

## FORCING NOZICK BEYOND THE MINIMAL STATE: THE LOCKEAN PROVISIO AND COMPENSATORY WELFARE

ADAM BLINCOE\*

### I. Introduction: Taxation, Compensation, and Forcing Nozick beyond the Minimal State

In *Anarchy, State and Utopia*, Robert Nozick notes that a vice of patterned principles of distributive justice is that they “necessitate redistributive activities.”<sup>1</sup> He argues that even a modest amount of free exchange will almost certainly upset a pattern of wealth distribution. Consequently, any state that seeks to maintain a particular pattern of wealth distribution will need to periodically carry out a redistribution of wealth, often in the form of taxation on earnings, which for Nozick is “on par with forced labor.”<sup>2</sup> This unfree labor is abhorrent to Nozick’s libertarian sensibilities; it runs counter to a strong claim of self-ownership and an

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\*Adam Blincoe is Honors Faculty Scholar at Longwood University. He thanks John Simmons for extensive comments and discussion concerning early drafts of this essay, Jan Narveson for comments he gave on an earlier version of the paper presented at the Eastern APA, and two anonymous reviewers for their comments.

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<sup>1</sup> Robert Nozick, *Anarchy State and Utopia* (Basic Books, 1974), p. 168. See pp. 160–74 for his full account.

<sup>2</sup> ASU, p. 169 (see also the related footnote further clarifying this claim).

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emphasis on individual rights.<sup>3</sup> Yet, it seems not all taxation is beyond the pale for Nozick.

In part 1 of *Anarchy, State and Utopia* (ASU), Nozick argues for the legitimacy of a minimal state. The activity of this state consists largely (perhaps solely?) in protecting its citizens from harm and executing punitive justice when harms are committed against its citizens. In the course of his argument supporting the minimal state, Nozick appears to accept a limited amount of taxation (and apparent redistribution) as legitimate.<sup>4</sup> One might ask though, what makes taxation in support of the minimal state legitimate and taxation in support of patterned conceptions of distributive justice illegitimate? For Nozick, the difference lies in the fact that the former serves a compensatory purpose and the latter does not. That is, the minimal state can tax its clients to compensate nonclients within its territories who have been deprived of the benefits of privately enforced justice.<sup>5</sup> This is an expression of the principle of compensation Nozick develops in chapter 4 of ASU, namely, that those disadvantaged by a prohibition on certain risky activities are to be compensated for their disadvantages.<sup>6</sup>

In this essay, I will be concerned with another sort of compensation and how it forces Nozick's position to (d)evolve beyond the acceptance of a merely minimal state (and its merely minimal taxation). The principle of compensation already at work in Nozick's minimal state is important because it sets a precedent that at least *some* taxation is legitimate, and therefore not on par with forced labor. In what follows, I will argue that Nozick's entitlement theory, and his treatment of the Lockean proviso in particular, forces him into a dilemma involving the compensation of people with rather low welfare prospects. Either (a) Nozick must admit that taxation for the purpose of guaranteeing a compensatory level of welfare (and not merely for protection from harm) is legitimate or (b) he must admit that his entitlement theory

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<sup>3</sup> For Nozick and many libertarians, a strong claim of ownership over one's labor (and the products of one's labor) is simply an extension of a strong claim of self-ownership; see J. H. Bogart, "Provisos and State of Nature Theories," *Ethics* Vol. 95, No. 4 (Jul. 1985), p. 832. For a statement of this theme in Nozick, see ASU pp. 167–74.

<sup>4</sup> See especially pp. 110–15 in ASU. In what follows, I assume that the compensation paid to nonclients, funded by client fees, is akin to taxation. Nozick implies this by admitting that such compensation is at least *apparently* redistributive.

<sup>5</sup> Nozick, ASU, pp. 110–15 (see especially p. 114).

<sup>6</sup> *Ibid.*, p. 87. This is as close to a definitive statement as Nozick gives of the principle he develops over the latter portion of chapter 4. See pp. 78–87 for Nozick's justification of this principle.

cannot satisfy the Lockean proviso. Thus if Nozick wants to maintain the Lockean principles of his entitlement theory, he will be forced further left within the libertarian camp.<sup>7</sup>

To develop this dilemma, I will first briefly outline Nozick's entitlement theory. Then I will consider Nozick's treatment of the Lockean proviso and identify some problems regarding generations subsequent to an original resource acquisition. Ultimately, I will argue that Nozick's particular formulation and interpretation of the Lockean proviso will support compensation for those who lack the opportunity to appropriate certain resources now. Thus, Nozick's entitlement theory will have to significantly revise (or drop) some of its Lockean principles or expand to guarantee a compensatory level of welfare. This is a significant result since most alternative provisos employed by libertarians are as strict as Nozick's or stricter.<sup>8</sup> Hence, if Nozick's proviso leads to a welfare state, it is likely most other alternatives will as well.

## II. Nozick's Entitlement Theory: Historical, Not Patterned

Nozick's entitlement theory (henceforth ET) addresses the topic traditionally known as distributive justice, though Nozick prefers to talk about justice in "holdings" rather than a distribution of wealth and resources.<sup>9</sup> Nozick's entitlement theory outlines three activities to consider to properly determine justice in holdings: (1) original acquisition (how something originally comes to be held), (2) transfer of holdings, and (3) the rectification of past injustices. Nozick succinctly summarizes entitlement theory with respect to the first two areas as follows:

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

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<sup>7</sup> Here all I mean by "further left" is a position that puts greater emphasis on equality of wealth distribution (but does not necessarily seek to achieve absolute equality).

<sup>8</sup> Werner, "Self-Ownership and Non-Culpable Proviso Violations," *Politics, Philosophy & Economics* Vol. 14, no.1, (2015), p. 71.

<sup>9</sup> ASU, pp. 149–50. This is because Nozick thinks the term "distribution" can imply (incorrectly) that there was some sort of central or original act of distribution performed by an authoritative distributing party. If one approaches the question like this, then it is a natural question to ask whether the distribution was carried out well, and if not, whether we should engage in redistributing the world's resources and wealth. Nozick prefers the more neutral term of "holdings," which refers to the same sorts of material resources and wealth that are involved in issues of distributive justice.

1. A person who acquires a holding in accordance with the principles 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 else 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.<sup>10</sup>

Because some (many) people have come by their holdings in ways inconsistent with principles 1 and 2, Nozick recognizes the need for a complete entitlement theory to include some principles governing the rectification of past injustices.<sup>11</sup> In summary, according to ET, “a distribution is just if everyone is entitled to the holdings they possess under the distribution.”<sup>12</sup>

It is clear from this description of ET that what matters is the historical process and not the distributive pattern that is the end result of this process. Theoretically, any sort of distribution of holdings may be just as long as it results only from just acquisition and transfer. Nozick distinguishes this sort of theory from patterned conceptions of distributive justice that strive to achieve (at least approximately) and maintain a certain pattern of wealth distribution. On such theories, a distribution of wealth could be unjust despite having a completely just history of original acquisition and transfer.

Nozick thinks a state seeking to maintain some end-result pattern, rather than merely a just process, will need to engage in a frequent redistribution of holdings that were come by in a perfectly just manner.<sup>13</sup> Put differently, if the state allows consensual transfers of holdings, the process that results in a particular distribution may be perfectly just, but in virtue of its tendency to upset the desired pattern, its results will have to be frequently voided. For Nozick, this sort of state intrusion into what citizens wish to do with their holdings violates ownership rights. Nozick thinks his historical ET avoids this intrusive and frequent redistribution. However, a closer look at

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<sup>10</sup> ASU, p. 151.

<sup>11</sup> Ibid, p. 152. Nozick is largely silent on just what these principles of rectification might look like on ET.

<sup>12</sup> Ibid, p. 151.

<sup>13</sup> It is clear in ASU that the justice of holdings transfers is governed largely by consent.

