Toppling the Jenga Tower: A Critique Of Nozick’s Theory of Holdings

CHRIS LUCIBELLA, American University

ABSTRACT: Proponents of an unrestricted free market and of a minimal state frequently use the philosophy of Robert Nozick to criticize government action. While this has obviously harmful ramifications for any project of social welfare, it also rests on tenuous philosophic justifications. This paper seeks to analyze the theoretical shortcomings of Nozick’s theory of holdings, a fundamental premise in his political philosophy as described in Anarchy, State, and Utopia. It concludes that, because of theoretical as well as practical shortcomings, Nozick’s theory of acquisition and transfer is untenable as the basis for a rational theory of distributive justice.

When it comes to libertarian philosophers, Robert Nozick is pretty much the head honcho. A contemporary of John Rawls and Michael Sandel, Nozick stands far at one end of the ideological spectrum and is most noted for defending a minimal state wherein the government’s sole purpose is protection of the security and other negative rights of its citizens. He criticizes Rawls extensively, particularly for obligating the government in distribution schemes of primary goods.\(^1\) Essentially, Rawls’ notion of justice as fairness demands that the legitimacy of distributive shares be contingent on the background arrangements of a given society\(^2\), and that distribution of the goods of society should be consciously structured in order to provide a fair distribution. Nozick conversely believes that free exchange is the center of all fair distribution, and that any patterned attempt to manage the goods of society is categorically unjust. The

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\(^1\) See particularly Robert Nozick, Anarchy, State and Utopia, pp. 216-224

cornerstone of this argument is Nozick’s belief in the legitimacy and primacy of free exchange, to which both parties must rationally assent. His attack on distribution schemes and defense of libertarianism is fundamentally flawed, however, and therefore philosophically untenable. It relies on the doctrine of a just original acquisition\textsuperscript{3}, which cannot be justified using Nozick’s own framework.

Nozick’s belief in just acquisition is central to his attacks on distribution schemes of egalitarian liberalism, and also functions as a key component of his ideal minimal state. Rather than one central body that dictates all distribution of the goods of society, he asserts the importance of society’s resources being doled out via free exchange. In the minimal state, “There is no central distribution, no person or group entitled to control all the resources … what each person gets, he gets from others who give to him in exchange for something.”\textsuperscript{4} Nozick is so concerned with free exchange in part because it encapsulates the autonomy that his ideal state preserves in its actors. Because persons are rational agents, they possess an autonomy that exists as a side constraint on government action. For the government to take from one individual for the sake of another is a violation of that autonomy; hence, free exchange must be fundamental to any possible distribution, so as to not violate the highest right of the individual.

The notion of free exchange is insufficient, however, for Nozick to describe a system that sidesteps the problem of ordered distribution. Through the following induction, Nozick expresses the necessary function of justice in the matter of holdings\textsuperscript{5}:

1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.

2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone 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.

Entitlement, therefore, is of primary importance for Nozick, as an expression of the legitimacy of a transfer or a holding. The added caveat of a just original acquisition in the distribution of social goods is a key component of Nozick’s philosophy, and of libertarianism as a whole. By his own account, a holding (or system of holdings) that originates from an unjust original acquisition is contrary to his conception of the minimal state.

Nozick affirms this stance in two ways. First, he writes of the importance of a historical account of holdings: “The entitlement theory of justice in distribution is historical; whether a distribution is just depends on how it came about.”\textsuperscript{6} Assessments of holdings must have a retrospective element in order to determine whether past injustices have taken place that demand rectification. Nozick calls this the historical nature of distributions, and places great importance on the examination of past “moves” which motivate the current state of affairs in regards to the distribution of goods. Second, by acknowledging that past distributions may not have been in alignment with the tenets of justice, Nozick asserts the society’s need to rectify the situation, with state intervention. He writes, “[P]ast injustices might be so great as to make necessary in the

\footnotesize{\textsuperscript{3} Robert Nozick, \textit{Anarchy, State and Utopia}, pp. 230
\textsuperscript{4} Ibid. pp. 149
\textsuperscript{5} Ibid. pp. 151. Nozick makes use of the term “holding” and the verb “to hold” in his philosophy. Essentially, a holding constitutes an individual’s property, which arises from their right to ownership. Holdings are transferred, as explained above, through exchange between individuals: “…new holdings arise out of the voluntary exchanges and actions of persons” (pp.150).
\textsuperscript{6} Ibid. pp. 153}
short run a more extensive state in order to rectify them.” This doesn’t violate his own criticism of patterned distribution, however, as the original acquisition in these cases was illegitimate. In this way, Nozick attempts to account for small-scale redistribution in the instance of unjust acquisition or transfer.

