights are natural in the Lockean tradition, then yes. But if, like Narveson, de Jasay, and other contractarian libertarians, one thinks that a system of negative rights, or at least the rules affording one, develops from accord because the situation after the accord is more beneficial for all than the situation before the accord, then perhaps not.^{xiv} If one can show that the cause of the ethical norm of initial collective ownership supersedes the cause of the ethical norms that produce negative rights, then one could read Nozick's two

interpretations of the proviso into a “libertarian” theory of private appropriation. And, luckily for our purposes, Nozick’s discussion of the four types of coordinated activity to mutual benefit is in keeping with the contractarian tradition and not the natural rights tradition.

Let us now move to our survey of the four types of coordinated activity to mutual benefit. The first is type of activity concerns actions that involve a shared goal. An instance of this would be all the residents of a village coming together to build barrier to protect themselves from an imminent flood. The second variety of coordinated activity to mutual benefit involves “complimentary actions toward our separate goals” (Nozick 2002: 245). This would involve any type of trade. X gives Y two ounces of gold and Y gives X ten bushels of wheat. The third type of cooperation is essentially (though not exactly) Hobbes’ first law of nature; it says “let’s agree not to mutilate each other so we can pursue our respective goals without wasting any energy defending ourselves.” As Nozick implicitly implies, this third type of activity is effectively an extension of the second type, because it is effectively an exchange.^{xv} Individuals may not care for the physical wellbeing of the others, but they care about their own, so they exchange the promise of not initiating force. The fourth type of coordinated activity to mutual benefit involves coordinating your activity with those who are acting on the same principles and norms as one’s self (Nozick 2002: 245).

Can initial collective ownership be considered an ethical norm that could facilitate cooperation to mutual benefit in one of these four ways? Also, how can initial collective ownership be reconciled with the third type of coordinated activity to mutual benefit – a rule mandating a negative system of rights by promising non-initiation of force? Let’s answer the second question first. In short, it’s a matter of temporal order. Before a group agrees not to mutilate each other, they need a reason to mutilate each other – i.e. holdings. Why harm someone unless they have something you want? Further, before people have things, they need to obtain them. And it is possible, at least in principle, that people could come to an agreement on how to set out to appropriate the world before they actually did so.

Moving on to the first question, let us assume for the sake of argument that they do come to an initial agreement on appropriation methodology. Assume that people aren’t scattered at random around the globe initially; they, instead, *all* exist in close enough proximity to communicate. Would the appropriation methodology agreement be that all land at present (i.e. before appropriation) be treated as commonly owned?^{xvi} And if so, how? I think this could be possible only if the agreement somehow met with the conditions of the first type activity to coordinated mutual benefit. The agreeers would have to hold some shared value that would see them agree that all property is commonly held prior to initial appropriation. Surely the second type of cooperative activity is out of the question; it would not be mutually beneficial to agree to initial communal ownership since different persons are of different abilities and those of higher abilities would gain no benefit from the agreement. The third type is, as we have seen, not worth considering. And the fourth type would fail too since dealing only with those who think like you wouldn’t guarantee universal agreement.

Going back to the first type of cooperative activity, what would this shared value be? And why would *all* people hold it (which would be necessary for the demands of initial common ownership of all things)? I can’t say. In fact, I don’t think anyone can.

And it is for this reason that I don't think there is a rationale in Nozick's discussion of cooperation to mutual benefit for initial collective ownership.

A critic of discussion may allege that I show a lack of imagination. For one, it is possible that the agreeers all believe that their god gave them the world in common – even Locke thought as much in formulating the proviso (Narveson, 2002: 118).