Nozick's theory of justice in acquisition shows he cannot entirely avoid this sort of redistributive activity.<sup>14</sup>

### III. Justice in Acquisition: Nozick's Version of the Lockean Proviso

The consequences of ET come into focus when we add a bit more detail to its principles governing transfer and original acquisition of holdings. From Nozick's brief discussions of transfer of holdings, it appears that justice in this activity is largely (perhaps solely) a product of consent.<sup>15</sup> If all parties involved agree to a transfer or exchange of holdings, assuming no extenuating circumstances of coercion or deceit are involved, the transfer will be just. This means that if the original acquisition of the holdings (from the mass of unappropriated worldly resources) is just, then an unbroken line of consensual transfers should (for the most part)<sup>16</sup> guarantee all future holdings to be just. In this way, ET's principles of transfer are justice preserving.<sup>17</sup> Explaining how something can come to be justly held in the first place involves Nozick in more complex considerations.

To elucidate justice in acquisition, Nozick employs a version of the Lockean proviso (henceforth LP). Locke's proviso states that in order to be

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<sup>14</sup> In one sense, Nozick might be able to respond to my eventual argument that he can still avoid this sort of redistribution. This is because eventually I will argue that while ET will have to involve a more pervasive and intrusive redistributive activity to support a substantial social-welfare minimum, this redistribution remains a compensatory activity in light of non-extant opportunities to acquire certain resources. However, it still remains that this sort of redistribution, even though compensatory in nature, is one Nozick seeks to avoid because of its sheer pervasiveness and intrusiveness. It is also important to note that the compensatory taxation Nozick admits as legitimate is imagined to be fairly minimal.

<sup>15</sup> See especially ASU, pp. 150–53 and 157–58. Unfortunately, like several important principles operative in Nozick's ASU, we do not get an explicit and definitive statement of the principles of justice in transfer. Despite this, it is clear that consent is what is doing the work in ensuring the justice of transfers. This of course coheres well with Nozick's libertarian principles involving ownership of self and labor, and his stress on the inviolability of the individual in general. For more on how ET expresses Nozick's belief in the inviolability of individuals and the illegitimacy of using them (without consent) as resources for others, see Bogart, *Lockean Provisos and State of Nature Theories*, pp. 831–33 and Sarkar, *Lockean Provisos*, p. 48.

<sup>16</sup> Nozick recognizes a few exceptions that might arise in extreme cases. These possibilities will be discussed below.

<sup>17</sup> Nozick, ASU, p. 151.

just, an acquisition of some resource from nature must leave “as much and as good” for others to acquire for themselves.<sup>18</sup> Nozick thinks the general force of this proviso is that an acquisition may not worsen the situation of others. If an acquisition does not worsen the situation of others, then it is just and yields permanent property rights.<sup>19</sup> More will need to be said about how an acquisition might make another worse off. Initially, Nozick brings up what I will refer to as the zip-back argument, which leads him to amend the LP. The argument is as follows:

It is often said that this proviso once held but now no longer does. But there appears to be an argument for the conclusion that if the proviso no longer holds, then it cannot ever have held so as to yield permanent and inheritable property rights. Consider the first person Z for whom there is not enough and as good left to appropriate. The last person Y to appropriate left Z without his previous liberty to act on an object, and so worsened Z’s situation. So Y’s appropriation is not allowed under Locke’s proviso. Therefore the next to last person X to appropriate left Y in a worse position, for X’s act ended permissible appropriation. Therefore X’s appropriation wasn’t permissible. And so on back to the first person A to appropriate a permanent property right.”<sup>20</sup>

Nozick answers this argument by specifying what it means to worsen an individual’s situation for the purposes of the LP in conditions of scarcity.<sup>21</sup> With this specification, he softens the requirement imposed by the LP on acquisition and thereby protects most sorts of acquisition from falling prey to the zip-back argument.<sup>22</sup> Focusing on welfare instead of actual appropriation makes the proviso much easier to satisfy,<sup>23</sup> especially in light of what Nozick allows as compensation for those no longer able to appropriate. Helga Varden gives an excellent summary of how Nozick recasts the LP into a weaker version. She writes:

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<sup>18</sup> Locke, *Two Treatises of Government*, section 27 (cited in Nozick, ASU, p. 175).

<sup>19</sup> Nozick, ASU, pp. 175–76.

<sup>20</sup> Nozick, ASU, p. 176.

<sup>21</sup> Liberty Fitz-Claridge, “Wilt Chamberlain Revisited: Interpretative, Practical, and Theoretical Problems for Fried’s Left-Lockeanism,” *Libertarian Papers*, Vol. 7, No. 1 (2015), p. 62.

<sup>22</sup> Nozick, ASU, pp. 176–80.

<sup>23</sup> That is, the proviso on this reading is much easier to satisfy than some other plausible alternative renderings. See Werner, “Self-Ownership and Non-Culpable Proviso Violations,” pp. 69–70.

[Nozick] suggests that a person may appropriate under conditions of scarcity given that he “compensates” newcomers who, as a result of the appropriation, face conditions under which original appropriation is no longer possible [ASU, 178]. Compensation, Nozick maintains, can consist in either access to use the landowners’ land or access to use or acquire some of the social product that landowners have produced upon their land. And since the capitalist system produces a large social product and newcomers have access to this social product through markets, it reconciles the landowners’ original appropriation of all the land with the newcomers’ right to acquire a fair share of material resources. Softening the proviso is seen as maintaining its core idea that the property appropriation must not leave others in a worsened condition.”<sup>24</sup>

With this weakening of the LP,<sup>25</sup> Nozick introduces a new requirement of compensation into his ET. An appropriation does not have to leave more of the same resource for others to appropriate, as long as those who originally acquire the resource compensate those who cannot acquire it for themselves later.<sup>26</sup> It seems then that an originally just acquisition, followed by a seamless series of justice-preserving transfers, is not sufficient to guarantee the justice of a particular distribution of holdings, at least not without compensation. Below I will highlight two particular situations in which this is the case: a person unable to appropriate a vital resource in a context of extreme scarcity, and the more common case of the poor individual in conditions of moderate scarcity. Nozick recognizes the need to compensate both sorts of people. However, I will argue that in the latter case, Nozick greatly underestimates the magnitude of compensation required to justify the appropriations in question.<sup>27</sup> The case of the poor individual will force Nozick to admit much more substantial levels of compensation and push his ET beyond the minimal state.<sup>28</sup>

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<sup>24</sup> Varden, *The Lockean “Enough-and-as-Good” Proviso: An Internal Critique*, pp. 426–27.

<sup>25</sup> Although it is debatable whether Nozick’s version of LP is in line with Locke’s own intentions, I will continue to refer to Nozick’s version of Locke’s proviso as the Lockean Proviso or LP.

<sup>26</sup> Below we will discuss in greater detail the types of compensation Nozick allows.

<sup>27</sup> As we will see below, this way of stating things is not entirely accurate, since it is really the system as a whole, and the current distribution of holdings, that will not be justifiable without compensation (according to the LP).

<sup>28</sup> By “developed” here I only mean to refer to a system of private property that has existed for some time so as to yield many of its characteristic benefits and scarcities. I will have more to say on this topic below.

