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17 An Internal Critique of Nozick's Entitlement Theory

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Robert Nozick has proposed an entitlement theory of distributive justice, which he uses to defend the institution of private property, and to criticize redistributive measures on the part of governments. The root idea of this theory is that the justice of a given distribution of possessions depends upon how that particular distribution actually came about, rather than upon its structure. Many have criticized this theory from the outside, questioning the entitlement approach and the theory of individual rights on which it is based.[1] I offer a different critique of Nozick's entitlement theory, an internal one. Accepting, for the sake of argument, the general entitlement view of justice, I shall argue that Nozick's specific theory is, in a very broad sense, internally inconsistent. That is, some fundamental principles and arguments of Nozick's theory are subject to problems and objections that he recognizes himself in other contexts. And these problems cannot be solved without sacrificing some of Nozick's main political doctrines.

Nozick admits that he has not provided a precise statement of the principles of his entitlement theory.[2] As my criticisms apply to the basic form of his principles, and not to points of fine detail, this should not matter. My arguments, if they succeed, show that substantial revisions in Nozick's theory are needed. And they indicate that a more satisfactory form of the theory could not easily be used to justify permanent private property, without at the same time legitimizing substantial forced transfers of wealth from the rich to the poor.

I THE NO NET HARM CRITERION

Nozick's entitlement theory has three parts. The theory of original acquisition concerns how unowned things come to be legitimately owned in the first place. The theory of transfer, which I shall not discuss, describes the conditions under which ownership of something is legitimately passed from

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one party to another. Finally, the theory of rectification states how past injustices (i.e., illegitimate acquisitions and transfers) are to be rectified by compensation of the victims. According to the entitlement theory, a party's ownership of something is legitimate (rightful) if and only if it has come into his possession via a chain of legitimate acquisitions, transfers, and rectifications.

The central problem of the theory of acquisition is how any of the earth's resources, or the things made from these resources, can come to be privately possessed. By what right may some exclude others from using these things, and then pass on, by contract, gift, or bequest, this right to exclusive use?[3] Locke suggested that one acquires property rights to resources, and their products, by mixing one's labor with those resources, and he claimed this was justified provided that one left enough and as good for others.[5] Nozick labels the latter qualification Locke's Proviso, and he endorses not the qualification itself, but the principle underlying it: that if others are not harmed (i.e., made worse off) by an original acquisition, it is legitimate.[6] We may call this Nozick's Proviso.

The fundamental principle of Nozick's theory of rectification says, in effect, that victims of injustice are sufficiently compensated if they are no worse off (having received the compensation) than they would have been had the injustice not taken place.[7] Both this Rectification Principle and Nozick's Proviso involve comparisons between a person's actual level of well-being and how well off he would have been under certain counterfactual conditions (i.e., if certain acquisitions and/or transfers that did take place had not). The former says that violations of a person's natural rights not to be victimized by illegitimate transfers or acquisitions are redeemed, if his actual situation (with rectification) does not come off unfavorably in this comparison of levels of well-being. The latter says that restrictions or violations of one's natural rights to use the earth's resources are justified if one's actual (restricted) situation is at least as good as the counterfactual unrestricted situation. We may summarize this by saying that Nozick employs a No Net Harm Criterion as the central normative principle of his theories of acquisition and rectification. That is, he holds that compensations received for restrictions or violations of natural rights are morally adequate if the compensated individual is not, on balance, worse off than he would have been without the restrictions or violations.[8]

My case against Nozick consists of pointing out that the No Net Harm Criterion is too weak in two respects that Nozick himself notices in other contexts. It systematically understates the *amount* of compensation that morality requires. And, in case of important cases, it is either inapplicable

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or vacuously satisfied. Both Nozick's Proviso and the Rectification Principle are subject to each of these criticisms. But I shall direct each criticism primarily at a single target. Thus, in Section II, I apply the first to Nozick's defence of private property; then in Section III, I consider the implications of the second with respect to the issue of rectification across generations.

