

A FREE-RIDER PERSPECTIVE ON PROPERTY RIGHTS

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1. Introduction

IN HIS ARTICLE “Nozick’s Argument *for* the Legitimacy of the Welfare State,”¹ Michael Davis seeks to establish a line of reasoning justifying an extensive state based largely on what he interprets to be Robert Nozick’s theory of entitlement. According to Davis, this argument can easily be constructed and merely depends on “seeing most so-called free-rider problems from a new angle, that of property.”² Indeed, Davis takes care to promote this new perspective, and much of his article focuses on establishing an alternative view on property and free-riding. If this view were defensible it would have implications far beyond questions regarding Nozick’s minimal state, or even governmental authority and private enterprise more generally. The complexity, ingenuity, and initial promise of Davis’ argument therefore warrant a detailed analysis. As a foundation, a brief restatement is necessary.

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¹ Davis (1987).

² *Ibid.*, p. 576.

2. Davis' Theory: A Brief Restatement

Davis' intent is to propose a Lockean theory of property acceptable to Nozick or "any rational libertarian," and to prove the merits of this theory by measuring it against a criterion of adequacy that he offers.³ After dispelling a variety of anticipated criticisms, Davis believes to be able to use his Lockean theory of property to justify the creation of a welfare state on the basis of Nozick's minimal state.

According to Davis, a Lockean theory of property is not a theory of property in civil society, but rather "a theory of what should happen in a certain governmentless state peopled by rational beings."⁴ Based on this understanding Davis argues that intuitions cannot be of help in evaluating the theory, because intuitions are necessarily "intuitions of property... as we know it" from civil society, and not those of property in the state of nature.⁵ Having essentially dismissed intuitions as a judge of his theory, Davis introduces his criterion of adequacy and its four conditions.

These conditions are that the theory must (1) be internally consistent, (2) be able to morally justify a system of property in the state of nature, (3) be effective in resolving property questions in the state of nature, (4a) abide by the "principle of liberty"⁶ ensuring that social practices providing people greater opportunities to do as they choose are to be preferred, and (4b) adhere to the "principle of wealth maximization,"⁷ which states that—in accordance with the principle of liberty—social practices creating wealth should be preferred to those that do not.⁸

Davis' Lockean theory of property which is meant to be evaluated on the basis of this criterion of adequacy consists of six principles. Those principles which are most central for a critical analysis of Davis' argument are presented here:

1. Definition of "Produce": (b) You produce an intangible insofar as what you do adds to the value of an already existing object without physically changing it.
2. Principle of Acquisition: (a) What you produce (whether an object or an intangible) belongs to you unless (and until) you sell it, give it

³ Ibid., p. 577.

⁴ Ibid., p. 576.

⁵ Ibid., p. 577.

⁶ Ibid.

⁷ Ibid.

⁸ See *ibid.*

away, abandon it, or the like (subject, perhaps, to the Lockean Proviso or other moral constraint). (c) What another transfers to you, similarly belongs to you, provided... you do not refuse it.

3. Principle of Private Property: You have an exclusive right to control, sell, give away, or abandon whatever belongs to you..., and you continue to have that right until you give it up or transfer it to another...

5. Definition of Unjust Alienation: (b) Anyone who withholds from you what belongs to you, wrongs you, unless he acts with your consent or under some preemptive moral rule, for example, to collect damages you owe him.

6. Principle of Correction: Anyone who wrongs you by taking or withholding what belongs to you may be forced to return it, to compensate you for its loss, or (perhaps) even to suffer punishment..."⁹

Davis interprets all but principles one and two of his theory to be a partial but uncontroversial restatement of Nozick's entitlement theory. Accordingly, his efforts focus on expanding upon and defending the first two principles. With regard to principle 1(b) Davis distinguishes between 'objects,' which are defined as having a location in space and being touchable, and so called 'intangibles,' which lack a location in space and are untouchable.¹⁰ As an example of how such an intangible is produced Davis discusses transporting water from a mountain well to the desert. While the water (the object) is not physically changed its value is greatly increased through the newfound convenience of being able to purchase it in the desert. Thus, the water becomes the bearer of an intangible which is "a function of convenience."¹¹ Importantly, it is possible to produce intangibles that attach to objects one does not own, thereby increasing their value. In particular, Davis notes that the increase in the value of one's home that results from the improvements a neighbor makes to her own property are produced by her.¹²

In combination with principle 2(a) this has far reaching consequences. Given that what a person produces belongs to her, one may become a part-owner of any object owned by another in the process of producing an intangible that attaches to that object. The only condition for this is that either the owner consents or it is done without directly interfering with the

⁹ Ibid., p. 578.

