

PRESENT PAYMENTS, PAST WRONGS: CORRECTING LOOSE  
TALK ABOUT NOZICK AND RECTIFICATION

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**The Problem Stated**

ACCORDING TO NOZICK (and Locke and innumerable others), what has come to be termed “distributive justice” is a matter of goods going to those who made or found them, or to those who get them from others by agreement, e.g. by buying or selling them. No other fundamental ways of arriving at ownership of anything are morally legitimate—since, by definition, the only other ways there are would involve compelling some to give goods to others, contrary to the general libertarian principle that Nozick (and many others, including the present writer) suppose to be the most fundamental general principle of morals. But of course things sometimes go wrong, and people get things by theft, assassination, fraud, and so forth. When this happens, what should be done about it? Nozick calls upon a third category, *rectification*. The simplest way of putting this idea is that if A unjustly acquires x from B, then A may (if necessary) be compelled to restore x to B. The idea can be made more precise: to the extent that A has illegitimately *worsened the situation* of B, rectification is accomplished if A brings it about that B is *no worse off, given the actions done* with a view to rectification, than B would have been had the injustice not occurred in the first place. This last is a tall order, and not easily accomplished in a wide variety of cases. Indeed, in conspicuously important cases, it is, in the most direct way, impossible, for in those cases, B is dead and nothing whatever can be done to make B in

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particular better off than he now is. And in numerous other cases as well, rectification would no doubt be very difficult.

Nozick famously asks “How far back must one go in wiping clean the historical slate of injustices?” And, notoriously, he conjectures that perhaps we would end up with a modest case for something like a “maximin” principle:

assuming (1) that victims of injustice generally do worse than they otherwise would, and (2) that those from the least well-off group in the society have the highest probabilities of being the (descendants of) victims of the most serious injustice ... then a *rough* rule of thumb for rectifying injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up least well-off in society.<sup>1</sup>

This fact, that rectification is often difficult or even impossible, is said by many writers, and evidently also thought by Nozick himself, to be a major problem for Nozick’s theory. Colin Farrelly, for example, points to the paucity of discussion of this matter in *Anarchy, State and Utopia* as if it were a major fault: “Given the importance the issue of rectification has on Nozick’s entitlement theory one is bound to wonder why Nozick does not make this issue more central ...” And he goes on to assert that

To his original declaration that “taxation is on a moral par with forced labour” we must add: *if and only if no considerations of injustice could apply to justify such taxation*. The minimal state is only justified provided all past injustices have been rectified. What society can claim to have satisfied such a requirement?

And he adds,

...Rawls ... imposes on citizens a duty to bring about just institutions and a duty to oppose injustices. If rectification is to be taken seriously then similar duties must also be imposed on citizens by Nozick’s entitlement theory.<sup>2</sup>

Farrelly is far from alone in voicing similar complaints—evidently most writers and most philosophical readers find them very telling. Nozick’s theory, they think, is in deep trouble if it cannot solve this problem. And note

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<sup>1</sup>Robert Nozick, *Anarchy, State and Utopia* (NY: Basic Books 1974, p. 231.

<sup>2</sup>Colin Farrelly, *An Introduction to Contemporary Political Theory* (London: Sage, 2004), 49.

especially how Farrelly, who is far from alone, thinks that taxes are automatically called for if there has been injustice somewhere—anywhere, apparently—back up the line.

In the present article, I shall argue that it is entirely mistaken to think that this is a serious “problem” for Nozick’s *theory* at all, that it has virtually none of the implications widely attributed to it (including, apparently, by Nozick himself)—especially, the inference to taxation as a somehow appropriate remedy—and that the tendency to think so is due to unacknowledged reliance on a wholly different theory which, after all, it was a main point of Nozick’s work, and more generally of the libertarian theory, to criticize, and to reject.