II NOZICK'S DEFENCE OF PRIVATE PROPERTY

It might be thought that moral restrictions in original acquisition rule out a system of permanent inheritable private property rights (henceforth abbreviated as 'private property'). For if people can turn land and other natural resources into their own property, and these resources are not returned to an unowned condition, then after a number of generations, those without significant inheritances will likely find that there is not 'enough and as good' available for them to use. Nozick, aware of this problem, invokes his Proviso to provide a solution, a moral defence of private property.[9] He argues that the situation of those who do not inherit, for example, those who must become wage workers to survive, has not been worsened by the private property system. For the indirect benefits they receive from the system, which are primarily due to the economic development spurred by it, outweigh the disadvantages of their having no resources (other than their own labor) to use or appropriate.

But what alternative situation for the non-inheritors are we considering, in arguing that they are not worse off under the private property system? Apparently, Nozick thinks the relevant comparison is to a state of nature situation in which there is no private property system, or in which there has not yet been one and people are just now to be given the chance to appropriate. For he suggests that the critical question is how much wealth is attributable to human action and how much to natural resources, implying that only the latter sort of wealth is present in the baseline situation.[10] Some socialists might object that the appropriate baseline is how well off the non-inheritors would now be if there had been collective ownership of resources throughout history. But we may pass over this objection, assuming that the No Net Harm Criterion is properly applied to the comparison between one's situation under the private property system and one's counterfactual situation in some state of nature with no prior history of private property.

The question I wish to raise is whether the *amount* of indirect benefits to the non-inheritors that is required by the No Net Harm Criterion is sufficient compensation. Admittedly, if the Criterion is satisfied, the

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non-inheritors are not harmed by the private property system. But the inheritors of property are benefited by the system, some enormously, and more than the non-inheritors. Might a morality require them to share some of these benefits with those who are relatively disadvantaged by the private property system?

Surprisingly, the notion that they must share seems to be a direct corollary of one of Nozick's own arguments.[11] In discussing how much compensation for the violation of one's rights in the state of nature is adequate, Nozick draws a distinction between (merely) *full* compensation and *market* compensation. Full compensation is the minimum amount needed to bring the victim up to the welfare level he would have been at had the violation (or 'boundary crossing' as Nozick calls it) not occurred. Market compensation is the amount that the two parties would have agreed to, prior to the violation, as the price of allowing the violator to cross the victim's boundary. (Of course, if there is an actual agreement, there is no violation, but I shall continue to use the convenient terms 'violator' and 'victim'.)

Market compensation will generally exceed full compensation. This may be seen by thinking of the victim as the seller of a permission to cross the boundary, and the violator as a buyer of this permission. If the lowest price the seller (victim) would accept is below the highest price the buyer (violator) is willing to pay, then an exchange at any price in the trading interval between it will benefit both parties. Now the victim's lowest price is the point at which he would just be fully compensated for the boundary crossing, at which he would suffer no net harm. But this is hardly a fair price. Why should the price in the trading interval most preferred by the violator and least preferred by the victim be the fair one? Should don't the violator have to pay the market price, which could be anywhere in the trading interval depending on the bargaining power and tactics of the two parties? Nozick certainly thinks so, noting that merely full compensation is inadequate. For if only full compensation were required, a violator could, in effect, 'steal' a boundary crossing, and then pay for it at a price favourable to himself, rather than at a negotiated price.

But now consider Nozick's defence of private property by means of the No Net Harm Criterion embodied in his Proviso. It amounts to saying that original acquisitions may violate (or restrict) the use rights of their contemporaries, and the descendants of those contemporaries, provided that the latter parties receive full compensation. However, the above Nozickian arguments imply that these parties must receive *market* compensation, which is likely to be considerably more. Since the rights of non-inheritors have been violated (or restricted), those who violate them – or their

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descendants who benefit must share with the non-inheritors the benefits accruing from the violations, on mutually agreeable terms.[12]

We may note in passing that Nozick's arguments imply that a market compensation test rather than the No Net Harm Criterion should also be used in the theory of rectification. For if A can profit from the use of one of B's possessions, P, he cannot simply steal P, use it, and pay B merely full compensation. He must pay B the market price, thus sharing with B the profit from the use of P.