¹⁰ See *ibid.*, p. 579.

¹¹ Ibid., p. 580.

¹² See *ibid.*, p. 586.

object. The resulting partial ownership then extends to the value of the intangible or the “value added.”¹³ As a consequence the producer of the intangible is entitled to receiving payment for this value added.

Based on these ideas Davis then formulates his thesis regarding how the transition from Nozick’s minimal state to the welfare state can be accomplished without either violating any individual rights or the “foolhardy donation of liberty.”¹⁴ As this argument itself builds on Nozick’s explanation of the emergence of the minimal state, a quick review of that argument is in order.¹⁵

Nozick argues that the minimal state arises as an unintended consequence of individual actions that are optimal responses to the state of nature: an invisible-hand explanation of the minimal state.¹⁶ For their own safety, individuals bond together in so called mutual-protection associations that are transformed into a dominant protective agency by market pressures.

This agency then operates a monopoly of protective services in its area; however, this is no monopoly on the use of force. Those individuals who choose not to purchase protective services are not shielded against aggression from others and retain the option to enforce their own rights. Thus, according to Nozick, the dominant protective agency is not a state.¹⁷ Just as in the state of nature, the choice of some individuals to defend their own rights can cause problems. In particular, the misenforcement of rights or unjust retaliation from independents may pose risks to the members of the dominant protective agency.¹⁸ Therefore, the dominant protective agency will prohibit any such actions against its clients and thereby claim a monopoly on the use of force in its territory. With the establishment of this monopoly, the dominant agency creates, in Nozick’s words, the “ultraminimal state.”¹⁹

While the ultraminimal state improves the safety of most individuals, it significantly disadvantages the independents. Given that they are disallowed

¹³ Ibid., p. 583.

¹⁴ Ibid., p. 590.

¹⁵ For a more detailed reconstruction of Nozick’s explanation of the emergence of the minimal state, see Wündisch (2014), Ch. 2.2. The following three paragraphs are a summary of that reconstruction and rely on it, in part verbatim. Ibid., pp. 24-26.

¹⁶ See Nozick (1974), Ch. 2, esp. pp. 118-119.

¹⁷ See *ibid.*, pp. 22-25.

¹⁸ See *ibid.*, Ch. 4, esp. pp. 65-78. For results of this argument, see also pp. 88-90 and 110-113.

¹⁹ Ibid., p. 26.

from enforcing their own rights against clients of the agency, they can no longer threaten to defend themselves against aggressors and are, therefore, exposed to increased risk of being maltreated. Thus, the independents deserve compensation.²⁰ Those operating the minimal state are morally required to make the independents as well off as they were before being disallowed from defending their own rights—by providing them with protective services in disputes with paying clients of the agency.²¹ Once all individuals within the territory of the ultraminimal state are offered protection, the minimal state is created.

As mentioned before, Davis aims to show how this minimal state can become a more extensive state without either violating individual rights or forgoing individual liberties. For Davis this story begins with what he calls the “second-class members” of the protective agency.²² These are the former independents who receive protective services as compensation and who the agency only shields from the hostile actions of “full members” who are, in contrast, completely protected.²³ Due to the services provided by the protective agency, even the second-class members live in a state of security rather than “civil disorder, insecurity, and constant vigilance.”²⁴ The value of that security, Davis claims, is reflected in its impact on the price of properties owned by citizens of the minimal state. It follows in accordance with the definition of ‘produce’ 1(b) and the principle of acquisition 2(a) that as the agency has produced this added value it belongs to the agency. Given that under the principle of private property (3) the agency has the exclusive right to control this added value it may under the principle of correction (6) demand and forcefully collect compensation for its loss should those who have benefited not return the value of the security if, in accordance with the definition of unjust alienation 5(b), they are asked to do so.²⁵

Given this right the agency would then demand of the second-class members to return the full value of the security provided or, alternatively, to

²⁰ See *ibid.*, p. 110. For the principle of compensation, see also *ibid.* pp. 78-84.