### **A Reminder: What Libertarianism Is**

Libertarianism asserts that we all have a general right of *liberty*, and that this is *the* basic right so far as the use of *compulsion* in society is concerned—it is, as John Stuart Mill puts it, to “govern absolutely the relations of individuals in society in the way of compulsion and control.” [*Essay on Liberty*, Ch. 1] This word ‘absolutely’ is a strong one. If it means what it appears to mean, then the idea is that, again as seen by Mill, the *only* reason why anybody (“society”) would ever be morally justified in interfering with the liberty of any person would be in order to prevent that person from interfering with the liberty of—which is to say, doing a harm to—some other person (who has not, in turn, interfered with the liberty of someone yet else). Whatever Mill’s other predilections may have been, as a statement of the libertarian idea, his is deservedly regarded as classic.

It is not the point of this brief essay to try to make the Liberty Principle either plausible or entirely precise. The purpose here is only to see where rectification fits in. For this it is enough to give the general idea: namely, that we may intentionally *impose a worsening* on any person *only* in order either to prevent or to rectify some worsening that that individual in turn is or would be imposing on some other (innocent) person/s. Specifically, what we may *not* do is, for example, to compel this individual to give alms to the poor, to promote the local Symphony Orchestra—or to traipse off to some remote part of the world in order to save the citizens of some hapless country from the machinations of an evil dictator. All of these latter are, to be sure, fine things to do, and we should (in my view, anyway) encourage people to do them, such as by lots of credit for doing them (well), and in general to place

such individuals on suitable moral pedestals. That is, as we may put it, the *moral carrot*. But libertarianism requires, as the very essence of the matter, a distinction between the *carrot* and the *stick*. Moral *requirements*, or at least, in particular, those requirements under the rubric of *justice*, are those that may indeed be imposed—promoted by using the stick. But the principle of liberty says that the stick may be used *only* for *very restricted* purposes—namely, just that one.

One of the purposes for which it may be used is, of course, rectification. That's what makes rectification a principle of *justice* rather than something else. But in pursuit of which rectification of whose injustices may the stick in question be wielded, and by whom? To this, libertarianism gives an almost alarmingly precise answer. First: *anybody may* use it against the appropriately guilty parties—provided that the innocent parties violated by those guilty parties agree to it, at least. Second: *nobody may* use it against *anybody else*. Both parts of this answer are absolutely essential to this theory. To emphasize one to the neglect of the other would be to distort the theory, probably beyond recognition.

So: what about rectification of the injustice that person A has done to person B? Libertarianism says that A *owes* rectification to B, of course. But does any body *else* owe it? No. Does anybody *owe it to B* to *help* compel A to make the rectification in question? No. If we just contemplate the principle again, it is clear that these negative answers are the correct ones. Other persons than the guilty parties are, by hypothesis, *not guilty*; therefore, we may *impose no costs* on these other parties. That includes the cost of helping out with the detection and imposition of rectifications on the guilty parties. It might be highly advisable for such people to enlist in associations devoted to correcting wrongs, but it is not a requirement of justice as such.

Since taxation is par excellence the imposing of costs on “other people”—namely, all of them!—it is therefore perfectly clear that Farrelly's quick inference to the legitimacy of taxation in order to justify assorted instance of past maldistributions by theft or fraud, does not go through. Just what we may and should do is an important question; but whatever the answer may be, it is clearly *not* to do it by resorting to wholesale robbery of legions of innocents.

### Does the *Theory* Go Wrong?

That pointed out, let us now return to the “problem” for Nozick’s theory said to be created by the historical fact that people often do wrong things to others. When does a *theory* have a problem? A problem should be created for a *theory* if that theory cannot tell us, regarding a certain class of cases, what to say about it, or if what it does tell us to say about that conflicts, for example, with what it tells us to say about some other cases (or, of course, with any of the relevant facts.) Among the things a theory can say about some cases is, legitimately, Nothing. What should I give my daughter for Christmas? The theory doesn’t say anything about that, and it shouldn’t. Very well. What should it say about robbery? That it is wrong. And so on.

Now, the facts cited by critics such as Farrelly as being a problem for Nozick are these:

(a) that quite often, people do things to others that are, as agreed by his theory, wrong, and

(b) it might be very difficult or impossible for precise or even approximation *rectification* of the wrongs in question to be achieved.

