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LAWRENCE C. BECKER

AGAINST THE SUPPOSED DIFFERENCE BETWEEN HISTORICAL AND END-STATE THEORIES*

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Historical theories of distributive justice are supposed to stand in sharp contrast to end-state theories. I do not think they do. There is a limitation on the principles of historical theories which takes much of the interest out of them – at least insofar as that interest comes from their supposedly striking difference from end-state theories.

I. THE GENERAL FORM OF HISTORICAL THEORIES

The root idea of historical theories is simply that the history of a distribution, rather than its pattern of holdings, determines whether it is just. Just distributions come about necessarily, and only, from just original acquisitions plus just transfers (if any) of those holdings.

The idea has considerable appeal – especially in Robert Nozick's elegant presentation of it. He puts the general form of historical theories as follows:

> If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.
>
> (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) application of 1 and 2.[1]

There are many possible principles of justice in acquisition (e.g., various forms of utilitarian and Lockean principles). And there are many possible principles of justice in transfer. So the range of possible theories of this general form is quite large. (Nozick's argument for the general form, therefore, cannot be damaged merely by attacking his own choices for those principles.)

II. THE LIMITATION ON THE TRANSFER PRINCIPLE

There is a stringent limitation on the general form of transfer principles, however. It is that transfers are bound by all but one of the general conditions

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('provisos') attached to justice in original acquisition. (The one exception is non-ownership. Original acquisitions are by definition acquisitions of unowned things; transfers are not.)

To see this, consider the controlling assumption of historical theories: They must all assume that just transfers are justice-preserving, somewhat (Nozick says) as rules of inference are truth-preserving.[2] They must hold that if the transfer from *A* to *B* is just, and similarly for the transfer from *B* to *C*, *C* to *D*, and so on, then it follows that the overall shift in holdings from *A* to *Z* will be just.[3] If this proposition about the transitivity of justice is false, then the general form of historical theories is indefensible.

It is not false. It is merely empty because of the limitation on transfers. Suppose the principle of acquisition is the Lockean one: I am entitled to whatever I can produce (from my own or unowned property) by means of my own labor. But there is the famous and necessary proviso: I am entitled to those things *as long as I leave as much and as good for others*.[4] Mill's more accurate formulation is: as long as my acquisition constitutes no 'loss' for others.[5] Now it might be thought that such a proviso operates only on the acquisitions, leaving us free to approve of any fully voluntary transfers of justly acquired holdings. (This is what gives historical theories a libertarian flavor.) But this isn't so. If the no-loss requirement restricts acquisitions, it must also restrict transfers. If my acquisition of *un*owned things is only justifiable on the condition that it impose no loss on others, surely the justifiability of my acquisitions of *owned* things must be subject to the same condition. How could it not be? It is, after all, a condition on holding things as property, not simply on the act of acquiring them.

Nozick is well aware of this point, though he discounts its importance. He writes:

> A theory which includes this [Lockean] proviso in its principle of justice in acquisition must also contain a more complex principle of justice in transfer. Some reflection of the proviso about appropriation constrains later actions.... Each owner's title... includes ...the Lockean priviso.... Thus a person may not appropriate [through Lockean original acquisition] the only waterhole in the desert and charge what he will. Nor may he charge what he will if he possesses one, and unfortunately it happens that all the water holes in the desert dry up, except for his. This unfortunate circumstance, admittedly no fault of his, brings into operation the Lockean proviso and limits his property rights.[6]

Nozick discounts the importance of this restriction because he takes a very narrow view of when an acquisition can be said to constitute a loss to others,

and because he believes that transfers in a truly free market will very rarely run afoul of this narrowly construed proviso.[7]

There is good reason to reject a narrow construction of the no-loss requirement.[8] But that is beside the point here. The point here is simply that each transfer must preserve the proviso on original acquisition. This imposes a perfectly general limitation on justice-preserving transfers. If they fail to meet it, they fail to preserve justice.

The task of writing the proviso on the principles of acquisition and transfer is therefore an utterly central one for any historical theory.

III. THE CONVERGENCE OF HISTORICAL AND END-STATE THEORIES

My contention is that the effort to write the proviso radically diminishes the distance between historical and end-state theories. This is best seen by examining two criticisms levelled at end-state theories on behalf of historical ones. First, end-state theories are criticized because they are predominantly substantive rather than procedural. It is thought to be much more difficult to establish the justice of a particular pattern of holdings than a particular procedure of acquisition and transfer. Second, end-state theories are criticized because they require constant tinkering – constant redistributions – to preserve the proper pattern of holdings. Such tinkering is said to be incompatible with any reasonable amount of individual liberty. Nozick's Wilt Chamberlain example is designed to illustrate the point.[9] So historical theories are touted as helpfully procedural and liberty-preserving.

They are not. They are significantly substantive and liberty-limiting. They are substantive because the specification of the proviso (or absence of one) on the principle of acquisition is indistinguishable from the specification of a just pattern of distribution. They are liberty-limiting because the constant tinkering required to preserve the proviso in transfers (and holdings generally) is indistinguishable from the pattern-preserving activity objected to in end-state theories.

