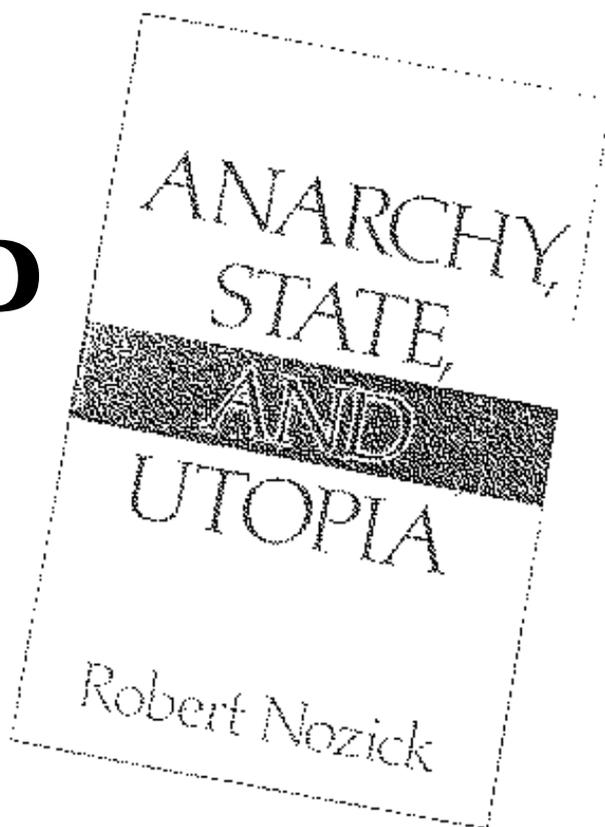


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THREE CRITICS ANSWERED

DAVID CONWAY



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www.libertarian.co.uk email: admin@libertarian.co.uk

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David Conway is Head of the School of Philosophy and Religious Studies at Middlesex Polytechnic. He has contributed to numerous academic journals, and is the author of *A Farewell to Marx* (1987).

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FOR LIFE, LIBERTY AND PROPERTY

NOZICK'S ENTITLEMENT THEORY OF JUSTICE: THREE CRITICS ANSWERED

DAVID CONWAY

Ever since the publication of Robert Nozick's *Anarchy, State and Utopia* in 1974, the Entitlement Theory of Justice advanced in that work has been subjected to sustained criticism. In this paper, I consider three important objections to that theory and defend it against those criticisms.

Robert Nozick's Entitlement Theory of Justice is designed to provide an account of what justice requires concerning property. The theory consists of three principles: a principle of justice in acquisition, a principle of justice in transfer, and a principle of justice in rectification. The first of these principles specifies the severally necessary and jointly sufficient conditions for an individual to become the legitimate owner of an object which has not previously been owned by any individual. Amongst the objects to which this principle is meant to be capable of applying are portions of the Earth's surface, that is, areas of land.

The principle of justice in acquisition to which Nozick subscribes may be formulated so:

An individual A acquires at time t a full property right in an object O which has not previously been the property of any individual if and only if:

- (i) A mixes his labour with o at time t ; and
- (ii) as a result of O becoming A's private property, no one else is made any worse off than he or she would have been, O having being left unappropriated by anyone and had everyone in consequence been free to use O without appropriating it.

The second clause of the principle is Nozick's version of Locke's proviso that private appropriation is justified only where there is left for others to use and appropriate enough and as good of whatever kind of object was appropriated.

In what follows, I shall use the term 'private appropriation' or more simply 'appropriation' to refer to acts by which individuals make their private property objects that have previously not been the private property of any individual. According to the Entitlement Theory, private property is morally legitimate if and only if private appropriation is legitimate. For, unless private appropriation is legitimate, there is no way legitimate private property can come into being.

Nozick's principle of justice in transfer may be formulated so:

A person B is morally entitled to an object, O, that was previously the legitimate property of some other person, A, if and only if A freely gave O to B as a gift or in voluntary

exchange for some other object, P, which was the legitimate property of B.

Nozick's principle of justice in rectification may be stated thus:

Victims of an injustice, or those descendants of victims of the injustice whose situation is worse than it would have been had the injustice not been done, are morally entitled to receive from perpetrators of the injustice, or from any descendants of the perpetrators who have benefited from the injustice, sufficient compensation to bring the victims and/or their descendants to the level of well-being that they would have enjoyed had the injustice not been done.