#### IV. Nozick's Proviso and Cases of Catastrophe or Extreme Scarcity of a Vital Resource

Nozick thinks a theory of appropriation incorporating his weakened LP will be well suited to handle extreme situations in which “someone appropriates the total supply of something necessary for life.”<sup>29</sup> He also acknowledges that the LP will add certain constraints to the principles of just transfer in these situations.<sup>30</sup> Thus, in certain extreme circumstances, Nozick admits, just transfers will not necessarily preserve an unfettered property right to holdings gained by a legitimate original appropriation: “Each owner’s title to his holding includes the historical shadow of the Lockean proviso on appropriation.”<sup>31</sup> Nozick maintains that if owning a certain resource makes others fall below a baseline of welfare, then there will be constraints on what one can do with one’s property, and these constraints flow from the LP’s requirement not to make others worse off by an act of appropriation.<sup>32</sup> Preston Werner has noted that this means that what is supposed to be Nozick’s principle of justice in transfer actually “applies to all ownership post-appropriation [i.e., original appropriation], regardless of whether it has been transferred amongst owners or not.”<sup>33</sup> This is important for my argument below because it sets a precedent: in principle, Nozick’s theory allows for a distribution of holdings to become unjust even though it has been subject to a seamless chain of just transfers. Two examples given by Nozick illustrate this point well: the first involves a desert dweller who appropriates the only water source in a given area, and the second involves a castaway who washes up on a privately owned island.<sup>34</sup>

In the case of the desert water source, the person’s original appropriation is just. However, if severely dehydrated travelers come upon his water source, the owner cannot justifiably deny them water just because he owns it. Nor can he charge them exorbitant rates for use of the water. Such actions on the part of the owner would mean that his original appropriation of the water hole greatly worsened the situation of the travelers. Had he not appropriated the water hole, the travelers would have

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<sup>29</sup> ASU, pp. 178–79.

<sup>30</sup> *Ibid.*, p. 179.

<sup>31</sup> *Ibid.*, p. 180.

<sup>32</sup> Nozick does not settle on an answer to the question of how to calculate an appropriate baseline. The exact level of the baseline is not important here. For his brief considerations on this baseline calculation, see ASU, pp. 177–78.

<sup>33</sup> “Self-Ownership and Non-Culpable Proviso Violations,” p. 81n7.

<sup>34</sup> I add a bit of my own detail to these examples to better illustrate my points.



drunk their fill for free; now they may be impoverished or die as a result of the original appropriation. Similarly, the woman who comes to hold an island in a just manner still cannot justifiably reject a desperate castaway as a trespasser. Had she not appropriated the island, the castaway might have used its resources for survival. Certainly, such an appropriation in conjunction with an ordinarily legitimate no-trespassing rule worsens the castaway's situation.

These two examples highlight an important feature of ET: in some extreme cases, otherwise justly obtained holdings can be justly constrained. If a castaway will die if you enforce a strict no-trespassing rule on your island, then your property right is constrained in this case. The welfare of others, in certain circumstances, sets a limit on how one can use one's justly obtained holdings (at least these sorts of natural holdings). It is also important to note that these examples show that the LP does not only govern original acquisition; it also governs current holdings. In one sense, the injustice of refusing water to the desert traveler cannot plausibly be traced to the original appropriation of the watering hole. The person who carried out this original act may have had no idea that this resource would one day be necessary for another person's survival. Perhaps the original appropriation was even carried out at a time when many such holes existed in the area but subsequently all water sources but this one dried up.<sup>35</sup>

## V. Extant Challenges to Nozick's LP

Before presenting my own dilemma for Nozick's LP, I will briefly consider two other challenges in the literature. Though I think these concerns may present a problem for Nozick's ET, I will argue they present much less of a problem than my own objection.

First, in his 2015 paper "Self-Ownership and Non-Culpable Proviso Violations," Preston Werner seizes on the sort of extreme scenarios I introduced above to argue that Nozick's LP will end up demanding, under certain special conditions, the donation of organs. Werner develops a scenario involving two people, A and B, on an island. Each knows they will both contract a deadly kidney disease by the age of thirty. A and B also know that on this island a special plant, *Curea*, grows. They know that if taken prior to age thirty, *Curea* will keep the gene that causes the kidney disease latent (and harmless) for life (but if one does not consume the plant, only a kidney

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<sup>35</sup> This point will be especially important below when we consider the more common case of the poor person in conditions of relative scarcity.

transplant will save one's life).<sup>36</sup> Werner asks us to imagine that A appropriates half of the island's *Curea* and consumes all of it (much more than is needed to prevent the disease). A leaves the other half of the *Curea* untouched for B to appropriate before the age of thirty. However, after A has consumed half of the *Curea*, but before B consumes any, a tsunami destroys the half of the *Curea* that A had left untouched.<sup>37</sup> Werner argues that in this scenario, "B has a claim to (at least) one of A's kidneys."<sup>38</sup> This is because, though the appropriation was perfectly just at the time, after the tsunami, B is made much worse off than she would have been had A not appropriated half of the island's *Curea*. A must compensate B, and the only compensation that will bring B close to the level of welfare she would have had if A had not appropriated the *Curea* is the transplant of a kidney.

Second, Eric Mack presents some problematic implications for Nozick's proviso when it is faced with particular scenarios of resource acquisition. He asks us to consider Adam, who gains legitimate ownership over an island and then labors extensively to prevent the island from disappearing into the sea by building retaining walls and planting protective plants. This appropriation of an originally unowned island has made it possible for unfortunate castaways to access what would have otherwise been an inaccessible or nonexistent island.<sup>39</sup> One such scenario Mack calls "Unrequited Love," and it goes as follows:

Adam, the proprietor of the island, allows the able-bodied Zelda ashore but then refuses to reciprocate Zelda's budding romantic passion for him—a fate which Zelda experiences as worse than death. ("Far better had he never allowed me to come under his cruel sway").<sup>40</sup>

In this case, Adam's appropriation and work to preserve the island has made Zelda worse off, since without it the island would never have existed and she would have died rather than be struck with this agonizing (worse than death) unrequited love. Hence, Nozick's LP maintains (quite

<sup>36</sup> "Self-Ownership and Non-Culpable Proviso Violations," p. 71.

<sup>37</sup> *Ibid.*, p. 72.

<sup>38</sup> *Ibid.*, p. 72.

<sup>39</sup> Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy*, Vol. 12, No. 1 (1995), p. 193.

<sup>40</sup> *Ibid.*, p. 194.

counterintuitively) that Adam owes Zelda some compensation.<sup>41</sup> Another counterintuitive case Mack calls “Paternalist Caging.” It goes as follows:

Adam, the proprietor of the island, refuses to allow Zelda to come ashore. However, Zelda inadvertently enters an offshore cage which Adam has constructed to catch (large) sea mammals. Rather than releasing her, Adam proceeds to furnish her with far more life-sustaining and satisfying conditions than she would have enjoyed had she been allowed ashore and otherwise been treated justly by Adam. (Had she not entered the cage, he would not have been able to effectively bestow his paternalist largesse.)<sup>42</sup>

Again, Nozick’s proviso, when applied to this case, seems to produce starkly counterintuitive results. Since Adam has compensated Zelda with improved welfare, his continued caging of her is apparently not unjust.<sup>43</sup>

These challenges posed by Werner and Mack are unique in that they do not (like many other objectors) merely argue that Nozick’s LP is too permissive and therefore not morally plausible. Instead, they argue that Nozick’s LP leads to starkly counterintuitive results as it is. What should we say about these challenges? Werner claims that under certain circumstances, Nozick’s LP requires compensation that includes organ donation. A defender of Nozick’s might employ a reasonable constraint on the form compensation can take (perhaps one involving a strong claim to bodily integrity or self-ownership). A strong claim to self-ownership is after all among the intuitive starting points of almost any libertarian theory. With respect to Mack’s cases, it is not clear that Nozick’s LP is committed to such counterintuitive results. In particular, a defender of Nozick’s might try to avoid the force of “Unrequited Love” by putting limits on what sort of welfare (or sources of welfare) should be considered for purposes of compensation; perhaps not just any idiosyncratic desire merits compensation.<sup>44</sup> Moreover, the force of the paternalist case could be blunted by considering the real welfare value (subjective though it is) of being free to do as one pleases and live as master

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<sup>41</sup> Mack states Nozick’s LP is a “welfare proviso... according to which any noninvasive action is acceptable if and only if it yields as much welfare for its recipient as would have been enjoyed by her in the pre-property state” (p. 212). Mack goes on to explicitly claim that Nozick’s proviso would vindicate Adam in paternalist cases (like “Paternalist Caging” below) and also endorse Zelda’s complaint against Adam in cases like “Unrequited Love.”

<sup>42</sup> *Ibid.*, p. 194.

<sup>43</sup> Mack recognizes this explicitly with respect to this and other paternalist cases on p. 212.