Returning to the theory of acquisition, we have seen that there is a conflict between Nozick's endorsement of market compensation for rights violations, and his Provisos-based defence of private property. Since, however, the Proviso argument is not crucial to his main line of arguments,[13] could he resolve the conflict by retracting his endorsement and accepting full compensation as adequate? No, he could not, even if he were willing to ignore the force of his own arguments for market compensation. For if only full compensation is required, a precise analogue of Nozick's defence of private property can be constructed to justify the redistributive state. For it is plausible to suppose that all, even those on the paying end of redistributive taxation, are better off living in the redistributive state, than they would have been in the anarchical situation in which the state did not exist. Thus, the full compensation, or No Net Harm, criterion seems to be too weak to function for Nozick as a *sufficient* condition of an institution adequately compensating those whose rights are violated by it. For interpreted as such, it would imply that the redistributive state is justified. Thus, Nozick apparently must choose between scrapping his defence of private property, and accepting the redistributive state as legitimate.

Nozick might try to avoid this conclusion by attacking the argument for redistributive government based on the No Net Harm Criterion. He could point out that the Criterion may not be satisfied for many who must pay redistributive taxes, if how these people would fare within the anarchical (i.e., non-redistributive) state is taken as the baseline of comparison. But surely the anarchical state of nature is the baseline analogous to the propertyless state of nature, which is what his remarks suggest should be used as the baseline in the case of private property. And if his point were that there is, for a significant group, some alternative system (or variant of the system in question) that would have benefited them more than a given system of redistributive government, the same may be said of any given private property system. In defending private property, Nozick calls for assessing the system as a whole, not piece-by-piece, and he does not require that it be maximally beneficial to be justified. If the same test is applied to redistributive government, it also passes muster.

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There is, though, an alternative line of defence of Nozick's position which requires more detailed consideration. It rests on the claim that the absence of any natural resources to directly use or appropriate (because others have already acquired them) is merely a *restriction* of the exercise of your natural rights to the earth's resources. And restrictions of natural rights, unlike *violations* of rights (for example, theft or redistributive taxation without consent), require either no compensation, or at most full compensation. Hence the private property system, as a mere restricter of rights, must satisfy a less demanding compensation requirement than a system of redistributive taxation, in order to be morally permissible.

However, for this defence to work, one must clarify the distinction between restrictions and violations of rights in a way that makes plausible the different principles of compensation that supposedly apply to each. Let us try to do this. We might first identify violations of rights with direct interferences with other's physical movements, and restrictions of rights with other kinds of effects on one's liberty, for example, psychological pressures and withholding of information. For it is plausible that the former are generally more harmful and intrusive and would, therefore call for greater compensation. But if we compare redistributing via taxes withheld from wages with the barriers to movement place in one's way by the fences and guards protecting other's property, we see that there may be more direct physical interference involved in a private property system than in a redistribution scheme. So this way of drawing the distinction would not serve the purposes of Nozick's defender.

Alternatively, we could regard restrictions on rights as limitations on their effective exercise due to the successful competitive exercise of equal rights by others. Hence the existence of *fair competition* constitutes a reason for requiring less compensation for those whose rights are restricted (i.e., for the losers in the competition). But, of course, the right to compete for natural resources may seem an empty right for those who arrive on the scene with no inheritance and no unowned resources for which to compete. In these circumstances do they possess a right to compete at all? Perhaps they do, since they have the chance to use their labor to acquire or rent natural resources and their products. But for the present argument to have force, the competition they wage against inheritors of property among others must be fair. Is it fair for their use of natural resources (in general and in the competition to acquire more) to be restricted by the prior acquisitions of others, provided only that they are better off than in the propertyless state of nature? This is the question that must be answered positively if the present defence of Nozick is to proceed. Yet it is the very point at issue in our examination of Nozick's use of his Proviso

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to defend private property. Hence, to rely on the present interpretation of what a restriction of a right is, in order to defend Nozick, would amount to arguing in a circle.

Let us start again. Is the absence of direct access to natural resources due to others' acquisitions a mere restriction of one's rights, because it is a circumstance that arose *unintentionally* rather than by design? Maybe, but in general we do not think that unintentional, say reckless or negligent, interferences with rights call for lesser compensation for the victim than do intentional interferences. And Nozick himself seems to reject the notion that harmful unintended side-effects call for less compensation than intended harms.[4] Nor will it help Nozick's defender to identify restrictions, as limitations on the exercise of one's rights that arise from the acts of several independent agents. For it is hard to see why the victim of the acts of many deserves less compensation than the victim of an equally damaging act performed by a single individual. Suppose, for example, that I fall asleep and a cell is built around me that I am trapped in for several days. Do I deserve less compensation if the cell was built, brick by brick, by numerous successive passersby than if it were built by one man? It seems highly doubtful.