Nozick acknowledges that his philosophy lacks attention to a larger scheme of rectification in *Anarchy, State and Utopia*. He accepts that historical rectification is a viable and important area for philosophic inquiry, and potentially an area that requires more thought in relation to his philosophy of holdings. Essentially, he leaves the area open to further analysis, not ruling out their possible importance: “These issues are very complex and are best left to a full treatment of the principle of rectification.” This paper will therefore pick up this thread and analyze Nozick’s philosophy in light of a more sophisticated look at the principle of rectification.

It is here that Nozick’s justification of the minimal state, contingent on the doctrines of free exchange and fair acquisition, hits a snag. Both of these concepts must be philosophically tenable to legitimize any of Nozick’s extrapolations, but in actuality both are fundamentally flawed. Invalidating the notion of original acquisition would therefore invalidate the entirety of Nozick’s analysis on holdings and transfers for two reasons. First, just acquisition and just transfer are each necessary components of his theory of holdings as a whole, meaning both must be tenable in order for the greater whole to stand. Second, his doctrine of just primary acquisition lies lexically and temporally prior to that of just transfer, making the latter contingent on the legitimacy of the former. Nozick constructs a precarious tower with his philosophy, a logical syllogism that rests on certain fundamental assumptions in order to be consistent and tenable. Chipping away at these assumptions is the equivalent of removing a foundation piece from a tower of Jenga blocks; it risks toppling the structure that rests on top.

The remainder of this paper will first focus on criticism of Robert Nozick’s analysis of primary acquisition, next present potential answers to these arguments, and finally articulate counter-arguments against those answers, with the hope of synthesizing a cohesive answer to Robert Nozick’s dual concepts of just acquisition and free exchange. First will be responses explaining why the concept of just acquisition is flawed, and then responses to the notion of free exchange as just exchange.

Nozick takes a fairly Lockean view of acquisition, especially in the context of obtaining land, arguing that the mixture of one’s labor with natural resources that are common and unclaimed, or that one has legitimately acquired through free exchange, generate a legitimate claim of acquisition. It is the infusion with labor that generates ownership, as the expression of an autonomous agent; it is this same notion, however, that brings to light the first (and most compelling) argument against the concept of just acquisition, particularly in the United States. Looking at a historical account, much of the acquisition of land and the benefits of that land would not be considered legitimate by Nozick, because they were not procured through the labor of those who claimed ownership of the land.

This criticism begins, in a suitably historical fashion, with the first explorers who claimed the land that is now the United States despite the sizable indigenous populations already inhabiting the continent, and it continues through our history of Manifest Destiny and acquisition of lands through the genocide of the Native American people. Rather than explore these issues too closely in this paper (although it is a vital area of study), the generalization will be

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made that the first American colonists had no legitimate claim to the land that they either seized through violence or conned whole populations out of with unquestionably unfair trades (such as the infamous beads-for-Manhattan transfer). Indeed, it is this very sort of unjust acquisition that Nozick demands use of the historical principle in order to check. This becomes troubling, however, given the scope of gains that were essentially stolen from the indigenous peoples of the Americas, for the majority of the current continental United States would have to trade back to those few remaining tribes who survived the bloody ordeal of colonialism in order to fulfill Nozick’s principle of rectification.

The same problem is also raised by America’s history of slavery. It can be once again generalized that for over two hundred years, citizens of the United States as a whole (even those living in states where slavery was eventually banned) benefited from the subjugation of an entire race. The labor being exercised (the slaves’) was not that of those who benefited (the slave-owners), and thus no legitimate claim can be made to any of the fruits of that labor. And because the benefits of this ill-gotten labor were spread even to those who did not condone slavery, the legacy of slavery is essentially one of blood money, staining the hands of all involved. Once again, Nozick’s notion of rectification would justify massive compensation for such an act, because the original acquisition of all the goods of the plantations is unjust.

The implication to the notion of just acquisition as a whole is powerful, and places Nozick in a double-bind that works to invalidate his reliance on the primacy of original acquisition on the whole. On one hand, redistribution schemes of unprecedented proportions are compelled by Nozick’s own assertion of the principle of rectification, an obligation that at best would bankrupt the nation and at worst de-legitimize the land mass claimed by the United States. On the other hand, Nozick’s assertion of the need for just acquisition seems untenable, at least in the way that he establishes that acquisitions must be gained, and this is it is? [need a subject noun/pronoun here] one of the major supporting notions of his justification of the minimal state. Either side of this bind would seem to go against what Nozick purports to establish in Anarchy, State and Utopia, namely a legitimate government that doesn’t apply large-scale, patterned distributions of goods and social benefits.