<sup>44</sup> I address this further below in my objections section.

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of one's own life, not caged in relative luxury.<sup>45</sup> That is, we react against this case so strongly because we do not really believe that the caged person, lacking autonomy, can be better off.

Despite my doubts as to the merits of these objections, a defender of Nozick's should address such worries. However, the challenge that these sorts of problems pose is fairly limited. This is because Werner's and Mack's challenges depend on examples that are incredibly idiosyncratic. If these objections do hold, it is clear that they will hold only under very special (and rare) circumstances. These sorts of challenges merit a response, but they do not show that Nozick's ET leads to anything like a welfare state. In the following section, I will develop a much more troubling challenge to Nozick's ET. It is more troubling than Werner's and Mack's concerns because it rests on a much less idiosyncratic sort of case: the parties to be compensated are numerous. Hence, the compensation called for in my challenge will be extensive. This, I argue, means Nozick's ET, as it stands, leads to a redistributive welfare state.

## **VI. The Case of the Poor in Conditions of Moderate Scarcity**

In a contemporary capitalist system, the case of the poor in conditions of moderate scarcity is common and therefore potentially more problematic for Nozick's theory. In such a system, certain resources, such as land, have become too scarce to be affordable by large swaths of the population. If ET deems that this large group must be compensated for their inability to appropriate resources, then Nozick will have to move beyond the minimal state to one that guarantees some compensatory level of welfare. This move would involve the state in activities beyond protective services and punitive justice, such as taxation of those able to appropriate (or who already have appropriated) for the purpose of funding a compensatory redistribution of wealth. This is precisely the sort of intrusive redistribution for welfare purposes that Nozick wishes to avoid. Such a state would no longer be minimal. Yet, Nozick himself seems to acknowledge the need to compensate this significant group of people who are currently unable to appropriate resources for themselves.<sup>46</sup>

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<sup>45</sup> I will return to this issue in my own critique of Nozick below.

<sup>46</sup> Nozick himself does not identify this group as poor. However, this term seems appropriate. In conditions of moderate scarcity, where land is available at a price, it is the poor (and perhaps some lower middle class?) who cannot afford to appropriate land via purchase. Henceforth, I will refer to those people who are unable to appropriate various resources in a developed system of private property as the poor.

Nozick avoids moving beyond the minimal state by highlighting the substantial social benefits of a developed system of private property. He acknowledges the need to compensate the poor in such systems. However, according to his weaker version of the LP, this compensation need not come in the form of an opportunity to appropriate some particular (or any) resource. The compensation may also take the form of presenting an opportunity to use the resource in question, or an opportunity to use or appropriate social goods flowing from others' appropriation of the resource.<sup>47</sup> According to Nozick, in developed private property systems, this compensation has already been paid in excess. This is because the benefits of a developed system that allows permanent private property are available to the poor, and available to a degree that more than makes up for their own inability to appropriate resources for themselves.

This claim has some plausibility given the substantial benefits private property systems have made, and continue to make, possible. Nozick lists some of the relevant considerations as follows:

social considerations favoring private property: it increases the social product by putting means of production in the hands of those who can use them most efficiently (profitably); experimentation is encouraged, because with separate persons controlling resources, there is no one person or small group whom someone with a new idea must convince to try it out; private property enables people to decide on the pattern and types of risks they wish to bear, leading to specialized types of risk bearing; private property protects future persons by leading some to hold back resources from current consumption for future markets; it provides alternate sources of employment for unpopular persons who don't have to convince any one person or small group to hire them, and so on.<sup>48</sup>

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<sup>47</sup> Nozick, ASU, pp. 176–78.

<sup>48</sup> Ibid, p. 177. Paeans to the great variety and extent of the benefits of a system of private property, or unfettered capitalism, are common in the libertarian literature. For other examples, see David Schmidtz, *Elements of Justice* (Cambridge: Cambridge University Press, 2006), 56; and Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy*, Vol. 12, No. 1 (Winter 1995), pp. 212–16. For a particularly strong statement of the benefits of private property systems, see also Jan Narveson's "Property Rights: Original Acquisition and Lockean Provisos," *Public Affairs Quarterly* Vol. 13, No. 3 (Jul. 1999), pp. 216, 220–23. Especially relevant is Narveson's passage on pp. 222–23, where he writes, "Thus the original intent of the Lockean proviso is met, in spades, by the on-going process of human production stimulated by individuals' interests, protected by property rights. What is 'left' for others

Features such as these have led to a proliferation of modern conveniences and innovations that have made life longer and more comfortable. Benefits as diverse as the vaccination for smallpox, indoor plumbing, biscuits in a can, Twitter, and minimalls have ostensibly arisen because of the efficiency, innovation, and culture of risk taking that private property makes possible. In light of access to these benefits, Nozick thinks the modern-day poor person has been more than compensated. The poor have not been made worse off by these appropriations of property, because without them they would lack many modern advances. In other words, it is the by-products of the system itself, as a whole, that compensate the poor for their inability to appropriate resources. They are better off with the system and its benefits than they would be with the opportunity to appropriate but without the benefits of the system.<sup>49</sup> It is at this point that I will challenge Nozick's position. In brief, I think a large group of people are worse off in such a system.

To frame my argument, it is helpful to highlight how Nozick responds to a similar challenge leveled by Fourier. Nozick writes:

Fourier held that since the process of civilization had deprived the members of society of certain liberties (to gather, pasture, engage in the chase), a socially guaranteed minimum provision for persons was justified as compensation for the loss... But this puts the point too strongly. This compensation would be due those persons, if any, for whom the process of civilization was a *net loss*, for whom the benefits of civilization did not counterbalance being deprived of these particular liberties.<sup>50</sup>

My contention is that compensation is due to certain poor persons in a developed system of private property because the progression of this sort of civilization has been a net loss for these people. The benefits of this system

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is, overwhelmingly, the opportunity to avail themselves of the production of their fellows. As society becomes more complex in its differentiation of products and skills, we are increasingly dependent on propensities to exchange on the part of their fellows, who meanwhile become reliable producers and exchangers. Thus what's left for others is not merely 'as good,' but much better from the start, and as time goes on incomparably better."

<sup>49</sup> It is for this reason that Nozick thinks the LP will rarely come into play, and so will not merit any sort of pervasive redistributive activity on the part of the state. He goes as far as to suggest that the contexts meriting constraint on otherwise just holdings may very well be coextensive with catastrophe situations. See ASU, pp. 181–182.

<sup>50</sup> Nozick, ASU, p. 178n.

do not counterbalance such people's lost opportunity to appropriate. Thus a sizable portion of the poor remain uncompensated.<sup>51</sup>

## VII. Farmer John on the Frontier vs. Waiter John in the Trailer Park

Jan Narveson contends that “in the United States today, far more people are employed serving food in restaurants than on the farms that produce the food in the first place; waiters and waitresses, cooks and cashiers—all are better off than they could ever have been on any primitive farm.”<sup>52</sup> These words come in the midst of Narveson making a point similar to Nozick's—namely, that the benefits of a developed system of private property make it so nearly all (or perhaps all) will be better off. I think both Narveson and Nozick are wrong about this, and Narveson's suggested comparison is as good as any to show why. Let us consider, then, the cases of the primitive farmer and the modern waiter.

To carry out this comparison we will consider an individual, John, who finds himself on the lower rungs of the socioeconomic ladder. John has an intense desire to execute the modest life plan of farming his own land. We will consider John in two conditions, one in which he is able to execute his life plan and become a primitive farmer and another in which he is unable to appropriate the necessary land and so must settle for a job as a waiter. The geographic locations of both cases will be the same. The time period (and thus the relative development of the system of private property) will be the main difference.