Regarding these facts, one’s reaction should, surely, be: Hey, right!—What else is new? The world has lots of injustices in it, for sure. That’s life. But what does this have to do with Nozick’s *theory*? If that theory told us that rectification should *always be easy*, it would of course be thereby refuted. But why should it be thought to have that particular cross to bear? Or again, if somehow *theories* are at fault because they do not, *by themselves*, make the world any better, then our critic needs to be gently reminded that we are only *theorists*—we’re just trying to figure out what *is* right and wrong. And while, no doubt, some rights and wrongs can happen in the classroom or the study—philosophers have been known to get into duels, for instance—still, by and large, the rights and wrongs we speak of take place out there in the world, and *our* job is to figure out *what to say about them*; it is not, however, our job to *go out there and do* all those things. Since the world is a large place, containing at present many billions of people, not to mention that in the past and future there have been and will be billions more, there is just no way that you or I or anybody can do much to affect the overwhelming majority of those cases in any way at all. It would be pretty strange if we could ask of a *theory* that *it* get out there and *fix* all those problems. This can hardly be what is meant.

But if not, then, what? The libertarian theory does have its problems, to be sure. Getting precise, or even just decently within the ball park, about just which actions would give rise to just which entitlements of particular kinds, is indeed not easy. Determining precisely when a given transaction may be said to be suitably voluntary to pass muster for libertarian purposes is important and, again, not always easy. However, the critics we are addressing here—including Nozick himself, as noted—aren't addressing such questions. In fact, they evidently think that we do have a tolerable enough grasp of those matters to be able to say, at least very often, that some person, A, has violated the liberty principle in relation to some other, B, whereas he has not violated it in relation to C, D, E, and so on. We suppose we fairly well know what belongs to whom by the first and second of the three categories of principles of distributive justice that Nozick (etc.) identifies—original acquisition and transfer. Their criticism is supposedly directed at the third, and you can only do that if you suppose that there are cases, once the first and second have been cleared, for the third to apply to.

And as to the rectification principle, it is reasonably clear, in comparison with the first two, what it does and does not say. It tells us that A's rectificatory duties consist in restoring the situation *ex ante* of his victims, namely to the level, whatever it was, that they enjoyed before his imposition (with additional payments, probably, to cover the costs of detection and transaction.) Granted, it is often hard to see quite what will do this—although, it should be added, it is often far from impossible. Often, for example, A does something for B and B says, "OK, that's fine; the matter is done with." It is, again, of the essence of the libertarian theory that B is the *absolute and final authority* on that matter, and so if he says (sincerely) that it's done with, then it *is* done with, period. And that very often is in fact achieved. We may also conjecture that more generally, rectification *would be* achieved if the erstwhile victim *would* say, regarding a given proffered compensatory package, that it would do fine, thank you. This may be something of an idealization, though let's again recognize that it is one very often achieved in practice, and that it's hardly an idealization in the sense that we have no idea how to imagine that such a thing *would be said*; it would only be an idealization, indeed a utopian idea, if we claimed we knew how to get to the point, in each and every case, where someone plausibly *would* say that (if possible—which in the case where death has occurred, the individual in question obviously cannot).

This, then, restates the problem: namely, what *is* the problem? The general “problem”—that much injustice happens and goes unrectified—is not a problem for the *theory*, but a problem for *people*—as, of course, it is and should be. When injustices are committed, what is to be done? The libertarian theory tells us what it is, the doing of which would *constitute a rectification*, a redress. It does *not* tell us how to get somebody or other to do it—except in one important respect. *Namely, it says that we may not do this by aggressive means.* If injustices are to be fixed, they must be fixed by voluntary means, in respect of all the innocent parties who had nothing to do with the original injustice. We don’t defend liberty at the expense of liberty, except where the liberty is that of the miscreant, who causes the problem by himself acting in violation of the liberty principle.

Of course, then, this calls into question the further inference, so readily made by the critics, that the libertarian is going to have to get The State after the crooks. Minimal-state theorists may believe that we ought to have a state to do so, but that does not follow from the libertarian principle; indeed, it appears to be inconsistent with it. For of course, the state *will* use coercion to do this. It is not at all obvious that “one could actually utilize Nozick’s argument to justify a number of egalitarian measures, given the injustices that have taken place in human history.”<sup>3</sup> Or rather, it is not obvious that one could utilize the *libertarian principle* to get to this conclusion, despite full acceptance of the criteria for rectification and the thesis that justice would be done if it were achieved.

