

Nozick, Resources, and Intergenerational Justice

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In his *Anarchy, State, and Utopia*, Robert Nozick called into question government systems of redistribution. As part of his defense of the “night watchman” or minimalist state, he argued that the notion of “distributive justice” was an oxymoron. For Nozick, patterned systems of distribution focused on particular desired end-states (like equality, or Rawlsian “fairness”) were inferior to a “historical” scenario of property ownership based on a just original distribution and fair transfers of property. This paper will contend that Nozick’s argument falls short, because he does not account for the need for intergenerational justice. Moreover, it will suggest that the ideas of an under-appreciated nineteenth-century political philosopher, Thomas Skidmore, can be used to illustrate the conflict between just acquisition and just transfers in Nozick’s conception of property ownership. Skidmore’s proposals for one-lifetime possession of worldly goods, ongoing auctions of formerly-owned property, and the award of a patrimony on reaching adulthood provide a superior basis for libertarian property ownership.

According to Nozick, people are entitled to untrammelled use of their possessions without interference by the state or others, as long as two, exhaustive conditions hold true: that the acquisition of the property originally was just, and that property acquired through transfer was justly acquired initially and then transferred under rules of just transfer.¹ Nozick accepts the theory of property acquisition described in John Locke’s description *Second Treatise on Government*. According to Locke, the earth was granted in common to all men. A person acquires property by mixing his labor (or that of his servants) with existing natural resources. Locke proposed that each person could arrogate to himself as much as he could use, as long as he left “enough and as good” for others.²

Writing in 1690, Locke did not foresee—or at least did not address—that there might come a time when there was not “enough and as good” resources available for others. Nozick acknowledges that in a world of finite resources and growing population, eventually some will be born after there is no longer “enough and as good” left over,

but he fails to take seriously the objection that people entering into his closed system of property ownership based on historical possession have no reason to subscribe to or respect an initial division of property that does acknowledge their right to basic resources. Nozick instead argues that the benefits of “appropriation and permanent property” outweigh the drawbacks of having no useful resources aside from one’s own labor. Nozick also states—although he fails to substantiate his claim with any evidence—that “benefits of civilization” outweigh the possession of natural resources for any individual.³

We can understand the flaw in Nozick’s reasoning about intergenerational justice by imagining his principles being carried out in some geographically delimited space. Let us suppose that a tour-boat departs from Hawaii, carrying seven people originally intending to go on a three-hour tour. The weather worsens; the tiny tour-boat is tossed around, and but for the heroic actions of the fearless crew, all would have been killed. Our unlucky tourists strike ground on the shore of an uncharted desert isle, where they are marooned indefinitely. Each of the stranded parties arrogates some of the island’s resources to himself or herself, using his or her talents to variously cultivate coconut trees, build mansions out of palm fronds, and sew designer clothing out of coconuts and ferns. If the seven inhabitants of the desert isle have agreed to this distribution all seems well; but what happens when additional inhabitants are marooned on the island? Is a new division of resources required, since the introduction of additional people has now changed the situation so that there is no longer “enough and as good” for all who are present? Or are they, as Nozick might suggest, required to labor for the existing owners of the desert island, due to lack of resources?

Writing in 1798, Thomas Malthus described the same situation with a slightly different metaphor:

A man who is born into a world already possessed, if he cannot get subsistence from his parents on whom he has a just demand, and if the society do not want his labour, has no claim of right to the smallest portion of food, and, in fact, has no business to be where he is. At nature’s mighty feast there is no vacant cover for him. She tells him to be gone, and will quickly execute her own orders, if he do not work upon the compassion of some of her guests. If these guests get up and make room for him, other intruders immediately appear demanding the same favour. The report of a provision for all that come fills the hall with numerous claimants. The order and harmony of the feast is disturbed, the plenty that before reigned is changed into scarcity; and the happiness of the guests is destroyed by the spectacle of misery and dependence in every part of the hall, and by the clamorous importunity of those who are justly enraged at not finding the provision which they had been taught to expect.⁴