### *(a) Farmer John on the Frontier: The Colony of Virginia in the 1740s*

First, let us consider John growing up in the colony of Virginia in the 1740s. He is born into a family working its way out of indentured servitude. As a result, he grows up poor. As soon as he is old enough to hold a hoe, he goes to work farming someone else's land alongside his father. From an early age, John develops an intense desire to gain mastery over his life by farming

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<sup>51</sup> Helga Varden raises a more basic worry about this sort of compensation. She thinks it violates the essentially bilateral nature of the sort of justification or compensation that the LP requires. She thinks the benefits of a system at large cannot compensate those unable to appropriate. Each appropriator must guarantee compensation of those made worse off. For Varden's account of this difficulty, see “The Lockean ‘Enough-and-as-Good’ Proviso: An Internal Critique,” pp. 427–28. I will pass over this difficulty here, but it does appear to be an issue any Lockean theory of appropriation will have to address.

<sup>52</sup> “Property Rights: Original Acquisition and Lockean Provisos,” p. 223.

his own land. It soon becomes clear he will never be able to afford land in the colony (he can never seem to earn the excess funds to buy it). For this reason, he decides to move to the frontier and claim some land of his own. He and his wife move to what is now the state of Kentucky.

John takes only what his mule can carry. The trip, even in late spring, is risky. In the first season, John and his wife only have time to set up a temporary shelter to make it through the winter. Life is precarious for that first year. But in following seasons, John and his wife are able to clear and farm a modest plot, and build a modest cabin. Within a few years, John's now-growing family has a fairly stable food supply consisting of crops and trapped animals. By most measures, even compared to his contemporary society, he is not materially well off. Frontier life is primitive, and even his impoverished parents, back in the colony, have a few more amenities than John does. However, for John, this loss in material comfort is easily outweighed by the achievement of his utmost desire: John is his own master and lives off his own plot of land. The ability to pursue his cherished life plan is a great boon to John's level of welfare. Moreover, he does not experience his work as drudgery imposed on him by another. He engages in all of his efforts as his own boss, working directly for the good of his family and the achievement of his cherished dreams.

*(b) Waiter John in the Trailer Park: The State of Virginia in the 1990s*

Now consider John in an analogous situation in the 1990s. He is born into a family mired in a cycle of poverty in a semi-rural area of Virginia. His mother and father are immigrants and have not been able to obtain jobs that pay more than minimum wage. They work hard, sometimes at multiple jobs, but finances are tight. As soon as John is old enough, he works jobs after school to help out. Eventually John drops out of high school to help support his family by working full time as a waiter in the local Shoney's restaurant. Throughout this time, John develops an intense desire to gain mastery over his life. He develops a life plan of one day supporting his own family by farming his own land. It soon becomes clear he will not be able to afford even a modest plot of land, let alone a pristine Kentuckian plot ripe for farming, trapping, and hunting. Unlike John of the 1740s, this John has no option to move west and acquire some such unclaimed land on the frontier. So John settles for a life as a waiter, a form of labor he experiences as menial drudgery, unconnected with his deepest desires. He gets married and moves into a modest trailer he and his wife pay for by working overtime. He is able to raise a family, but his backyard garden is a far cry from the farm of his dreams. His work load does not even allow him the time or energy to properly tend to his small kitchen garden.



(c) *Is Farmer John Worse Off than Waiter John?*

It is my contention that farmer John is significantly *better* off than waiter John. A Nozickian argument would no doubt point to all of the modern amenities and innovations available to waiter John and not available to farmer John. Farmer John grew up in a much less developed system of private property, which means many of its benefits have yet to be realized. Waiter John's trailer has indoor plumbing, electricity, and food refrigeration. Food bills are often hard to pay, but he does not have to worry about catching or growing his food. His children attend the local public elementary school and receive periodic vaccinations. Waiter John also has a color television with five channels, a secondhand spring mattress, and a fridge full of Busch Lite. Farmer John's cabin life lacks these modern wonders. Does this not clearly show that a modern waiter is better off than a frontier farmer? I think not.

The reason Nozick and Narveson are wrong on this point is because they weight (non-natural) material wealth too heavily when determining a person's welfare.<sup>53</sup> If we focus on material wealth and comfort, it is at least plausible that waiter John is better off than farmer John. The modern trailer occupant may appear more materially wealthy than the average cabin dweller on the North American colonial frontier.<sup>54</sup> Once we consider other factors, such as subjective life satisfaction, it becomes clear that for some Johns, frontier farming is a significantly better life overall. Being able to pursue and ultimately achieve one's life plan of self-mastery is enough to outweigh much in the way of material wealth and comfort. Even in the mere pursuit of his own farm, farmer John is already realizing a level of self-governance and autonomy that is off-limits to waiter John. Waiter John cannot plausibly pursue, much less attain, his life plan. This cannot be easily made up for. I contend that vaccinations, electric heat, and drive-throughs at McDonald's

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<sup>53</sup> I use the qualifier "non-natural" here because I think libertarians such as Narveson and Nozick often greatly undervalue undeveloped nature. They focus (quite appropriately) on all the great things that can be done with nature once it is developed, but they often ignore all that is lost through development (such as the enjoyment of pristine natural beauty) and the bad things added (such as massive amounts of pollution and traffic).

<sup>54</sup> I say "arguably" here because I think Nozick, Narveson, and other libertarians often underestimate the purely material value of pristine natural resources in their (somewhat) justified lauding of appropriated/developed resources. A pristine plot lacks valuable infrastructure, but it also lacks pollution; it may be subject to predators absent from developed territories, but it still has plenty of animals to hunt and trap (and to seek to leave to hunt and trap on others' land).

are just not enough to overcome this loss. The condition of waiter John is worsened by the system of private property as a whole (at least at this late stage of its development).<sup>55</sup>

### **VIII. Nozick's Dilemma: Move beyond the Minimal State or Violate the Lockean Proviso**

Many people in the contemporary United States (or a society like it) are in a situation analogous to waiter John, and in a less developed system of private property, many would have the opportunity to become a farmer John. If this is the case, then many poor people are worse off than they would be in a situation with much less appropriation. And if this is the case, then Nozick is wrong about how often the LP is likely to come into play. Indeed, the LP will apply to so many people in a society of private property similar to the present United States that Nozick's ET will be forced to endorse a state that goes well beyond the minimal activities of protection and punitive justice. The Nozickian state will need to guarantee a compensatory level of welfare.

This guarantee of welfare will be required in order to compensate those (many) people who are worse off in light of how far the system of private property has developed and how much they value autonomy or self-mastery. Material wealth and comforts, at the right level, could perhaps compensate for lost opportunities to appropriate land. However, the more appropriate compensation might be to make it possible, for those who desire it, to purchase land to farm (or make some other opportunity possible short of appropriation).<sup>56</sup> Whatever form the compensation takes, it will cost the state some money, which means the state will need to institute a redistributive tax scheme. Thus, as Nozick has developed it, ET will require a more than minimal state in many possible (and actual) systems of private property (for example, those akin to the United States<sup>57</sup>). He would have to drop the LP requirement in order to avoid this outcome. Assuming my argument can withstand objections, it looks as if Nozick will need to either abandon the LP or endorse some sort of redistributive welfare state.<sup>57</sup>

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<sup>55</sup> Below I will make the case that this applies to earlier stages of development as well.

<sup>56</sup> If more people opt for this situation than the available land can support, then other comparable opportunities or increased material wealth would need to be offered.

<sup>57</sup> For an alternative case for how Nozick's ET might justify some sort of welfare state, see M. Davis, 1987, "Nozick's Argument for the Legitimacy of the Welfare State," *Ethics* 97 (3), pp. 576–94. Davis's account of this is distinct from my own and ultimately

## IX. Objections and Replies

If my argument succeeds, Nozick is forced into a dilemma. However, there are some objections a Nozickian is likely to level against my argument. In concluding this essay, I will answer three of the most obvious (and substantial) objections to my case.