## Rectification

A major—indeed, surely, *the* major—sort of case that critics have in mind when they suppose that the need for rectification will lead to the legitimation of redistributive taxation is that in which A robs B, and then C benefits from the proceeds of the robbery. According to one critic, “... if there has been a single injustice in the history of the state, no matter how far back, the state will not be able to achieve a just distribution of goods in the present.”<sup>4</sup>

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<sup>3</sup>Farrelly, *Op. cit.*, 49.

<sup>4</sup>Farrelly, quoting from Lawrence Davis (1982), *Op. cit.*, 46.

That is a remarkable conclusion, indeed. How are such conclusions arrived at? We will need to make some distinctions. To begin with, it is obvious enough that one is not allowed to be the *knowing* receiver of stolen goods. When A sells x to B, B assumes that x does in fact belong to A; if it does not, then it isn't A's to sell, and B cannot buy it. No sale! Better yet, he might go to the police, or whatever the relevant rectificatory agents might be, and implicate A. So far, so good. But, of course, this is frequently not what happens. In fact, in the historically interesting examples, it is absolutely normal that the persons in question have no idea that some such thing happened, in the dim and distant past. The money (or whatever) that they pay for this fraudulently represented piece of goods is real enough, and they do (did) have a right to *it*. Suppose, however, that they do discover it, a hundred years later, for example. Then what? The critics appear to think that somehow the answer is clear, even obvious. I think it is nothing of the sort. It may, of course, be sticky, and sometimes imponderable—but it's not obvious. Let us consider.

To begin with, let's consider the case in which A sells x to innocent B, under the false pretense that x is indeed A's. Since it's going to matter, let's distinguish three kinds of cases:

(1) What A does for B is a *fake* service: A doesn't in fact do for B what B thought A was doing for B. (This is the broadest category, since all exchanges are really exchanges of services. However, some services involve transfers of durable goods and some do not, so for present purposes, we will distinguish (1) from the next two cases.)<sup>5</sup>

(2) What A provides B with is a durable but movable good, which in fact belongs to someone else.

(3) What A purports to provide B with is title to some nonmovable good—real estate will be our example. B supposes he can just move in and set up shop, and it turns out that someone else has title....

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<sup>5</sup>That all exchanges are really exchanges of services is something I have explained elsewhere, though a moment's reflection should make it obvious, so long as the exchanges are voluntary. In those cases, your giving me the thing does me a good thing, a service, and vice versa. Our offers are aimed to inducing the other person to do that good service, and in successful exchanges, both parties do the desired thing.

In case (1), A needs either to provide B with the service he said B was going to get—which is probably impossible, in most such cases; or else to make amends, as by compensating B with a money payment. As noted at the outset, ideally what A provides in the way of compensation puts B back at his baseline *ex ante*, and if it does, justice is done. Suppose he cannot? Justice, most likely, will not then be done. Our theory tells us, as it should, what would be just, but it certainly doesn't assure us that A is going to get it, or even that he realistically *can*. But there's no spillover to society at large—no case for holding that somehow everybody gets to be taxed a bit in order to fix things.

In case (2), B has, as he thinks, acquired some usable durable but movable object. Now suppose that B commences to utilize *x* in various ways. B might, for example, eat it; or incorporate it into his domestic establishment; or it might be an item of capital goods which B puts to use, enabling him to make further goods and perform further valuable services (e.g., selling the goods in question to still others.) In all these cases, A has, as it turns out, done a further injustice. Not only has he unjustly stolen *x* from some other person, C, but he has also put B to considerable trouble and perhaps expense. Now, does B *owe* something to A? Plainly not (“a kick in the pants,” we might be tempted to say; but likely B would prefer to have his money back....) Does *he* owe something to C? That is what the critics assume. But why? What we know now is that the original perpetrator, A, certainly owes something not only to his immediate victim, B, but also to his original defraudee, poor C. He can't just come along and repossess *x* from B, for B *bought* it, fair and square—so far as B has any reason to know—from A. A is somehow going to have to recompense *both* B *and* C for their trouble. But if we compel B to return *x* directly to C, we have *stolen from B* the whole price that he paid A for it—which is plainly unjust. Culpable ignorance sometimes happens, to be sure; but very often our ignorance of things like this is altogether nonculpable. We were *bad*. And when we are, it is a bit much to hold that we are guilty of the crime of theft on top of it. We aren't.