While the problem of intergenerational justice seems like it may sink Nozick’s ship, it may be possible to throw him a life raft that enables him to leave much of the rest of his theory intact. In his 1829 *Rights of Man to Property!*, labor advocate and political philosopher Thomas Skidmore sketched out a plan for distributive justice that took seriously the resource claims of new generations. Like Nozick, Skidmore

argued that self-ownership, and the ownership of one's productivity, were crucial to human freedom. "Whenever nations have ceased to exist...it has been because there has prevailed in them no system, or theory of government, whereby property should be as nearly equal among the people, comparatively speaking, as their stature; and yet so constructed, as that each individual should labor, as it were, *exclusively* for himself, except so far as regards contributions to the public service."⁵ But Skidmore also recognized the necessity of intergenerational economic justice, asserting that a man, finding himself born into an existing allocation of property, had just as much right to a portion of that property as those who preceded and surrounded him, simply "in virtue of his existence, and in virtue of the existence of the property in question. They are inseparable; while one has vital life, or the other physical existence."⁶

Skidmore's rationale for the possession of property is slightly different from Nozick's, but not in ways that impact the usefulness of his ideas to support Nozick's theories. Skidmore asserts that humans' initial and pre-political right to an equal share of resources can be generalized from the right to life. No one questions the right of living humans to breathe, take in light with their eyes, or occupy the space taken up by their bodies. The necessities that support physical existence—food, water, shelter—are only extensions of the human body because they are the things humans need to survive.⁷ From the perspective of each individual, his life has priority, and the priority of his own existence is paramount for him whether he exists within or outside of any particular society. Thus, the individual can have no motivation to support any state of affairs that will not at the very least preserve his life.

If this natural right to resources is posited, there can be no requirement that land be fenced or improved or otherwise "mixed with labor" before it can be owned. A man may own his own labor, but labor does not have magical properties that confer ownership on resources, Skidmore argues. If there were some way of taking the labor back out of those materials again you might again own the labor; but everyone has a continuing claim to the natural resources. Moreover, Skidmore asserts that because civilization is so ancient, no matter how much labor individuals perform, they are tremendously indebted to the generations that came before them, for preparing infrastructure.⁸ Since a natural right to resources based on mere existence does not identify any particular *tract* of land or set of resources as belonging to any particular person, to have arrogated any particular tract in the mists of time without the consent of is to have made all worse off.⁹ Everyone has an equal claim, and "there can exist no power whatever to destroy equality of rights, but the power of violence and injustice."¹⁰

Skidmore devised a mechanism for the acquisition of property that begins with the fairest possible initial distribution, and then acknowledges the continuing claim on resources presented by people born into an existing population. He begins with a property census. He proposes that all citizens of his state be required to register all the real and personal property in their possession (anyone holding back items from the general inventory would have to serve 14 years in prison for grand larceny). Having performed the census, the state will issue all of the adult natives of the state with a dividend, or credit, corresponding to their equal portion of the value of the goods and chattels enumerated in the state. Once this dividend has been credited, the state will hold an auction, at which credited citizens will purchase real and personal property.

The general property auction will include all people, including the disabled and insane, who will be represented by guardians or trustees acting on their behalf.¹¹ Anything so large or complex that it cannot be divided up may be jointly purchased by a group of people.¹² Once the auction has been conducted, Skidmore suggests that the value of the goods sold should be compared with the original dividend, and that those who are creditors to the state because they have not spent their original dividend will be entitled to a second dividend, called a “patrimony.”¹³ Thus, some people living within a state’s boundaries will have exercised their preference for the acquisition of particular property, and others exercised their preference for the possession of liquidity.