### *a. We Can't Satisfy Every Crazy Idiosyncratic Life Plan*

Someone might challenge my inclusion of a life plan as irrelevant in determining who is and is not owed compensation. There are all sorts of odd life plans, and yet it would seem absurd to require the state to compensate each one. Imagine that instead of farming, a person wished to live in a state without cars, for no other reason than the satisfaction of knowing that cars were not within the borders of his home state. Such states existed at an earlier stage in the private property system of the United States. Given an ardent desire for this life, such a person may be worse off now than he would have been in the United States of 1828. Should we then hold the government hostage to every idiosyncratic desire that can no longer be achieved as a result of the advanced stage of the private property system?<sup>58</sup> I do not think so.

In brief, I think it is perfectly legitimate for the government to refrain from compensating people with idiosyncratic desires. The life plan I focus on in my examples directly involves land appropriation. Furthermore, in the context of the life plan of someone like farmer John, the land appropriation serves the purpose of allowing him greater autonomy. In Mack's terms, access to resources such as land allows people to exercise their "world interactive" powers/capacities, which is what it means to exercise one's autonomy. That is, one cannot exercise autonomy in the world if a sufficient amount of that world is not available for interaction.<sup>59</sup> Providing access to important resources such as land makes such autonomy possible. No longer must farmer John work for others; he lives off his own efforts on his own property. Thus, this life plan not only appeals to resource appropriation (which is rightly constrained by the LP), but it also appeals to a Lockean libertarian value of individual liberty (which the LP is meant to preserve). Ultimately, what is problematic about a poor person not being able to

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fails for reasons ably pointed out by Joachim Wundisch in his 2014 article "A Free-Rider Perspective on Property Rights," *Libertarian Papers* 6 (2): 145–61.

<sup>58</sup> This is the same problem Mack raises in his unrequited-love case presented above. See his "The Self-Ownership Proviso: A New and Improved Lockean Proviso," p. 194.

<sup>59</sup>Ibid, pp. 186–88.

appropriate land is his dependence upon others for the use of resources<sup>60</sup> and how that dependence can dramatically decrease one's autonomy (via a much narrower purview for one's world-interactive powers). Not being subject to such dependence (and autonomy constraint) is a great good that calls for compensation if lost. These sorts of setbacks are relevant for the LP and should therefore be compensated in any theory incorporating this principle. More idiosyncratic setbacks have little discernible connection to the LP or the foundational intuitions of any plausible libertarian theory; hence, they can be legitimately ignored.

If these considerations do not convince the objector, then it might be enough just to point out that the state can only address relatively pervasive welfare concerns. A state cannot practicably respond with compensation to the idiosyncratic desires of specific groups or particular people. The sort of case I present, concerning John, applies to whole classes of people.<sup>61</sup> The desire to live off one's own land is a common one; however, it is easy to imagine that many people mired in the cycle of poverty would opt for the life of farmer John even if they did not have a lifelong dream to farm.<sup>62</sup> Thus, those whose condition will be worsened by not having this opportunity of appropriation (namely much of the poor in a well-developed system of private property similar to the United States') will be many. This is a pervasive welfare concern that the state governed by the LP can and should address.

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<sup>60</sup> For more on this theme, see Varden, "The Lockean 'Enough-and-as-Good' Proviso: An Internal Critique."

<sup>61</sup> Some might question the pervasiveness of a strong desire to farm one's own land. Some might question such a desire as an overly romanticized picture of how "poor country folks" think. Such objectors would do well to remember that there are whole communities in the contemporary United States who still view farming as the most desirable sort of life. There are whole rural communities organized around who gets what land and what they will do with it. And there are whole communities that would happily forgo much modern convenience to preserve a relatively simple farming lifestyle. This desire to live off one's own land is neither rare nor strange. Perhaps it could be characterized as a natural expression of the human desire for, and pursuit of, independence and self-governance.

<sup>62</sup> This is especially likely to be true if such people were raised in a less developed environment where farming was a more common lifestyle.

*b. Is Frontier Farmer John the Proper Baseline for Comparison?*

A more serious objection to my argument involves my baseline for comparison. A defender of Nozick might say I stacked the deck in my favor by choosing to compare farmer John with the modern poor. Though living at a much more primitive time, a person in 1740s Virginia would already be experiencing the benefits of a private property system. John does not travel over the Appalachians naked and empty-handed. He brings with him warm clothes, an ax, a domesticated mule, and some food stores made possible by the private property system. Even if John did walk naked into the woods, he still would have benefited from the skills he learned by growing up in society. The more proper baseline for comparison (so the objection would go) is the existence of a truly primitive hunter-gatherer.

I have three responses to this objection, at least one of which should satisfy the objector. First, one could claim precisely the opposite: that I stacked the deck in Nozick's favor. I did not compare farmer John to someone existing in a pure Nozickian minimal state (with its dearth of state-run social programs). Waiter John lives in 1990s Virginia and has the benefit (among others) of subsidized vaccinations at the local free clinic, free road use, and free education for his children.<sup>63</sup> Indeed, many of the modern material marvels that Nozick touts, and that weigh heavily in his calculus of compensation for what the poor are unable to appropriate, would in fact be out of reach for someone like waiter John. Hence, I could make my focal comparison above much more favorable for my argument.

Second, I could argue that I have in fact already chosen the proper baseline for comparison. Nozick originally states that the system of private property itself more than compensates those who are unable to appropriate at some later stage. But if compensation is requisite, it is not the original appropriation that comes into question. Nor is it the system as a whole at all times that comes into question. Rather, what comes into question is the system as a whole at some stage (or stages) in its development, namely the stage(s) at which it is no longer possible to appropriate some resource. This is already evident in Nozick's treatment of the catastrophe examples above. Such examples show that in Nozick's ET, the LP does not apply merely to original appropriations; it also comes into play to constrain holdings long after such appropriations. In the case of well-advanced systems of private property (such as the United States in the 1990s) the distribution of holdings, and not some original appropriation, is constrained by the LP. Thus, it is

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<sup>63</sup> Of course, if John pays taxes then road use and education are not really free. I am assuming he is poor enough that his tax rate is rather modest.

perfectly appropriate to compare waiter John to farmer John rather than to a hunter-gatherer who has not benefited at all from a private property system. Private property *simpliciter* is not the problem; the relative degree of development of a private property system is.

Third, I might respond to the objection by accepting this new, proper baseline. Consider the Native American tribes of 500 CE in North America. In general, I could contend that the lifestyle of a hunter-gatherer in a small band society might yield a higher welfare than that of waiter John, with all of his modern amenities but mired in poverty. Many libertarians dismiss this possibility almost out of hand, perhaps thinking this conclusion could only result in a wildly romantic (and inaccurate) view of hunter-gatherer life (one that glosses over the many gruesome hardships suffered by such societies). Fortunately, we do not have to depend on armchair judgments of what life was like for hunter-gatherers. The best data we have indicate that, while certainly grim in certain respects, the life of the average hunter-gatherer was significantly better than that of a person like waiter John.

Recently, a book has been published that addresses this very question: are poor people in developed capitalist systems of private property better off than the average hunter-gatherer? *Prehistoric Myths in Modern Political Philosophy* is co-authored by a philosopher (Karl Wilderquist) and an anthropologist (Grant McCall). Wilderquist and McCall were troubled by how often the quality of life of hunter-gatherers factored into the arguments of political philosophers and how few data such quality-of-life judgements were based on. It turns out that when one actually engages with the available data, significant numbers of people today appear worse off than the average hunter-gatherer. While the modern rich and middle class (in a place such as the United States) are better off than almost any hunter-gatherer, the poor are considerably worse off. Wilderquist and McCall draw on our best data for what the life of these ancient peoples was like and on anthropological data gathered from the few hunter-gatherer societies remaining today.<sup>64</sup> I do not have the space to cover all of their findings in detail. Here I will simply highlight some of the most important ways a hunter-gatherer existence outstrips the lives of many modern poor persons such as our waiter John.<sup>65</sup> Wilderquist and McCall key on four broad measures of the quality of life.

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<sup>64</sup> Wilderquist and McCall, *Prehistoric Myths in Modern Political Philosophy*, Edinburgh University Press, 2017.