We can say that B should try to undo the transaction: e.g., he could return *x* to guilty A, on condition that he get his money back *and* that A then return *x* to innocent C. However, the cases I have envisaged—which must be so frequent as to be absolutely typical—are ones in which “getting his money back” would not actually be sufficient compensation. When we engage in trade, each party *benefits*: each party emerges in *better* condition than she was before the transaction. The difference, from the point of view of B, between

the value to B of the goods got and the price actually paid to A, is what justifies B in participating in the exchange; it is what B is entitled to. You cannot take either away from B without injustice—injustice *to B*.

Undoubtedly, on many occasions, A will not be able to *afford* this level of compensation to both parties. True. But it does not follow that party B has to do it all by himself. On the contrary: it seems that the agents of B and C need to get together and see what they can do by way of exacting restitution from guilty A. We are, then, very far indeed from justifying the State's invading the innocent beneficiaries of past crimes in order to somehow reinstate the original victims—or, as is often argued, their descendants. What's done cannot be undone. Compensation that tries to undo the undoable by compelling still further victims is not justice—it's merely more injustice.

This leaves us with what is no doubt the trickiest case of all—case (3), ownership of permanent bits of the world. It is this kind of case that tempts people to construe ownership as fundamentally *two-termed*: a relation between a person and a thing out there. Those who think this cannot, I think, have appreciated what they are getting into. So let's be blunt. The point of rights, *always*, as a matter of fundamental analysis, is to ground obligations on others. For someone to have a right is for that someone to be such that someone else is required to attend in some way, normally and primarily by keeping off. In the case of property, that is the *only* point at issue. Obviously no two-termed relation does this. Property relates someone to someone else in respect of the property-holder's doings with the item owned.

In the case of real estate, there are lots of things one might do with it, and to own it is to be entitled to do some or all of those things. (We'll tentatively assume, *all*, until further notice.) Of special interest at present are two among these: (a) occupy it; (b) transfer some or all of one's rights to it to someone else, either by sale or gift.

Let's now address two cases of malfeasance. In one, Mr. A "sells" the land to Ms. B, who is taken in and who arrives only to discover that the actual owner is very much still on the scene, deed in hand. B's been defrauded. What to do? A owes B the money or whatever, and probably a lot else. C, the rightful owner, doesn't owe anyone anything. And B is probably in for a tough time collecting, though she's certainly entitled to go ahead and try.

The kind of case that—*uniquely*, as we now see—could generate the Nozickian history, if any, is where A or his henchmen dispatch the original inhabitant, C, and either moves in, or pretends to be the rightful owner and sells it to unsuspecting B, this time with a deed in hand that will be convincing, there being no one on the scene to dispute it. Now we are to suppose that some who find out about this evil proceeding claim to be, themselves, among the rightful heirs to the place. If they find this out soon enough, they can take A to court, clearly enough. May they take B to court, too? What are B's rights here? B, as noted, had no idea that A is not the rightful owner, and paid good money for what she thought was becoming her property. Moreover, we will now suppose, B has invested time and energy and probably money in the property as well.

Enthusiasts (and critics) appear to propose that the state gets to divest B of her holdings and boot her out into the snow. This seems to me clearly wrong. B thought she got it fair and square, and has what she reasonably thought was the sort of paper that would establish this. Little did she know. But why is she to be held entirely responsible for the situation—to the point where she can be treated as a criminal in the process? I take it to be clear that she cannot. *Caveat Emptor* goes only so far. Strict liability in accepting other people's statements surely has its limits. We have a problem, yes. But its solution must involve extracting something from miscreant A, partly in compensation to B, but partly also to C.