Skidmore’s idea may seem similar to the modern suggestion for a “stakeholder society,” but it is different from, and superior to, such ideas, in three ways.¹⁴ First, the use of a property census and division of property takes seriously the libertarian assertion that the initial acquisition of property has to be just in order for subsequent property ownership to be just. Given what historians know about the sorry history of property acquisition in the United States (including the theft of ancestral lands from Native Americans) the only way to ensure the justice of current property distribution is to start again from scratch. Second, basing the property census on the same “historical” justification used by libertarians avoids having to base it on other categories that libertarians may not acknowledge (for example, a common commitment to citizenship in a non-minimal state).¹⁵ Finally, performing a current property census and compiling all available property to calculate the citizen dividend avoids the necessity for any controversial “wealth tax” or a “privilege tax,” as suggested in other plans for stakeholding.¹⁶

Had Skidmore envisioned only a single, initial property auction, it might be objected that his plan failed to address what could be expected to happen over time; those with easily-marketed talents might earn money at a faster rate than those with few talents (Nozick uses Wilt Chamberlain as an example of this phenomenon), and those born into families with less talented parents would be disadvantaged at the outset. But Skidmore foresees this objection, and in his plan prohibits the state from recognizing and executing wills. Inheritance concentrates property in a single family over time. For Skidmore, the power to make a will was an unfair binding of one generation by the previous—a failure to see that the rising generation has moral claims that are equal to ours. “For, as individuals are equal one with another, so are generations; and to allow a past generation to extend the operation of its laws or its wishes into the present generation, contrary to their consent, is to allow a principle which destroys the existence of equality between one generation and another.”¹⁷ Because those citizens reaching adulthood in every year subsequent to the initial auction have a claim on resources, Skidmore proposes that each year, a general inventory be repeated, from the goods of everyone who has died in the past year. This inventory will be divided up among those who come of age. People receiving their dividend may take it in cash or in credit to buy the goods that the state will always have on sale.¹⁸

Another potential problem is that of gifts given to family members during one’s lifetime, which have the potential, just as much as inheritances do, to prevent the rising generation from enjoying a sufficient initial acquisition of property. Nozick is able to claim that a transfer of any size that you make to your children is a “just transfer,”

because he does not acknowledge that transfers and initial acquisitions are dependent from each other. In fact, the ability of the next generation to claim its own resources depends on the reversion of individuals' property back into the common fund. In a system into which people continue to be born and to reach adulthood, continued "just acquisition" requires that the state tax family gifts above a certain dollar amount at a rate approaching 100 percent, although other types of transfers, including charitable donations, might still be encouraged.

By allowing the state to refuse to sanction inheritance, Skidmore limits the term of property ownership to a single generation.¹⁹ Nozick finds such a limitation unacceptable, noting that "if some time limit is to be set on how long people may keep resources others voluntarily transfer to them, why let them keep these resources for *any* period of time? Why not have immediate confiscation?"²⁰ It must be pointed out, however, that inheritance of property is only possible because inheritance is enshrined by the laws of the same sort of non-minimal state that Nozick finds generally indefensible. A limitation on gifts and bequests of property is defensible whether one is arguing from a utilitarian standpoint or under Nozick's "moral side-constraint." During the period in which one is capable of devising and carrying out a life plan, the state intervenes very minimally in any one person's property ownership; as soon as that life is over, the resources become available for choice and for use by others. Furthermore, Nozick notes that even under a libertarian regime the uses of property are not completely unrestricted, "My property right in my knife allows me to leave it where I will, but not in your chest."²¹ The right to bequeath resources after one's death is not as significant as the right of a living human to be able to carry out a life plan. From both a "natural rights" and a utilitarian perspective, property belongs only to the living. In Skidmore's words:

To man they belong, in consequence of his being. They are his, because he lives, and because they are necessary to him. When he perishes, they perish with him, inasmuch, as they are no longer useful to him, and inasmuch as, in the act of perishing, he returns to the condition of inanimate matter, which has no rights and can have none.²²

Skidmore has the better of the argument here.