²¹ See *ibid.*, p. 110. While paying members receive protection against all aggressors, compensation for independents includes merely protection from the actions of paying clients of the agency. Given that Nozick envisions “almost universal participation” in the fee-based protective program of the agency, this distinction is supposed to be of limited practical relevance; however, it does exist (*Ibid.*, p. 113).

²² Davis (1987), p. 590.

²³ *Ibid.*

²⁴ *Ibid.*, p. 591.

²⁵ See *ibid.*, pp. 591-592.

become first-class members. Davis assumes that the agency's fees for first class-members are lower than the value-added it provides, because the agency's efficiency has been proven by market competition. Thus, the only rational choice is to pay the fee, and as a result, only first-class members remain.

If now a majority of those members (or any number sufficient to establish an alternative protective agency) wishes for the state to fulfill more extensive functions because "each new function is one which... would benefit [them]," these functions can justly be assumed by the state—and financed by all.²⁶ Of such functions, Davis assumes there to be many; among them the provision of roads, health-care services, and unemployment insurance. The reason why these state-sponsored services would benefit the majority is simple: due to, among other things, its large scale of production, the state can provide them more economically than the individuals who could purchase them individually. Thus, given the consent of the majority, the opportunities for the just extension of the minimal state are without theoretical bounds.

In closing, Davis considers why the rich should accept this overtly redistributive taxation. First, based on the Lockean theory of property and the value-added analysis, Davis claims to have established that "[n]ot taxation but "tax rebellion" is theft."²⁷ Thus, the rich have no right to protest. Second, it is in the self-interest of the rich to pay taxes and remain members of the agency because the value of their property results from the government's productive activities. Thus, if they were to quit their membership that would mean "giving up all, instead of only part, of the wealth they derive from governmental activity."²⁸

As it seems, Davis has taken a Lockean theory of property to build upon the minimal state, thereby single-handedly turning Nozick's results on their head. Is that so? Unfortunately, there are many reasons for concern. My discussion of them is suitably separated into those relating to Davis' principle of acquisition and those pertaining to his continuation of Nozick's invisible hand explanation. They are treated in turn.

²⁶ Ibid., p. 593.

²⁷ Ibid., p. 592.

²⁸ Ibid., p. 594.

3. Criticism of the Principle of Acquisition

The principle of acquisition of Davis' Lockean theory of property states under 2(a) that you own what you produce, and it is—in combination with the definition of produce under 1(b)—taken to mean that one may produce an intangible on the basis of an object owned by another. Together with the definition of unjust alienation (5) and the principle of correction (6), this requires “me to pay my state-of-nature neighbor for improvements she makes to her property if they raise the value of mine.”²⁹ While Davis agrees that this conclusion may be “hard to accept,” he dismisses the relevance of these intuitions and instead makes reference to the criterion of adequacy by which he wishes his theory to be judged.³⁰ In particular, Davis claims that the results of his theory adhere to the principle of liberty (4a) and the principle of wealth maximization (4b).

In fact, the results do adhere admirably to principle 4(b): knowing that one will reap the rewards of any action that positively affects neighboring property values encourages such actions. Thus, the above social practice adds to useful goods and services and should, therefore, be preferred to its alternative *if* this is consistent with the principle of liberty. Given that principle 4(a) has priority over principle 4(b), it is crucial to evaluate what this social practice implies for liberty.

An especially drastic case is best suited to indicate potential complications: a poor person P lives in a house with a market value of \$20,000 and has additional funds of \$5,000. P is happy where she is and wishes to remain there. Unexpectedly, famous person F moves into a neighboring property and thereby increases the market value of all homes in the area. The house of P, as well as houses nearby, is now worth \$50,000. According to Davis' analysis, P owes F the added-value of \$30,000. However, P only has funds of \$5,000 and would need to sell her home—leaving her with \$55,000—to be able to pay F. Having sold her home and paid F, P is left with funds of \$25,000 but without a home. Further, given that the values of other homes have increased as well, P needs to leave the area to be able to purchase a new home.