Finally, consider the suggestion that restrictions on property rights constitute obstacles to acquiring ownership of things, while violations of such rights involve (illegitimately) depriving people of things they have already acquired. In general, people suffer more from losing what they have than from failing to gain what they desire. For they become attached to, and possessive of, their property, and they base their plans on their continued ownership of it. Hence, it may be proposed that while full compensation can make up for the lack of opportunity to acquire, only market compensation suffices in cases of wrongful loss of one's property.

This account of the violation/restriction distinction seems more promising than the others we have considered, but in the end it fails to establish the conclusion that Nozick's defender needs. If the 'violated' did suffer more, on average, than the 'restricted', it perhaps would follow that the former generally will deserve greater compensation (for losses of goods of equal economic value) according to whichever criterion of compensation is used—full or market. What would not follow is that different criteria are appropriate for use in the two cases. Admittedly, if the losses of those who cannot acquire property were only economic, while those of people who lose property were psychological as well, we might require market compensation in the latter case, but not the former, on the grounds that only the sufferer himself can gauge the extent of his psychic injury. But

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those who are prevented from acquiring property typically suffer psychic losses also, perhaps of a very painful sort, at the treatment of those who seem to more deserving than they, but who possess much more. Further, non-inheritors who suffer restrictions generally possess much less than do inheritors who suffer violations (for example, taxes and theft). And their greater need for more resources may make their suffering under restrictions greater than inheritors' sufferings over the loss of some of their, not greatly needed former possessions. Hence it is not even clear that, on average, the 'violated' suffer more from property rights violations than the 'restricted' suffer from restrictions on acquisitions. So the present line of reasoning will not really help Nozick's defender.

We could canvass other proposals that might be used in Nozick's defence, for drawing a morally significant distinction between rights restrictions and rights violations. But I see no reason to think that they will succeed where the above proposals have failed. Consequently, therefore, that Nozick's defence of the minimal state stands by the full compensation test embodied in the Wertheimer Criterion. He can keep his argument for private property, but only at the cost of acknowledging the legitimacy of redistributive taxation and the more-than-minimal state. If instead, he adopts the market compensation test, it no longer suffices as a defence of the private property system to point out that all benefit from it. Such a system is justified under this more stringent test, only if the inheritors of property transfer a significant portion of their wealth to the non-inheritors. On the surface, at least, such required transfers from the rich (inheritors) to the poor (non-inheritors) are just what opponents of redistribution, like Nozick, are against.

Nozick could, of course, here follow a line he adopts elsewhere.[16] He could claim that such wealth transfers are not really *redistributions*, because the underlying reasons for them are compensation and not the satisfaction of needs or the achievement of social equality. But then he would be conceding that even apart from rectification for past illegitimate transfers and acquisitions, the entitlement theory sanctions substantial wealth transfers from the rich to the poor. This would amount to saying that his theory does not really have the conservative implications that he, and others, apparently thought it did.

III RECTIFICATION AND THE EXISTENCE PROBLEM

In our discussion of Nozick's defence of private property, we took for granted an implicit assumption shared by him and his commentators – that

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the victims of an injustice would have existed had the act never taken place.[17] However, this assumption is frequently false in cases of interest to the entitlement theory, and its falsity seriously undermines Nozick's theory of rectification.

Recall that the Rectification Principle says (roughly) that a past injustice is rectified, if its victims are raised to a level of well-being at least as high as they would have been at had the injustice never occurred. But if the victims would not have existed without the injustice, special problems arise in interpreting and applying the relevant counterfactual.[18] Nozick acknowledges that such problems infect application of the No Net Harm Criterion when, in a different context, he suggests there is something morally wrong going on in the following situation:

> A given couple ... proposes to have an additional child and dispose of it at the age of three (or twenty-three) by sacrificing it or using it for some gastronomic purpose. In justification, they note that the child will not exist at all if this is not allowed, and surely it is better for it to exist for some number of years.[19]