Now take two further subcases. In one, not just a little but a *lot* of time has gone by: six generations, say. Do the great-great-great-great grandchildren of B owe something to the g-g-g-g's of C? If so, what? Suppose that six generations of love and labor have gone into the place, enjoyed by the B-descendants in peace and prosperity. Along comes C6, to dispute B's possession. How would they have a case, if they did?

We might think that one may bequeath property to whomever one will, and they need only be willing to accept it and that's that. But it's not. One cannot unilaterally impose costs on others. The man wanting to bequeath needs to see to it that someone is willing to do the administration necessary. The intended beneficiaries need to step forward, on their own, to make the claim. They cannot expect society to scan the heavens for them and do their work on their behalfs.

And suppose violence was involved? Are the G6 children of the original beneficiary to be punished for this? Why? Of course we do not want

people to be able to get away with murder. We don't want them to, but they sometimes do, and others not party to the original murders sometimes benefit unawares. Insofar as they are now better off than they would have been had the original evils not happened, they may owe someone something, but who, and how much? The rub is that almost all of the actual value of what they have now is due to the intervening 6 generations of hard work and creative imagination. The assumption that the original thing is what is at issue, regardless, seems to misstate the case. Few of us would be just as happy with the plot of aboriginal soil on which our current inherited house and garden stand as with the entire estate as it now is.

And in fact, the original thing is *not available*. Thus, the original South Dakota of the Sioux is no more. We cannot return it to them, and they likely wouldn't want it if we could. The other subcase is where B proceeds to make huge changes to the property, greatly augmenting its market value. Sometime later it turns out that A did not after all have legitimate possession, and someone else, say a near descendant of C, lays claim. What now? Will it be said that C is entitled to the property as it *now* is? Or does what B has done in the meantime make some difference? Miscreant A's problem is now worse, perhaps: he has caused B to go to much expense, under false pretenses. It seems that A needs to compensate B for this, as well as C.

Our idea about things in the world around us is that they are there for the using, and therefore for the taking, in the sense that the *only* objection to taking something into one's own use would be that somebody else is already using it—has “gotten there first.” Things lie about in the wilderness, along comes somebody who sees a way to make use of them, he proceeds to do so, and we say: blessings on him.

So what happens with *transfer*? Suppose A wants to transfer x, which he's already got, to person B. Here's a way he might do this: knowing that B and only B will be in a certain place, p, and that B would really like to have x, A abandons x at p and, sure enough! Along comes B and acquires it. A's method is risky—someone else might have come first after all, or B might have changed his habits and not shown up, etc. So, to reduce the likelihood of these unfortunate eventualities, A writes out a note explaining that B and only B is the intended recipient of x. Then what? He might pay some people to deliver it to B. Or he might leave it lying around where people will see it and hope that they then help B to acquire x, by not taking it themselves and by perhaps carrying it to B's house, and so on.

An appreciable question here, then, is this: how much does A have to do to bring it about that B and only B ends up with x? And if he doesn't do enough of those things, then what about the status of x if it ends up in the hands of somebody C? I do not think that C is at fault. He may think that it's tough for A but he *should have taken better care*.

Now, if we take the case where A is unable to do what is necessary to effect the intended transfer, and it is later discovered that this was so, how much trouble do unintended acquirers of x have to do by way of restoring the world to the way it would have been if all had gone well? Again, it looks as though the answer is: *not necessarily anything*, though it would probably be a good idea to do *some*.

What is also clear is that the social world generally does not have any particular claim to x. Those who accidentally acquire it have a better claim to it than those who are nowhere near, or of course those who do not care.

The point to be made here is that it is not obvious that an original property right has transferred without alteration to C, bypassing any claim on B's part. In general, those who swallow the argument as expounded by Farrelly assume that goods are eternal, their value doesn't change, it's perfectly clear who gave what to whom, perfectly clear that passage of a lot of time makes no difference—and, finally, that the rest of us have a heavy duty to take care of other people's affairs. Every single one of those assumptions is characteristically much less than true, and often wholly false. They all matter. And when they're cleared up, I think, the case for turning America over to the socialists is essentially nil.