Clearly, in this situation the social practice of having to refund added-value to its producer does *not* give “people greater opportunity to do as they

²⁹ Ibid., p. 586.

³⁰ Ibid.

wish,” and therefore violates the principle of liberty.³¹ However, objections might be raised against this example.

First, it seems excessive. In fact, it is far from it. All that is required to achieve the result described above is for the value-added to exceed the additional funds of P. Situations where changes in property values due to the positive development of a neighborhood outstrip the financial resources of its residents are common. This is especially plausible given that the private home frequently makes up most of the net-worth of a home-owning individual. If anything, this would be even truer in the state of nature. Thus, the example can be generalized and is likely to apply under many circumstances. That said, it is important to keep in mind that the force of the example does *not* turn on the question of whether financial circumstances like those described in the example are actually common. As Davis himself recognizes, statistically prevalent reductions in liberty are not required to defeat his principles because those who create wealth and then demand the return of the value-added must “not reduce anyone’s liberty.”³² Therefore, it is not necessary to turn to statistics on net worth and home equity to support the above argument.

Second, one may claim that these cases remain the minority and cannot be compared to the minor home improvements Davis discusses. While that is true, Davis builds his case in order to justify something very different: asking the second-class members to refund the full added-value of the security they enjoy. This is significant because (a) many of the second-class members are assumed to be relatively poor, and (b) Davis estimates the value-added of security to be “between 50 and 90 percent” of the property value affected by it.³³ Thus, to avoid the above result of having to sell the home, any second-class member would have to be able to pay at least 50% of her property’s value to the state. That is highly unlikely.

Third, one may object that the example does not take into account Davis’ caveat of the Lockean proviso. This is correct. According to Davis’ principle, 2(a) is “subject, perhaps, to the Lockean proviso or other moral constraint.”³⁴ However, there are two reasons why this does not impede the criticism of Davis’ position. First, in the case of the second-class members, Davis himself does not believe that the proviso applies or else he would not

³¹ Ibid., p. 577.

³² Ibid., p. 586.

³³ Ibid., p. 591.

³⁴ Ibid., p. 578.

argue that they are liable to repay the added-value.³⁵ Second, whether the proviso applies or not ultimately has no bearing on whether the second-class members are morally required to repay the added-value.³⁶ If one assumes the proviso applies, then principle 2(a) is void, and as the agency no longer owns the security it has produced it may not force the second-class members to repay it. Alternatively, if one assumes the proviso does not apply, principle 2(a) remains in effect but violates the principle of liberty, thereby rendering the agency's demand for repayment illegitimate.

Therefore, having taken into account the three objections above, it can be concluded that either (a) the principle of acquisition applies but violates the principle of liberty in the above case, or that (b) the principle of acquisition does not apply. In either case, the agency's demand for payment of value-added is unjustified and—where he needs it most—Davis' argument fails. It may be instructive to note that the above critique functions internally, without the need to rely on external principles that require independent support. Therefore, Davis' argument fails even if measured against his very own standard: the criterion of adequacy.

4. Reclaiming Compensation is Unjustified

Davis argues that the protective agency is justified in reclaiming the full value of their protective services from the second-class members because the agency has produced that value. For reasons not directly related to his theory of property, he is fundamentally mistaken. Davis wishes to establish an extensive state without violating any rights and is aware that in this task he relies on Nozick's justification of the minimal state, from which he wishes to proceed.³⁷ However, the transition from the ultraminimal state to the minimal state was only possible through compensating the independents by providing

³⁵ See *ibid.*, p. 591.

³⁶ Not being essential, the question of whether the proviso applies remains interesting. Under what kind of circumstances might this be the case? The Lockean proviso can be interpreted as establishing the necessary condition of acquisition that "enough and as good should be left for others" (Wolff, 1991, p. 107). The case in question reflects a situation in the state of nature, thus, it is permissible to assume enough land is left for others (See *ibid.*, p. 108). However, this land might not be as good. It is reasonable to assume that, given budgetary and other constraints, people live on their preferred property. Forcing them to move, therefore, causes them to accept a less-preferred option—property that is 'not as good.' This suggests it is likely that the Lockean proviso applies.