Unfortunately, Nozick never considers whether problems similar to the ones raised here may also apply to the use of the No Net Harm Criterion on the theory of rectification. But it is clear that they do. If we interpret the Rectification Principle so that it presupposes the victim's existence in the counterfactual situation, it cannot be used in cases in which this presupposition is false. On the other hand, we may interpret the Rectification Principle so that it is vacuously satisfied if the victim would not have existed but for the injustice. After all, save for a few exceptions, it is better to exist as a victim of injustice, than not to exist at all. On either interpretation, the Rectification Principle implies that there is no obligation to make restitution in situations like the following.[20]

Just before Lord Farmington leaves town (and his wife) for the weekend, the theft of a valuable gem from the house is discovered. He returns home to assist the police and over the weekend the sole heir to the Farmington estate is conceived. Years later, after Farmington has died and his heir has inherited the estate, Lord Rodney admits to having stolen, and to still possessing, the gem. Though we would normally believe that Rodney is obligated to restore the gem to Farmington's heir, the Rectification Principle implies this is not so. For if the theft had not occurred, Lord Farmington would have left for the weekend, and the particular sperm and egg cells that joined to bring his heir into existence would have never come together.

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This difficulty could perhaps be ignored if it arose only in special rigged examples, like the above. But the same point applies to some of the most significant situations generally thought to call for rectification – those involving large scale injustices that existed for substantial periods of time. Consider, for example, slavery in America. It is frequently and rather plausibly argued that if members of the white community have derived substantial economic benefits from the past practice of slavery, they owe restitution to descendants of Blacks whose forced labor produced those benefits.[21] But if the Rectification Principle is correct, this argument is a complete non-starter. For if slavery had never existed in America, the family trees of black families would have been different (than what they actually are) over many generations, and the existing individuals who are descendants of slaves would never have existed at all. Hence, they have suffered no net harm as a result of slavery and are owed no restitution according to the Rectification Principle. And living white people, who have indirectly benefited from the injustices of slavery and who, like living Blacks, also owe their existence to this past practice (since slavery influenced white family trees) – are not required to share these benefits with the heirs of the victims. What is especially disturbing about this, is that the absence of an obligation to make restitution in such cases is in no way contingent upon the beneficiaries of injustice being innocent or unintentional beneficiaries, who regret the occurrence of the injustice.

The conclusion that no rectification is owed in such cases might be avoided by revised the Rectification Principle to apply to certain *groups* (for example, American Blacks). But this move is not open to Nozick, as it lies in the face of his moral individualism and his view that group rights must be strictly derived from, and reducible to, the rights of particular individuals.[22] Nor will it do to require that, in the cases at hand, the victim of injustice be brought up to the level of well-being of his closest counterpart in the counterfactual situation in which that injustice does not occur. Leaving aside from problems concerning the identification of closest counterpart, it is hard to see how a rigorously individualistic theory like Nozick's could plausible link *your* right to compensation to how *some other* (possibly hypothetical) *person* would have fared in certain hypothetical circumstances. In fact, if Nozick allowed such a link between our moral rights and the features of such hypothetical others, he might seriously weaken his attack on those who tie our political obligations to the hypothetical consents given by (idealized) persons other than ourselves.

Why, though, couldn't Nozick simply accept the implications of his Rectification Principle in those odd cases and deny that no rectification is required? He could, and perhaps he would. But this would threaten to

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destroy the plausibility of the entitlement theory in the eyes of those concerned with fairness. When it appeared to contain an effective principle of rectification, the entitlement theory promised to remove those disadvantages due to past injustice, and leave the rest to be dealt with by individual initiative and by charity. There is at least some plausibility in supposing that this would be just. But once it is revealed that serious injustices of the past, its credibility as a theory of justice or *fair* distribution, is seriously called into question.

Note that the 'existence problem' which we have been discussing with regard to rectification, also applies to Nozick's defence of private property. For, given how much the absence of the private property system would have changed world history, it is likely that no presently existing individual would have existed if the private property system had not. From Nozick's Proviso, it follows then, that provided non-inheritors are glad to be alive, they have no valid complaint against the private property system, even if they are *worse off* than they would have been had they existed in a propertyless state of nature. Nor are they owed any compensation for their lack of opportunity to use or appropriate resources, and to achieve a standard of living at least equal to that in a propertyless state of nature. It seems obvious that this implication of the Proviso are unacceptable.