I would reply even if that were the case, it would be problematic. Once society develops to a certain level of rational secularism – assuming we get more rational rather than less and that rational secularism is more rational and neutral than some theological alternative – it would deem prior compensations for appropriations irrational, because it would deem the invocation of theology unfair to those who disagree.^{xvii}

ⁱ Nozick's entitlement theory is outlined because it is the broader theory within which his theory of just initial acquisition exists. By outlining it, I aim to create a deeper understanding of his theory of just initial acquisition by giving it context. Also, when I outline Nozick's theory of just initial acquisition, his two interpretations of the proviso (contained within it) are explicated.

ⁱⁱ If this argument currently seems esoteric at best, and incoherent at worst, never fear; it will be made clear when it is argued for.

ⁱⁱⁱ Nozick appears to use "justice in holdings" and "entitlement theory" interchangeably, so I do as well.

^{iv} This list is by no means a complete list of the questions inherent in topic (c). It is merely meant to provide the reader with a sample of what such questions would be. For a more complete list see Nozick's discussion of the topic on pp. 152 (1974).

^v It is common knowledge in libertarian *social* and *political* circles that these two theories of just initial acquisition are the two most prominent libertarian theories of just initial acquisition. Academically, given the work Narveson and others, the story may be different.

^{vi} Nozick makes this point on pp. 176 of *Anarchy, State, and Utopia*. I don't understand how there could be some to use as before, unless he means a farmer could reorganize a field of disparately placed wild hemp weeds into a field of densely growing hemp weeds, such there would be plenty of hemp stock (for paper, rope, etc.), including enough for all previous users.

^{vii} Nozick offers a discussion of social benefits on pp. 177 (1974).

^{viii} By 'valid' I mean binding in law. In this case, I mean harm mandates compensation.

^{ix} If the reader finds this exchange concerning Narveson's criticism of lost opportunity as a type of harm to be somewhat of a straw man, it is because the function of the exchange is to clarify the accuracy of Narveson's criticism; it is not a point I wish to argue. This is clear from introductory paragraph, as none of the points in this exchange register a thesis statement there.

^x I don't consider objections to this argument because doing so adequately would require a separate paper concerning which acquisition theory is superior: Narveson's or Nozick's? My focus, by contrast, is should the proviso (or at least Nozick's two interpretations of it) be used in a theory of just initial acquisition. I include this argument of Narveson's concerning Nozick's second interpretation of the proviso so as to present the reader with the complete picture of Narveson's critique of Nozick's interpretations of the proviso. If the reader feels this point should be elaborated because Nozick and

Narveson disagree, I say to them Narveson's next argument (which I present immediately) fills the void, since it too criticizes Nozick's second interpretation of the proviso and provides ample room for discussion.

^{xi} By political system, I don't mean to imply there is yet a state. I simply mean that the rules of the society in question only grant its members negative rights.

^{xii} A system of wholly positive rights would be socialist and most likely would not allow private ownership.

^{xiii} Nozick appears to use "coordinated activity to mutual benefit" and "cooperation to mutual benefit" interchangeably so I do as well.

^{xiv} See Narveson (2002) and de Jasay (2002).

^{xv} See pp. 245 of Nozick (2001).

^{xvi} Note: if this agreement happened, it would be the cause of the norm that facilitates coordinated activity to mutual benefit, or perhaps even the norm itself depending on how quickly people internalized its demands.

^{xvii} I am indebted to Jan Narveson on this point. See pp. 118 of Narveson (2002).

Works Cited

de Jasay, Anthony, 2002. *Justice and Its Surroundings*. Indianapolis, Indiana: Liberty Fund, Inc.

Locke, John, 1980. *Second Treatise of Government*. Ed. by C.B. Macpherson. Indianapolis, Indiana: Hackett Publishing Company, Inc.

Narveson, Jan, 2002. "Property Rights: Original Acquisitions and Lockean Provisos." In *Respecting Persons in Theory and Practice*. Lanham, Maryland: Rowman & Littlefield Publishers, Inc. pp. 111-129.

Nozick, Robert, 1974. *Anarchy, State, and Utopia*. United States of America: Basic Books.

---, 2001. *Invariances*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.