³⁷ See *ibid.*, p. 591.

them with protective services.³⁸ Had this compensation not been rendered, the action of the dominant protective agency to restrict the rights of the independents could not have been justified. Thus, to reclaim that compensation would constitute a violation of rights—a prospect Davis cannot build upon.

Not wanting to give up too early, one might wish to consider how Davis could adjust his account so as to make a reclaiming of added-value possible. Perhaps the second-class members enjoy increased property values above and beyond what they deserve in compensation. Given Davis' insistence on interpreting free-rider problems from the perspective of property and his belief that "security can account for between 50 to 90 percent of the value of land," such a modification might fit his theory.³⁹ However, this objection fails for several reasons. I present them in increasing order of significance.

First, Nozick has painstakingly clarified that the independents must be compensated in such a way as to offset the net disadvantages they incurred from the rights restriction that was put in place. In this process, special circumstances such as the wealth, the cost of self-protection, and even the financial liquidity of the independents were taken into account.⁴⁰ Thus, overcompensation is highly unlikely.

Second, any increase in property values the independents might observe is not a benefit in addition to the value created by the protective agency, but merely a potential measure thereof.⁴¹ Thus, to establish the value-added produced by the protective agency, the increase in property values may not be added to some alternative estimate of the value of security. Anything else would be double counting. Thus, increased property values are no indication of overcompensation.

Third, a related point is that if one accepts increased property values as a measure of value-added, we must subtract any funds the independents might contribute in order to finance these services.⁴² Thus, property values

³⁸ See Nozick (1974), p.110.

³⁹ Davis (1987), p. 591.

⁴⁰ See Nozick (1974), pp. 110-113. For a discussion of liquidity concerns see in particular p. 112.

⁴¹ Davis appears to know about this relationship. See Davis (1987), pp. 584 and 591.

⁴² Davis does not take this point into account and does not show that he is aware of it. See *ibid.*, p. 591.

are at best a very imprecise guide to value-added that must be adjusted for individual circumstances.

Fourth, and most interestingly, the property values of individual homes are highly unlikely to rise because of the activities of the protective agency. Given that this increase in property values is such a central assumption for Davis, it is necessary to analyze on what it is based and why it fails. Davis assumes that living in a state of security is worth more than living in a state of civil disorder and danger. That is certainly the case. Based on this assumption, Davis concludes that the added-value characterizing the difference between these two states is bestowed upon the property that is protected in the state of security and peace.

However, this conclusion is based on Davis' intuitions of property in the state of civil society—which he expressly criticizes—rather than intuitions about property in the state of nature.⁴³ In civil society increased security within a certain territory does increase the value of the property within that territory because the police are consistently concerned with protecting that property—whoever owns it. Thus, when moving into a 'safe neighborhood,' a person in effect purchases this police service as part of the price of property. However, in the state of nature Davis envisions, and certainly under Nozick's assumptions, the protective agency does not protect property as such. Rather, it protects the property of individuals in accordance with the protection policy they have purchased or received as compensation—quite independently of the property they own, buy, or sell.⁴⁴ Thus, the level of protection a property owner enjoys depends on her policy. This is especially important given that the protective agency sells a variety of policies offering different levels of protection.⁴⁵ Given this situation, a buyer has no reason to expect increased security from moving to a certain neighborhood and will, therefore, be unwilling to pay a higher price based on any such outwardly relevant protection.⁴⁶

⁴³ See *ibid.*, p. 577.

⁴⁴ How that protection policy was paid for—privately or as compensation from the minimal state—is not relevant to this argument. What matters is that how a piece of property is protected depends on the protection policy of its owner rather than whether it is located in a 'safe neighbourhood.' See Nozick (1974), pp. 110-111.

⁴⁵ See *ibid.*, p. 112.

⁴⁶ Unintended support for this argument can be found in Davis' explication of what it means to add value to an object. What is required is to "add something for which a relatively rational, well-informed person might pay in free exchange" (Davis (1987), p.