While Nozick has been assailed for failing to account for children, Skidmore's concern for intergenerational justice leads him to advocate that the state make separate provision for property for children. Some parents, after all, are too poor to have anything to spare; some choose not to share with their children; some children are orphans. The child's natural right to sustenance trumps the circumstances into which the child has been born, and Skidmore anticipates that the state will use some of the proceeds from its annual auctions—invested in a state treasury—to pay for each child's needs, with a monthly maintenance fee directed toward each child's parents or guardians until the child reaches adulthood.²³ Each generation is entitled to the rights enjoyed by previous generations: "Those who have arrived at maturity have not done so without being in debt to a generation which has gone before them. This debt they must discharge by making payment to the generation which comes after them."²⁴ Skidmore points

out that, even when parents own property, a state-assured patrimony is a much more secure source of wealth, since a businessman could go bankrupt tomorrow.²⁵

Nozick and Skidmore both recognize the importance of property ownership to individuals being able to carry out life goals. Skidmore's plan has the additional positive consequence of removing the constraint of poverty from (and thus increasing liberty for), a larger group. Skidmore notes that his plan is "of the utmost benefit to the poor and middling classes of the community, who form ninety-nine parts in every hundred of the whole population of every country," so that "it would be perfectly idle to oppose what so very large a majority should determine to adopt and enforce."²⁶ Skidmore asserts that the possession of property confers not only opportunities, but also undergirds political power. He writes:

Whoever looks over the face of the world, and surveys the population of all countries; our own, as well as any and every other; will see it divided into rich and poor; into the hundred who have everything, and the million who have nothing. If, then, Mr. Jefferson, had made use of the word *property*, instead of "the pursuit of happiness," I would have agreed with him...for I hold that man's natural right to *life* or *liberty*, is not more sacred or inalienable, than his right to property...in the pursuit of happiness, is property of no consequence? Can anyone be as happy without property of any kind, as with it? Is even liberty and life to be preserved without it?²⁷

Skidmore considers political power and property-ownership as so mutually self-reinforcing that he (writing at a time before the complete extension of the suffrage) calls for a constitutional convention to enfranchise Indians, blacks, and women, thus giving them the opportunity to protect their property using the mechanism of the state.²⁸

Although both Nozick and Skidmore acknowledge that resources are important, only Skidmore recognizes that self-ownership is insufficient starting capital for the fulfillment of a life. A man who only owns himself is forced to deplete his own resources and sacrifice physical comfort in order to survive, in a way that cannot be said for the owner of resources. "How can it be said, that I am created with an equal right to this happiness—with another, when I must purchase property of him, with labor and suffering, and when he is under no necessity to purchase the like of me at the same costly price?"²⁹ Skidmore questions the notion of a fair contract ever existing between a person who lacks a share of resources and a person with resources. Because the resource-poor person has no choice but to provide his labor if he seems to survive, the nature of the relationship is by definition one of duress.³⁰ Nozick, in contrast, asserts that a choice between starvation and providing one's labor to the only employer available is still a choice.³¹

Nozick lists social goods that can be achieved under a regime of private ownership, including experimentation, risk-bearing, and the self-employment of unpopular persons.³² All of these social goods are just as achievable under a Skidmore's, one-generation property ownership regime. Redistribution of resources creates a situation in which individuals have the freedom to participate in market capitalism,

in another economic system, or in no economic system; a state of affairs that Nozick characterizes as the best possible scenario.³³