Discussants on this question, beginning with the unfortunate example of Nozick, tend to talk as though wealth simply exists *all at once* and that the wealth of acquirers of property consists entirely in their coming to own objects previously owned by others: wealth is "holdings," as he calls them. But this is the wrong way to look at it. Wealth is *created* by people's efforts, their expenditure of more or less intelligently directed energy. The items in which a given case of "wealth" is found are *used*, more or less well. The better they are used, the more valuable is the possession—but this value is not due to possession, *simpliciter*—it is due, rather, to the ways in which the owner has employed it, has used it in improving his own life and the lives of loved ones or valued others, and in the process left it more desirable for others. And thus it is not true that the original possessor of some of the objects that served as what we may call the capital basis of the new wealth, is *the creator* of

that wealth. What he might have done with it if it had not been stolen is a matter of conjecture, and in some cases we can put to thief A's account the robbery of opportunity—the imposition, then, of *opportunity costs*, on victim C. But there is no case at all for demanding that B, *in particular*, work to recreate those opportunities for C. His life has gone on, innocently so far as he knows, and things are now a lot different. Taking from him what, so far as he had any reason to believe, was rightfully his, does him a harm. How great a harm he is done is proportionate to the increase in value that his use of the item in question has enabled him to bring about.

### The Critics' Error

What has gone wrong? Why have the critics been so ready to draw these wholly illegitimate inferences from the rectification principle? The answer, I suspect, is rooted in the commonest and most pervasive misunderstanding of the libertarian idea, namely the *confusion of negative* with *positive* rights. Every victim of injustice has a positive claim *against the transgressor*. Transgressors violate the duty to refrain from invading and despoiling, and may be compelled to restrict their activities along those lines. But his victims have *no* positive claims against *the rest* of humanity. It is simply not the case that justice *must be done*, in the sense that if S is a just state of affairs, then *everyone owes it to everyone to help bring S about*.

What critics seem to be assuming is this. Libertarians lay down a principle, the principle of liberty. If everyone acted entirely within the bounds declared by this principle, that would be lovely. Call that, perhaps, the “libertarian ideal.” Now imperfections develop. And at this point, the critics apparently assume, we are all called into the act: all must work together to bring about this ideal situation. If A robs B, then everybody is to get together to help compensate B so as to bring about the just situation.

But that is a ground-floor error. On the libertarian view, of course, everyone owes it to everyone to *refrain from aggressing*, in all the ways this can be done, against all other persons. But it does not follow, and it is not true, that everyone has the duty to *see to it that justice is restored*. The *only* persons who have *that* duty, directly from the libertarian principle, are the transgressors themselves. So far as everyone else is concerned—with an exception to be discussed next—they may stand ready to help, they may be positively thirsty for justice—but they do *not* have the right to *impose any duties of compensation* on anyone *else*.

The exception just hinted at would be persons engaged and contracted to try to bring about the restoration in question. These might be, say, hired by the victim, or his friends, or his neighborhood association, etc. As things stand, of course, we have public police and the like. But even if they're public, they are, after all, *engaged*, or *appointed*. Their duties along this line are duties of office—police and other such officials do not have a “natural duty” to do what they do (and get paid for it). How could anyone have thought so? But given that it quite obviously is *not* so, it is likewise obvious that there is no such general duty to go out and rectify injustices, incumbent on all and sundry. We make arrangements to try to bring about that desirable result, and some of those arrangements will impose duties on certain people to take appropriate measures. But that is all.

Early in *The Libertarian Idea* I went to some trouble to distinguish two very different views of liberty. On one view, what we have is simply a *right to liberty*, the right to do as we like. On the other view, however, we would have the *duty to bring it about that everyone is as nearly at liberty as possible*. It is easy enough to see why people adopting the second view should think that we need something like the State to achieve this noble end. But it does not follow from the first view, and in fact is on the face of it quite incompatible with that view. And on the face of it, the first view is *the right view*. Every classic statement of the liberty principle is perfectly clear on the point. Hobbes says that the fundamental principle of morals is to *refrain from war*—he does not say that that principle requires us to go out and *make* war on those who make war on others. Maybe it would be a good idea to do that, and we certainly have the right to do it, but it simply does not follow from our general right of liberty that we have that duty. And if we don't, then the case for massive impositions on almost everybody in order to try to rectify long-ago injustices does not go through. Some injustices can and should be rectified; many cannot, at costs worth incurring, and we should not think that everyone's rights to the various things they have are undermined by that fact.