<sup>65</sup> To read about the data and their analysis of it in depth, see especially chapter 10.

(1) *Social and cultural satisfaction*

As a general rule, prehistoric peoples were extremely social.<sup>66</sup> Although ancient hunter-gatherers did not have the satisfaction of creating and consuming things such as symphonies and novels, “ethnographic and historical accounts report that all indigenous communities have rich cultural lives with art, music, dance, storytelling, and so on. People in band societies have many opportunities for social interaction in a community that often makes them feel like an integral part.”<sup>67</sup> Furthermore, the social/cultural opportunities of more advanced societies are often off-limits to the poor<sup>68</sup> (think of the price of symphony or play tickets, or the sort of education that would allow one to enjoy a complex novel). Also, the poor in advanced capitalist societies often need to work far too much to have the time or energy to enjoy such activities. Moreover, “ethnographers report a distinct lack of a discontented minority in band societies. Suicide rates are low... The commonplace misery of discontented people in state society [today] seems to have no equivalent in band society... accounts of nomadic foragers attests to their being surprisingly content.”<sup>69</sup> Though many poor people in modern industrial societies are socially isolated and discontented, hunter-gatherer societies do not produce such groups of people.<sup>70</sup>

(2) *Material well-being*

Material well-being is usually the primary focus in accounts that depict hunter-gatherer life unfavorably. Modern capitalist economies produce such a wide variety of goods with such great efficiency that it seems obvious even the worst off live better than the average hunter-gatherer. However, as Wilderquist and McCall point out, “the problem with this view stems both from the over-identification of material income with material wellbeing (Kenny 2006) and from the fallacy of composition... [Such productivity] makes it *possible* for everyone to consume far more and work far less, but it does not ensure that everyone *actually does* consume more and work less.”<sup>71</sup>

In the area of leisure, the average hunter-gatherer is not only doing better than the modern poor person, but also significantly better than the

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<sup>66</sup> Wilderquist and McCall, p. 178.

<sup>67</sup> *Ibid.*, p. 178.

<sup>68</sup> *Ibid.*, p. 178–79.

<sup>69</sup> *Ibid.*, p. 179.

<sup>70</sup> *Ibid.*, p. 179–80.

<sup>71</sup> *Ibid.*, p. 180.

modern middle class.<sup>72</sup> One rather pessimistic study of a particularly hard-working hunter-gatherer group (the Ache) put their weekly work at about forty-nine hours (nine hours over the standard US workweek). However, this figure included many activities involved in running a household that the typical US worker does in their “leisure” time. When we correct for this, it turns out the average middle-class person works (including nonmarket work and childcare) about fifty-five hours per week. That is six hours more than a fairly hardworking hunter-gatherer group.<sup>73</sup> Some hunter-gatherers work far less (as few as nineteen hours a week).<sup>74</sup> Moreover, the hours hunter-gatherers did work must have felt much freer. They had a task, and it was largely up to them how to complete it. Hunter-gatherers were essentially their own bosses.<sup>75</sup> This is true of very few moderns, especially the poor.

When it comes to meeting the basic needs of all group members, hunter-gatherer societies outdo even places as wealthy as the modern United States. Hunter-gatherer societies have a strong safety net and fairly equal distribution of goods. If there is food among the group, no one goes hungry.<sup>76</sup> Although modern capitalist economies have much more wealth to dispose of, it is uneven in its distribution. Hence, extreme poverty continues even in places as wealthy as the United States, where 3.55 million children live in households making less than two dollars a day and 14.5 percent of all households experience food insecurity. As of 2013, some 640,000 Americans were homeless.<sup>77</sup> And homeless Americans face difficulties that do not exist in hunter-gatherer societies such as having to eat out of the garbage or “having no legal place to eat, sleep, or urinate... not to mention a place to hunt, gather, fish, or farm.”<sup>78</sup> Moreover, challenges such as these lead to levels of stress nonexistent among hunter-gatherers, who are generally content and confident that their environment will provide all they need.<sup>79</sup>

### *(3) Health and longevity*

But don't hunter-gatherers die young and live a life bereft of all the health-inducing wonders to which even a modern of modest means has

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<sup>72</sup> Ibid., p. 184.

<sup>73</sup> Ibid., pp. 185–86.

<sup>74</sup> Ibid., p. 185.

<sup>75</sup> Ibid., p. 187.

<sup>76</sup> Ibid., p. 187.

<sup>77</sup> Ibid., p. 190.

<sup>78</sup> Ibid., p. 190.

<sup>79</sup> Ibid., pp. 189–91.



access? Not exactly. The average life expectancy of a hunter-gatherer is significantly less than the average life expectancy of someone in a modern industrialized society. However, a life expectancy of thirty-five does not mean people expect to get old and die at the age of thirty-five. Rather, old age for a hunter-gatherer might be somewhere in their seventies, but the average is brought so low because of high infant and child mortality.<sup>80</sup> Once she survived childhood, a hunter-gatherer could expect to live a reasonably long life.

It is true that hunter-gatherers lack the benefits of modern medicine, but they are in turn healthier than citizens of industrialized societies in several significant ways.<sup>81</sup> Hunter-gatherers “are largely immune to the chronic degenerative diseases which produce the greater part of all mortality in affluent nations.”<sup>82</sup> Ailments such as obesity, heart disease, diabetes, and stroke fall into this category. A superior diet and low exposure to toxins is thought to account for the extremely low incidence of cancer among hunter-gatherers. Just “one forager woman in 800 develops breast cancer, while in the United States it is more like one in eight.”<sup>83</sup> So, along with the cures and treatments of many diseases, modern capitalist society has delivered many other deadly conditions that did not afflict our hunter-gatherer ancestors at all.<sup>84</sup>

#### (4) *Freedom*

When it comes to negative freedom (freedom from constraint), hunter-gatherers clearly have the upper hand over poor persons in capitalist societies. Hunter-gatherers are essentially their own bosses. They decide how, when, and to what extent they will hunt and gather. If one dislikes how their band is doing things, one is free to pick up and move elsewhere, essentially starting a new band society. This would seem to be the height of freedom from constraint. This option is not available to the poor in modern societies, where there is often no unowned periphery to which one can move. Moreover, the

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<sup>80</sup> Ibid., pp. 193–94.

<sup>81</sup> Ibid., p. 195.

<sup>82</sup> Ibid., p. 195.

<sup>83</sup> S. B. Eaton and S. Eaton (1999), “Hunter-Gatherers and Human Health,” in R. B. Lee and R. Daly (eds.), *The Cambridge Encyclopedia of Hunters and Gatherers*. Cambridge: Cambridge University Press, pp. 449–56.

<sup>84</sup> Ibid., p. 195.

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modern-day homeless often lack a place to sleep, have sex, or even urinate legally.<sup>85</sup>

But one might argue that modern capitalist societies provide a host of opportunities unavailable to hunter-gatherers, and in this sense a modern person is much more free (i.e., free to take advantage of a myriad of opportunities available in a market economy). Wilderquist and McCall contend that the average modern person does have a greater freedom of opportunity but poor people do not.<sup>86</sup> For example, modern capitalist societies present great educational opportunities; however, few of the poor can take full advantage of such opportunities. Moreover, the greater proliferation of education has created a condition wherein those who lack higher education lack knowledge and skills necessary to flourish in their society. Many new job “opportunities” are created, but are in practice not really open to those unable to gain a certain sort of education. In hunter-gatherer societies, every person has the opportunity to learn all the skills they need to thrive in society.<sup>87</sup>

I have only surveyed a few highlights from the extensive research Wilderquist and McCall draw on concerning hunter-gatherer well-being compared to modern persons in capitalist societies. It is clear, however, even from this brief treatment, that this is not an unfavorable comparison for my argument against Nozick. In fact, one should note that the inequality that results in such an unfavorable comparison of the modern poor with hunter-gatherers would likely be *worse* under a Nozickian state, with its dearth of social programs and absence of social safety net. Hence, choosing the baseline of ancient hunter-gatherers does not weaken my case; it strengthens it.