Nevertheless, one might ask whether persons do not enjoy considerable security simply by living in an area where the great majority of residents are well protected. Such a question, however, appears to result—once again—from intuitions about property in civil society. Generally speaking, and if one wants to follow Nozick's interpretation of the development of the minimal state, the answer is negative. Already in the ultraminimal state only a very small group of persons are not members of the protective agency; thus, one might assume that by virtue of living with other protected individuals these independents have little to fear. On the contrary, their inability to protect themselves "seriously disadvantages the independents in their daily activities and life."⁴⁷ Accordingly, it becomes clear that individual protective policies determine security and any advantages gained from living in a 'safe neighborhood' are minimal. This, of course, does not show that the services of the protective agency have little or no value. It is simply suggested that (a) increased property values are no guide to added-value because there are none, and (b), second-class members—having little money—could never repay the agency because in selling their houses they could not recoup the value of their protection.

It remains that to reclaim the added-value of the protective policy would violate the rights of the second-class members and is, therefore, unjustified. Further, responding to that claim with repayment is simply not possible for independents with limited financial resources. Davis' story of the extensive state ends before it begins.

Up to this point (in section 3) I argued that Davis' principle of acquisition must be rejected even by his own standards because it violates the principle of liberty. This result in itself suffices to reject Davis' overall approach and to show that he cannot build a welfare state on the foundation he suggests. In the present section (4), I argued that Davis cannot legitimately demand payments from second-class members for the security provided because that security is itself compensation offered by the state. Demanding its return would make the minimal state—upon which Davis wishes to build—illegitimate.⁴⁸

579). A well-informed person knows that in the minimal state, protection depends upon her protective policy, not her property.

⁴⁷ Nozick (1974), p. 110.

⁴⁸ See *ibid.* and Davis (1987, p. 591).

5. Services Must Benefit Everyone

For the sake of argument it is instructive to assume—counterfactually—that the minimal state is actually justified in demanding its full value-added from the second-class members and that consequently all purchase first-class memberships. Further, one might assume that a majority of those members favor the extensive state and that they either establish a new dominant protective agency or that they gain control of the original one.⁴⁹ Now, according to Davis, the agency may establish one additional state-sponsored service after another and would be justified in forcing all members to pay for each one through taxes.⁵⁰ Is that so?

Davis' fundamental argument is built on the notion of taxation being justified because it simply consists of "returning to the government what it has produced."⁵¹ Notably though, this argument relies on the government producing added-value that those who are to be taxed benefit from *individually*. This is clear based on Davis' discussion of how an object can become the "bearer of an intangible,"⁵² his justification of making second-class members pay for protective services,⁵³ and also his theory of property.⁵⁴ If tax rebellion means to "withhold what belongs to another," then surely one must have first received something.⁵⁵ Further, the state is only justified in claiming what it has provided in added-value.⁵⁶ Thus, not only must the activities of the state provide individual benefits for all those who are to be taxed, but the taxes may also not exceed what those individuals must rightfully return—the added-value the state has provided.

Which state services are likely to be justifiable under these conditions? Davis' first suggestion is a system of public roads, and indeed there is much reason to believe that evenly distributed roads, in combination with a not-

⁴⁹ Here—and in line with Davis—problems of coordination among members and especially the challenge of potentially creating a new agency that can take over the monopoly position of the old agency are neglected (See Davis, 1987, pp. 592-593). Further, no tribute is paid to the fact that the group desiring the extensive state most likely contains all poor members and is, therefore, financially ill-positioned against the wealthy population with contrasting interests.

⁵⁰ See *ibid.*, pp. 592-593.

⁵¹ *Ibid.*, p. 592.

⁵² *Ibid.*, p. 579.

⁵³ See *ibid.*, p. 591.

⁵⁴ See *ibid.*, p. 578.

⁵⁵ *Ibid.*, p. 592.

⁵⁶ See *ibid.*, p. 591.

overly-progressive tax system, provide benefits not larger than the tax levied on every individual.⁵⁷ In fact, this significant added-value provided by the government would even be measurable by Davis' preferred method: evaluating the resulting increase in property values. This increase in property values should be expected to occur as long as the state does not collect the value-added by means of either a toll on roads or a property tax.