Is socialism too great a price to pay for “our sins”? Yes, of course. For they mostly are *not* our sins, and it is a canard to say that they are. We innocently inherited or acquired by apparently legitimate means objects or services which some evil people have stolen from others or concealed from us the fact that they are not as advertised. The evil people in question deserved to have rectification imposed on them, by whatever means this may be possible, short of those that impose costs on still other, putatively innocent, persons. Moving to socialism would, of course, make those

imposed on *everyone*, and if that isn't "going too far," one would like to know what could possibly be! Meanwhile the people who created this mess sometimes get away with it, and often are dead by the time their deeds are uncovered. At that point, little or nothing in the way of rectification might be possible. Bygones will have to be allowed to remain bygones.

And when it is possible? Who then pays? Of course the miscreants themselves must pay, if there is any way to get them to do so. But they are long gone. So do we turn to their heirs, and the heirs of those who may have made exchanges with the original miscreants or, much more likely, an indefinite chain of intermediaries between these purchasers and the original villains?

If there are victims whose later-generation heirs can be identified (rare), then the problem will be to determine *both* (a) what compensation to them is appropriate in view of what they would have had if the original injustice had not happened, *and* (b) what is owed to the *other* victims, namely the ones who innocently, as they supposed, acquired and then put to good use the bequeathable items in question. If the putative recipients of the land or other resources that would have gone to their forbears can afford to compensate the innocent intermediate users for *their* honest efforts in the interim, perhaps a settlement can be made. Or perhaps not. In the latter cases, we lament—but we move on.

In the currently-discussed major cases, we have (a) acquisitions, by force, of land from presumably innocent Indians, and (b) of labor from certainly innocent black people (in the American case), or miscellaneous unlucky people (in Europe and the Roman empire, etc.) In the first case, the situation is complicated by the fact that many of these acquisitions were not by force but by treaties of varying degrees of legitimacy. And it is complicated all but impossibly by two further facts: that intervening generations have loosened all the connections supposed, and that the holders of the acquired lands have meanwhile improved them beyond imagining, and certainly very far beyond what would have been the case had the lands continued to be used as they were, mostly for hunting and gathering, by the original aboriginal inhabitants. Manhattan is "sold" for \$24, and its present value, virtually all of which is due to the lifelong efforts of many millions of people, past and present, must be very well into the trillions. Would adequate compensation for the descendants—if they can be identified—of the original area, consist in providing them with a similar-sized area somewhere in pristine condition?

And would those recipients be permitted to, for example, turn around and sell that area for current market prices instead? These questions belong in the realm of the imponderable. Any plausible answers would not generate identifiable clear duties on the part of any specific persons nowadays, and would certainly not generate such duties on the part of the almost everybody else who are not in the class of clearly involved persons. Even in the case of the descendants of black slaves in America—some of whom, we learn, have recently made it into the ranks of billionaires—the degree of conjecture required to try to determine who now is how much worse off by virtue of the misappropriation of the labors of their remote ancestors lies well beyond the borders of the determinable. The case for compensation by almost all of us to the many millions of mostly middle-class remote descendants of those slaves is essentially nil. Both slavery and forcible expropriation of land are evils, which we rightly prohibit today—except, apparently, when it is done by democratically elected governments. The *types* of wrong leading to the original wrongful redistributions have been, at least at the legal and moral levels, rectified. But rectification to individuals at the temporal remove from the original problems is beyond the pale. Justice requires, not that we “do our best” to approximate those impossible-to-determine rectifications, but rather that we leave what is beyond the pale beyond it. Scope there is for novels, histories, oratorios, and other well-done literary and artistic deplorings. But not for the legislator’s blunt cudgels.

Property is not, as some suppose, a fetish: it is among the means of improving our lives. That shouldn’t be lost in academic shuffles as we contemplate abstractly the transference or the interrupted, imperfect transference of property rights.