Take acquisitions first. Every principle of justice in acquisition either carries a proviso about the social context or it does not carry one. By a proviso about the social context I mean a specification of what background conditions – about the scarcity of available resources, the nature of the

people involved, and so on – make an acquisition unjustifiable. The no-loss requirement on Lockean acquisition is a social context proviso. So is the concern for social welfare built into utilitarian acquisition.

Suppose the principle of acquisition carries no proviso. Then its justification must show how every possible pattern of distribution which might result from the application of the principle would necessarily be a just one – no matter what the social conditions. That task is equivalent to constructing an account of the correct pattern(s) of distribution, because all possible patterns must be surveyed and each must be judged justifiable.

Now suppose there *is* a proviso on the principle of acquisition. Then its justification must show that all and only those patterns authorized by the proviso are justifiable. That task is also equivalent to constructing an account of the correct pattern(s) of distribution, because again all possible patterns must be surveyed and judged justifiable or unjustifiable. So either way, at the level of acquisitions, historical theories are no less substantive than end-state theories.

Now for transfers. They must preserve the social context proviso on acquisition. If there is no social context proviso, then this requirement is empty, and historical theories, at the level of transfer, can be purely procedural. But every defensible principle of acquisition *does* carry a social context proviso.[10] Consequentialist principles do so by definition; labor principles are generally agreed to require some version of the no-loss requirement; and direct arguments from individual liberty carry the proviso that acquisitions not destroy others' liberty. So the requirement that transfers preserve the proviso on acquisitions is not empty – at least not for the range of plausible, as opposed to logically possible, historical theories. As a consequence, historical theories are as substantive at the level of tranfers as they are at the level of acquisitions.

They are also every bit as liberty-limiting as end-state theories. Preserving the social conditions required by the proviso – through long chains of transfers, or just over time – is often impossible. Conditions (of scarcity, for example) are often outside the control of moral agents. When the conditions necessary for justice in holdings change in this way, justice can only be preserved by tinkering with titles. (The proviso comes into force to restrict the property rights of the owner of the waterhole.) One's title to a holding, then, will always be subject to redefinition as circumstances change, and restrictions on transfers will come and go for similar reasons. Such tinkering with titles

is equivalent to the pattern-preserving activity objected to in end-state theories. The Wilt Chamberlain example applies to both.

IV. A DISTINCTION WITHOUT A DIFFERENCE

So: both historical and end state theories of justice are in part procedural. (End-state theories have to have principles of acquisition and transfer too.) And both types are substantive. Further, they each require the sort of tinkering with titles that limits individual liberty. What, then, is the difference between them?

I submit that the truly interesting differences among theories of distributive justice concern the stringency of their provisos on acquisition and transfer.[11] And that difference concerns substance. It has nothing to do with whether a theory is historical or end-state in form.

Consider: Some end-state theories (e.g., those requiring strict equality in holdings) entail a great deal of pattern-preserving activity. They therefore seem preoccupied with the pattern. And some historical theories (e.g., libertarian ones) entail relatively little pattern-preserving activity and consequently seem predominantly procedural. But it is the nature of the respective provisos on acquisitions and holdings which is responsible for this – not the theory-form. After all, end-state theories can have very weak provisos and historical theories can have very strong ones. The end-state principle, 'Any pattern of holdings is just in which subsistence is possible for everyone', would presumably require very little tinkering with titles. The historical principle, 'All and only those acquisitions (and tranfers) are just which do not worsen others' socio-economic position relative to the acquirer', however, would require a great deal of tinkering.

So the real argument is about the strength of the proviso. The distinction between historical and end-state theories comes to very little.

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NOTES

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[1] Robert Nozick, Anarchy, State and Utopia (Basic Books, New York, 1974), p. 151.
[2] Ibid. The analogy is not exact. Nozick says "That a conclusion could have been deduced by truth-preserving means from premisses that are true suffices to show its truth. That from a just situation a situation *could* have arisen via justice-preserving means does *not* suffice to show its justice.... Justice in holdings is historical; it depends on what actually has happened." Ibid., pp. 151–152.
[3] Transfer are supposed to preserve *un*just distributions, too. That is why Nozick thinks he needs a principle of rectification: to correct the injustice preserved in steps which begin with unjust acquisitions. There is, however, some reason to wonder about this. If I purchase a stolen car in good faith and the original owner, all her heirs, and the thief as well are dead by the time the injustice is discovered, is any rectification needed?
[4] John Locke, Second Treatise of Government, Book V, 27.
[5] John Stuart Mill, 'Principles of political economy', in: The Collected Works of John Stuart Mill (Routledge & Kegan Paul, London, 1963), Book II, Ch. II, 6, p. 230.
[6] Nozick, pp. 179–180.
[7] Ibid., pp. 178–182. David Lyons critizes this aspect of Nozick's theory (by arguing that the proviso on transfers makes historical titles inherently unstable and subject to changes in circumstances) in his paper 'The new Indian claims and original rights to land', Social Theory and Practice 4 (1977), pp. 249–272.
[8] Lawrence C. Becker, Property Rights: Philosophic Foundations (Routledge & Kegan Paul, Boston and London 1977), pp. 42–43.
[9] Nozick, pp. 160–164.
[10] See the review in Becker, Chapters Three through Seven.
[11] This is hyperbole, of course. There are interesting differences in the modes of acquisition and transfer, the content of the rectification principle, the compensation requirement, and so on. But none of these differences is related to the historical/end-state distinction either.