We may sum this up by saying that the existence problem reveals serious flaws in Nozick's theories of acquisition and rectification. Furthermore, it threatens to plague any revisions of these theories that involve the No Net Harm Criterion and welfare comparisons between actual and counterfactual situations. And Nozick gives us no clue as to how to deal with the challenge this problem poses for his entitlement theory.

IV CONCLUSION

I have argued that two central principles of Nozick's entitlement theory that employ the No Net Harm Criterion, namely his Proviso and Rectification Principle, are too weak in two respects. First, they are inapplicable or vacuously satisfied in circumstances involving the existence problem, and this leads to implausible results. Second, the amount of compensation for rights violations required under these principles, namely full compensation, is too small. Thus, the existence problem, of which Nozick is aware, undermines his strategy of using the No Net Harm Criterion as the core of an entitlement theory of justice. And, even if one were to dismiss that problem as a bit of philosophical sleight-of-hand, Nozick's principles and his defence of private property would fall prey to his arguments for market

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compensation. So Nozick's entitlement theory, viewed as a defence of private property against the redistributive activities of the state, fails in the light of arguments, distinctions, and observations that he himself advances.

NOTES

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1. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
2. See, e.g., Brian Barry, Review of *Anarchy, State, and Utopia*, in *Political Theory* 3 (1975): 331–6; Thomas Scanlon, "Nozick on Rights, Liberty, and Property," *Philosophy & Public Affairs* 6 (1976): 3–25, and Peter Singer, "Rights and the Market," in John Arthur and William Shaw (eds), *Justice and Economic Distribution* (Englewood Cliffs, N.J.: Prentice-Hall, 1978): 207–21.
3. Nozick, p. xiv.
4. Nozick, p. 175.
5. *Second Treatise of Government*, sections 27–37.
6. Nozick, pp. 175, 177, and 178.
7. Nozick, pp. 150–8.
8. The possible significance of the distinction between violations and restrictions of natural rights is discussed in section II below.
9. Nozick, p. 177.
10. Nozick, p. 175. See also p. 181.
11. Nozick, pp. 63–5.
12. As the relevant parties are not contemporaries, there are special difficulties in determining what (exactly how much) market compensation is going to be. If we ignore this complication and think of contemporary inheritors and non-inheritors as the bargaining parties, it seems likely that market compensation would substantially exceed full compensation. For while the inheritors might expect to fare better than the non-inheritors in the state of nature (due to a better average cultural and genetic endowment), they are nonetheless in a worse bargaining position than the non-inheritors. This is because they would have much more to lose in a return to the state of nature no-agreement point.
13. Nozick has another argument for the market compensation argument's conclusion that rights violations in the state of nature may be prohibited, even if compensation is paid. See Nozick, pp. 65–7.
14. Nozick, p. 64n.
15. Allan Gibbard considers a liberal system like Nozick's and arrives at a similar conclusion using a different line of argument. See his "National Property Rights," *Noûs* 10 (1976): 77–86.

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16. Nozick, pp. 27 and 114.
17. The only mention of this assumption (and discussion of its implications) that I have found is in George Sher, 'Compensation and Transworld Personal Identity', *The Monist* 62 (July 1979): 378–91.
18. When viewed prospectively, rather than retrospectively as in the theory of rectification, these problems affect the theory of obligations to posterity. I discuss this in 'The Paradox of Future Individuals', in *Philosophy & Public Affairs* 11 (Spring 1982): 93–112.
19. Nozick, pp. 38–9.
20. Strictly speaking, this is implied by the *first* interpretation of the Rectification Principle only in conjunction with the true background assumption that there is no other principle in Nozick's system that would require restitution in such cases.
21. See, e.g., Bernard Boxill, 'The Morality of Reparation', *Social Theory and Practice* 2 (1972): 113–22.
22. Nozick, pp. 102 and 118.
23. Would introduction of the market compensation test into the theory of acquisition, as suggested in section II, partially offset the absence of an effective principle of rectification within the entitlement theory? Perhaps, but recognition of the problem about existence discussed in this section poses new difficulties for interpreting the market compensation test. If market compensation for present non-inheritors is to be determined (in principle) in a hypothetical temporal bargain between them and first generation acquisitors, the latter have an enormous bargaining advantage, as the very existence of the former is dependent on the private property system being agreed to. If, on the other hand, the bargain is between present inheritors and non-inheritors, are we to suppose that the absence of an agreement would result in the nonexistence of both parties?