This analysis can also be universalized, so as to escape criticism for being exclusive to the United States, and grounded only in the status quo. Any nation falls prey to this criticism, as acquisition of land on a global scale is inescapably a zero-sum game. In order to have come to the current global distribution of sovereign nation-states, one must address the long and bloody history of land wars that have molded the very shape of nearly every nation, and will continue to do so without question for the foreseeable future. Thus, all nations’ claims to their current landmass and the goods that spring from those established borders were at the expense of other nations; even if they weren’t directly the result of international conquest, the zero-sum nature of the international arena means that other nations are precluded from gaining access to those lands, meaning they were still gained at the expense of others who had a legitimate claim to them. Consequentially, the above implication can be universalized to apply to all situations; Nozick’s call for a historical analysis of acquisitions cannibalizes itself at the point where it de-legitimates the nation state, an essential body for Nozick’s own philosophy. The doctrine of just acquisition seems flawed in light of this development, which calls into question the remainder of Nozick’s philosophy of acquisition as a whole.

The next portion of this text will be an analysis of the possible responses that could be raised against this argument, as well as counter-responses to these arguments. It is the aim of this section to reinforce the previous analysis against possible criticism, while also clarifying the argument as a whole.
The first possible response to this paper is that the unjust actions that arguably de-legitimize the notion of just acquisition as a whole only apply to certain particular actors, and not to the society as a whole. This argument asserts that it is more realistic to address the issue of slavery and the land taken from the Native Americans as the actions of some members of society, namely the slave-holders or the explorers who first claimed the United States as theirs. In this way, the matter of reparations becomes a private matter to be settled between certain parties who benefited, not the whole of society. The United States would not be obligated, therefore, to perform any of the grand redistribution this claims, nor is the doctrine of original acquisition invalidated.

The response to this position is two-fold. First, this analysis is unique to the situation of the United States, yet the above argument against just acquisition was then universalized to all nations. Any nation’s acquisition of land is illegitimate, on a level that implicates all of society. Second, even given the context of the Unites States, this rebuttal falls. In cases of both slavery and the theft of lands from the Native Americans, the government benefited directly from the situation, either through tax revenue on plantations or through land mass gained during the era of Manifest Destiny. As a result, it is insufficient to claim only a few actors are implicated in these matters, as the government becomes implicated as soon as it is involved in this series of linked acquisitions that began with categorically unjust acts.

The second likely response to this paper’s main argument takes into account the more universal nature of the problem that is posed for Nozick’s theory of just acquisition. This argument claims that simply because an actor benefits from an unjust acquisition, they aren’t necessarily implicated in the unjust act itself. Take, for example, the earlier example of tax revenue on plantations. This argument would dictate that the government is not implicated in the act of slavery itself, simply because it benefited monetarily from its existence. This claim can be warranted in a number of ways. First, one can argue that actors can remain neutral to unjust acquisitions while still benefiting from them because they were unaware of the unjust nature of the acquisition in the first place. Alternatively, it can be said that it is an undue burden to place on the government to be culpable for the source of all its revenue; holding it accountable for how its tax dollars are generated is neither feasible nor desirable. However this argument is formed, the implication is clear: the government benefiting from slavery, or from seizing the lands of other nations, isn’t functionally identical to the government condoning the acquisition behind these acts, which remains unjust.

The answer to this is fairly straightforward, however, and lies within Nozick’s own theories. He envisions a system of exchange as a long series of links of just transfers, from one rational actor to another, beginning with a just original acquisition. Nozick himself affirms that no matter what the culpability of the next actors in the chain, if the original acquisition of the good in question was unjust, then it invalidates the entirety of the chain that good generated by being exchanged. In essence, Nozick’s notion of just transfer is a game of Jenga, and the just acquisition is the block at the very bottom of the tower; removing the block topples the structure that rests on top of it.

Even given these possible answers to the argument tendered above, it still appears that Robert Nozick’s system of just acquisition and transfer is fundamentally flawed. The history of slavery and theft from the Native Americans calls into question the legitimacy of the original acquisition of the lands and the goods of those lands within the United States; this notion is then universalized by looking at the unjust nature of acquisition of land by all nations. As such, Nozick’s notion of just transfer is untenable, as it is premised on the existence of a just
acquisition. This strikes a serious blow against not only his framework for a theory of legitimate holdings, but his assertion of the primacy of the minimal state as a whole.

Works Cited