At the time that Skidmore published his ideas, he was tarred with the brush of “agrarianism”—an allusion to the agrarian, or redistributive, land laws of the Gracchi of ancient Rome; but Skidmore was no communist. He imagined that in the future of his devising, people would continue to work, to exchange goods, and to amass profit. No one was self-sufficient, and this mutual reliance meant that all worked to satisfy each other’s wants.³⁴ Skidmore also expected the continuation of large-scale industry, with people forming cooperative associations to take work they already knew how to do. Thus, sailors would invest in their ships, and artisans in their workplaces.³⁵ Aside from this normative assessment, Skidmore also thought that people were too attached to the comforts of life to really not continue to use their distributed resources to work to produce those comforts.³⁶ Skidmore did not reject the use of machinery; in his view, working people benefited from cheap products as much as everyone else did. But the poor could avoid being oppressed by machinery if they could “lay hold of it, and make it their own...let them appropriate also, in the same way, the cotton factories, the woolen factories, the iron foundries, the rolling mills”³⁷

Echoing Malthus’s metaphor of the feast, Skidmore wrote:

If a man were to ask me, to what I would compare the unequal distribution of property which prevails in the world, and has ever prevailed, I would say that it reminds me of a large party of gentlemen, who should have a common right to dine at one and the same public table; a part of whom should arrive first, sit down and eat what they chose; and then, because the remaining part came later to dinner, should monopolize the whole; and deprive them of the opportunity of satisfying their hunger, but upon term such as those who had feasted, should be pleased to prescribe.³⁸

Like Robert Nozick, Skidmore believed that property-ownership was critical to human freedom—so critical that he created a mechanism for the distribution of property that respected private property for the period of each person’s lifetime, while protecting that freedom for future generations. Grafting Skidmore’s caveats onto Nozick’s prescriptions provides a libertarian solution to distributive justice that is founded on historical rather than patterned concepts, but at the same time acknowledges the importance of the rights of each rising generation.

NOTES

1. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 151.
2. John Locke, *Second Treatise on Government*, chapter 5, section 27, at <http://www.constitution.org/jl/2ndtr05.htm>, accessed December 2, 2013.
3. See Nozick, *Anarchy, State, and Utopia*, 179.
4. Thomas Malthus, *An Essay in the Principle of Population* (London: J. Johnson, 1803), 531.
5. Thomas Skidmore, *The Rights of Man to Property* (New York: A. Ming, 1829), 29.
6. *Ibid.*, 42.

7. Ibid., 77-8.
8. Skidmore, *Rights of Man to Property!*, 237.
9. Ibid., 33.
10. Ibid., 44.
11. Ibid., 141.
12. Skidmore, *Rights of Man to Property!*, 139.
13. Ibid., 140.
14. For one such proposal, see Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven: Yale University Press, 1999), 5.
15. Ackerman and Alstott rely heavily on concepts of shared citizenship and civic nationalism. See, for example, *Stakeholder Society*, 33.
16. Ackerman and Alstott, *Stakeholder Society*, 94-112.
17. Skidmore, *Rights of Man to Property!*, 115; Cf. Ackerman and Alcott, *Stakeholder Society*, 114.
18. Skidmore, *Rights of Man to Property!*, 142. It might be possible to conduct auctions on a less-frequent basis—say, every five years—in order to smooth out any inequities that might result from rapid demographic shifts one way or the other.
19. Ackerman and Alcott similarly suggest regulation of inheritances and large gifts to children, and propose that stakeholders who can afford it be required to pay back the current cost of their stakes out of their estates. See *Stakeholder Society*, 82.
20. Nozick, *Anarchy, State, and Utopia*, 163.
21. Ibid., 171.
22. Skidmore, *Rights of Man to Property!*, 89.
23. Ibid., 105, 157.
24. Ibid., 264.
25. Ibid., 259.
26. Skidmore, *Rights of Man to Property!*, 17.
27. Ibid., 59.
28. Ibid., 160.
29. Skidmore, *Rights of Man to Property!*, 60.
30. Ibid., 378.
31. Nozick, *Anarchy, State, and Utopia*, 263.
32. Ibid., 177.
33. Ibid., 312.
34. Skidmore, *Rights of Man to Property!*, 174.
35. Ibid., 194.
36. Ibid., 222.
37. Ibid., 384.
38. Ibid., 355.