*c. Might Nozick Be Focusing on Opportunity for Welfare, Rather than Actual Welfare?*

One final objection to my argument seizes on just what Nozick means when he considers whether someone is made worse or better off. So far I have proceeded on the assumption that Nozick is considering something like the welfare of the person in question, all things considered. However, when Nozick is describing the application of the LP he may only be focused on the narrower aspect of opportunity for well-being. Perhaps Nozick (or a

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<sup>85</sup> Ibid., p. 202.

<sup>86</sup> Ibid., p. 199.

<sup>87</sup> Ibid., p. 200.

Nozickian) could argue that while the actual welfare of the poor is worse, the opportunity for welfare is nevertheless increased. It is in this way that those unable to appropriate certain resources are better off.

I have two related responses to this objection. First, the way the term “opportunity” would function in such an argument is problematic. In one sense, it is quite plausible to say that increased opportunity for well-being, if high enough, might serve as sufficient compensation for lost opportunities to appropriate in an advanced system of private property. For example, the lazy person, in the right conditions of climate and food availability, may have been able to achieve some moderate level of well-being with little work (simply gathering resources from the abundant commons). The fact that such a person can no longer achieve the same level of well-being while remaining lazy is now compensated by increased opportunities to participate and prosper in a market economy. One might plausibly argue that the state is not required to compensate such a person any further than to allow her the opportunity to work for a living (i.e., achieve a moderate level of welfare by giving up being lazy). Such an answer may do for people who refuse to take advantage of increased opportunities for welfare, but it will not suffice in our focal case of waiter John. Waiter John is not lazy or otherwise unwilling to take advantage of opportunities for improved welfare; he is making a great effort to attain his dream of farming his own land. I contend that waiter John and many like him ardently attempt to better the situation of themselves and their families but this attempt is largely unsuccessful.

At this point the Nozickian might respond that this is unfortunate but beside the point. The LP requires compensation in terms of increased opportunity for welfare; it need not guarantee actual success. However, there remains the problem of determining just what counts as increased opportunity. For example, unlike farmer John, waiter John has the benefit of the additional “opportunity” to play the lottery. If he won, he would certainly have the means to achieve his dream of farming his own land. The problem of course is that the lottery does not represent an increased opportunity for welfare in the right way. It is a new opportunity to better one’s well-being, and it can do so to a much greater degree than most avenues open to farmer John; yet, it is rarely a successful venture.

The developed system of private property in which waiter John lives provides many new opportunities for bettering one’s lot. An implication of what I have argued in this paper is that these avenues are not often successful for people like waiter John. If this is the case, then it is misleading to say the modern-day market economy compensates people like John via increased opportunities to promote one’s own welfare. If these “opportunities,” when pursued, are rarely successful for whole swaths of people (because of the

disadvantages associated with the cycle of poverty), then it is not clear in what sense they are genuine opportunities.<sup>88</sup>

My second response to this objection builds on the first: focusing on this sort of “opportunity” rather than actually achieved welfare is an implausible rendering of the motivation for the LP and its force as a moral principle (at least as it is employed by Nozick within the framework of ET).<sup>89</sup> Why would opportunities be relevant at all, or worth preserving, if (when taken advantage of) they did not often lead to increased welfare? An opportunity has little value if it is unlikely to be successful. Thus, if we assume that such “opportunities” are what the LP seeks to preserve for those who are unable to appropriate a resource, then ET becomes morally implausible. This is similar to a point Mack makes concerning autonomy and access to the world’s resources. One may be free to exercise one’s world-interactive powers (that is, free from any direct constraint on their use) and yet may still be constrained indirectly by being deprived of access to resources in the world with which one could autonomously interact.<sup>90</sup> It is not enough that someone is merely unconstrained in the world. They also need to have access to resources with which to interact. Hence, one can be

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<sup>88</sup> Undoubtedly, modern market economies do provide increased genuine opportunities for some (perhaps many) poor people. For example, we could consider Anne the waitress, who wants to start her own business. She does not yet have a family to support and is fortunate enough to save some money and qualify for a small-business loan. The existence of people like Anne does not overcome my argument against Nozick. For Nozick to avoid being committed to a more extensive state, it has to be the case that relatively few people are like waiter John. On the contrary, I contend that many people in current private property systems are relevantly similar to him. And as with waiter John, the seemingly increased opportunities for welfare are for the most part not panning out.

<sup>89</sup> This parenthetical remark is added because there might be other renderings of the LP that are plausible if employed outside Nozick’s ET framework. For example, one might think Locke originally meant the LP to secure the opportunity to utilize (if one wished) one’s fair share of the earth’s resources. This sort of rendering, however plausible within Lockean theory, will not help Nozick, for two reasons. First, he tries to argue that people need not be given the ability to appropriate land or any other resource (as long as they are compensated), and this rendering would seem to imply that all need to be given the opportunity to appropriate. Second, Nozick already identifies what he believes to be a substantial problem for such a theory in the form of the “zip-back” argument. Hence, within ET, if the LP is to work and remain morally plausible, it will need to reference actual welfare or at least opportunities that have a significant possibility of success.

<sup>90</sup> “The Self-Ownership Proviso: A New and Improved Lockean Proviso,” pp. 186–92.

deprived of autonomy of action by being cut off from the world's resources in a sufficiently extreme manner. Likewise, one's autonomy can be curtailed by being deprived of any opportunities for flourishing in the world that are at all likely to pan out. Lack of genuinely viable opportunities is just another way the exercise of one's world-interactive powers can be constrained.

Hence, the lack of opportunity to appropriate needs to be compensated, not merely because compensating opportunities represents an avenue to increased welfare, but because these opportunities are often successful. If land, when appropriated and farmed, often yielded only weeds, then there would be less need to compensate for the loss of opportunity to appropriate. It is only because this opportunity often leads to increased welfare (i.e., the land is fruitful if worked in a responsible manner) that the loss of this opportunity demands compensation. It is for this reason, and with this motivation, that it is plausible to situate the LP as a moral principle within Nozick's ET.

Nozick interprets Locke as seeking to preserve the ability of others to appropriate a resource because a lack of this ability is likely to make them worse off. Nozick's amendment of the LP in light of the zip-back argument is only plausible if his concepts of "worse off" and "better off" are linked to actual welfare. He need not guarantee that every poor person actually achieves a certain level of welfare, but he does need to compensate such people with sufficiently promising opportunities. It has been my contention that developed systems of private property, similar to the system operative in the United States, fail to provide such opportunities for a substantial portion of the population.

## **X. Conclusion: Redistributive Taxes Are Compensatory, Not Akin to Forced Labor**

Nozick himself builds the framework that forces the dilemma advanced above. He sets the precedent of compensatory taxation early in ASU in arguing for the minimal state. He allows the LP to constrain current holdings in the case of catastrophe, and he admits that, in principle, those unable to appropriate in current well-developed systems of private property should be compensated. Where I disagree with Nozick (and Narveson), and where Nozick is ultimately mistaken, is in just how beneficial an advanced system of private property is for the poor. Once we consider more than just material wealth and convenience, and take into account subjective life satisfaction, it is clear that many poor people are worse off in a more developed system of private property. And this conclusion is not just the product of some romanticized vision of the grandeur of the wilderness or the simple pleasures

of farming.<sup>91</sup> The really weighty welfare good made possible by living off one's own land is the increased autonomy, the ability to be one's own master and self-govern to a greater degree. This is a welfare good that is hard to outweigh. For this reason, if Nozick wishes to maintain the Lockean credentials of his hypothetical state, it will have to go beyond minimal activities and minimal taxation and implement some compensatory level of welfare and more extensive redistributive taxation. Contrary to what Nozick thought, such taxation is not on par with forced labor, and this is because it is compensatory. Thus, followed to its (un)natural conclusion, Nozick's Lockean libertarian entitlement theory leads to the development of a welfare state.

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<sup>91</sup> Although these are perhaps more substantial considerations than some academics realize.