However, while there are a variety of further appropriate services imaginable (public sewage systems, water provision, etc.), it is questionable whether truly welfarist services such as unemployment insurance or, more importantly, strictly redistributive welfare payments are among them. Unemployment insurance mainly has value for those who have some chance of becoming unemployed. Those who either have reason to be completely confident in never being out of work or those who are independently wealthy and have no reason to work, will hardly benefit. Thus, it would violate their rights to tax them for such services—even given Davis' analysis. By extension the same is true of purely distributive welfare payments. Those who trust in Davis' property perspective on free-rider problems can verify this by considering how property values in the most exclusive areas would react to the provision of these welfarist services. Given that they provide little added-value to the owners of these properties, prices would remain stable or—given high taxes—decline. Thus, even if one assumes that the beginning of the justification for the welfare state is functional, Davis can only make limited progress. While a state more extensive than the minimal state appears justified, the moral welfare state appears elusive.

However, two solutions to this problem might be at hand. First, Davis may want to argue that welfare expenditures would indeed have value for every member of society and not only for those who are likely to benefit directly via welfare payments. The mechanism through which welfare expenditures could be of value to everyone is crime prevention. If welfare expenditures were to reduce the prevalence or intensity of crime they may well contribute to the security and thereby the wellbeing of every member of the relevant society. This connection between welfare expenditures and reduced crime rates appears to be especially plausible in the context of property crimes.⁵⁸

⁵⁷ A progressive tax system (in contrast to a proportional tax system) is “a system under which an individual's average tax rate increases with income” (Rosen, 2002, p. 536).

⁵⁸ For a closely related argument, see Wündisch (2014), Ch. 3. For empirical evidence supporting the connection between welfare payments and crime rates, see for example,

Second, Davis could rely on a cross-subsidization of services to bolster his argument. Ultimately, Davis' problem discussed above is caused by his decision to portray the state as adding services gradually. This causes the evaluation of some services being state-sponsored to be positive, while others are rejected. If, alternatively, Davis would portray the decision about having an extensive state as being a 'yes or no' choice, that particular problem might vanish. Under these circumstances the question would no longer be whether each additional service provides an added-value to each individual that is no greater than her tax contribution, but whether the extensive state as a whole would fulfill these criteria. Thus, under this new system of evaluation, services that are highly desirable for all (e.g. public roads) could in fact 'subsidize' less universally demanded services (e.g. opera houses) as long as there remains a net benefit or added-value of the state, for all.⁵⁹ Given Davis' assumption, there is nothing that makes this 'all or nothing' approach less justifiable than building a state in increments.

However, it remains that Davis' justification of the welfare state fails in far more fundamental places; in particular, it violates the principle of liberty. Therefore, Davis neither justifies an extensive state nor does he establish a consistent free-rider perspective on property rights.

6. Conclusion

Davis offers what he calls "Nozick's Argument *for* the Legitimacy of the Welfare State."⁶⁰ I have presented a multilayered argument for why Davis' and similar arguments must fail. After a brief restatement of Davis' position I argued—in section three—that Davis' Lockean theory of property fails because it violates the principle of liberty. This argument is one from internal consistency and succeeds without support from external principles. It alone suffices to reject Davis' approach.

In section four I put forward and defended the claim that Davis is gravely mistaken in the assumption that his arguments can justify demanding from second-class members of the agency repayment for the value created by the security services of the agency. This argument is based on a crucial aspect of Nozick's theory of the minimal state, namely, that the second-class

Messner and Rosenfeld (2001), (1997); Zhang (1997); Grant and Martinez (1997); Hannon L. and Defronzo J. (1998).

⁵⁹ Davis has a similar cross-subsidisation of services in mind but does not use it to strengthen his argument. See Davis (1987), p. 593.

⁶⁰ Davis (1987).

members of the agency have received that value as compensation for the transition from the ultraminimal to the minimal state. The argument turns on Davis' reliance on Nozick's construct of the minimal state. If Davis were willing to forgo this connection to Nozick he could potentially avoid the underlying challenge. However, not much would be left that could justify the claim of presenting "Nozick's Argument *for* the Legitimacy of the Welfare State." Of course, the argument from section three would stand even in this case, causing Davis' theory to fail.

Section five assumes—counterfactually and merely for the sake of argument—that the preceding arguments against Davis' theory fail and explores how much headway could be made towards the welfare state under these conditions. I present two strategies that Davis could—counterfactually—employ to argue for the justification of the welfare state. However, as stated above, Davis' approach fails at several fundamental points.

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