I G. A. Cohen

G. A. Cohen¹ has subjected Nozick's principle of justice in acquisition to sustained criticism. Cohen focuses his critical attention upon the second clause of Nozick's principle of justice in acquisition. What Cohen objects to is the specific state of affairs which Nozick claims should be used as the 'base-line' when assessing whether any given act of private appropriation has worsened the situation of those who did not appropriate the object in question. The base-line which Nozick favours is how those people would have fared had no private appropriation of the object taken place and had in consequence the object been left available for the free use by everybody without anyone being able to appropriate it. Cohen calls the form of ownership which obtains with respect to an object when it may be freely used by anybody without anyone privately appropriating it: *common ownership*.

Cohen observes that private appropriation of an object O may well not worsen the situation of anyone, whom the appropriation excludes from being able freely to use that object, when it is common ownership of O that is treated as the base-line for purposes of comparison. However, argues Cohen, it is arbitrary to restrict the base-line to the case of common ownership when seeking to ascertain whether the situation of others has been worsened by someone's appropriating some object. There are alternative possible forms of ownership besides that of common ownership with which those excluded from the use of an object by its private appropriation by another may with equal justification compare their post-appropriation situation in order to ascertain whether the appropriation has left them worse off. Among these alternative possibilities are: first, that situation in which persons who are denied free use of an object as a result of its private appropriation by someone else were to have appropriated that object themselves instead;

and, second, that situation which would have obtained had the object in question initially been *jointly owned* by everyone, and when in consequence what each may do with that object had been subject to consensual decision. If private appropriation is compared with either of these two cases, then the situation of those who have not appropriated an object can often justifiably be claimed to have been worsened by another's appropriation, even though the appropriation has not made their situation any worse than it would have been had common ownership prevailed.

To illustrate and support his claim, Cohen has recourse to a simple model: a two-person world consisting of persons A and B in which there is, initially, Lockean common ownership of its finite quantity of land. Suppose, says Cohen, A and B each obtains means of sustenance from the land "without obstructing the sustenance-drawing activity of the other". (p. 95) This would be the case where neither has privately appropriated the land which as a result is in common ownership. In such a situation, Cohen asks us to imagine that A obtains m from the land and B obtains n , where m and n are, say, bushels of wheat (or alternatively gallons of moose milk, taken from wild mooses which neither A nor B owns). Now, says Cohen, imagine that A appropriates all the land - or an amount which leaves B less than enough to live off. Suppose A then offers B a salary of $n + p$ (where p is greater than 0) to work on the land as A's employee, and B accepts the offer. Suppose A obtains $m + q$ from the new arrangement, where q is greater than p . Suppose the rise in output, says Cohen, is due to "the productivity of a division of labour designed by A who is a good organiser." (p. 96) Cohen calls this situation *the actual situation*. We are now to consider whether B's situation has been worsened by A's appropriation of the land.

According to Nozick, the appropriate base-line with which to compare the actual situation is that of common ownership wherein, as Cohen has stipulated, B obtains n . In the actual situation, B obtains $n + p$. Consequently, setting aside all factors other than quantity of yield, if common ownership is made the base-line, it seems as if A's appropriation of the land cannot be claimed to have worsened B's situation.

However, says Cohen - and this is what is supposed to make Nozick's selection of common ownership as the base-line arbitrary - there are other possibilities besides common ownership which can with as much justification be made the base-line, and B may well fare less well in the actual situation than he would in these other possible situations. First, there is the situation in which B appropriates the land in place of A. Second, there is the situation in which the land is initially jointly owned by both A and B, and where as a result what each may do with it is subject to consensual decision. In each of these two possible cases, argues Cohen, it is possible that B would fare better than he does in the actual situation. So, even if A's private appropriation of the land can make B better off than he would be under common ownership, A's appropriation of the land may still be said to have worsened B's situation, and therefore falls foul of any non-arbitrary Lockean proviso governing legitimate appropriation.

Let us examine each of these possibilities in turn to see why Cohen claims B could have fared better in them than he does in the actual situation. First, suppose B appropri-

ates the land instead of A. Now, B's organisational talent is either (a) the same as, (b) greater than, or (c) less than, A's. Assume (a) B's talent is the same as A's. It follows that, if B had appropriated the land instead of A, B would have been able to introduce the new division of labour, induce A to work for the salary $m + p$, and B would have obtained $n + q$. In such a situation, B would receive, as a result of appropriating the land, more than he receives in the actual situation. If B would have appropriated the land had A not appropriated it first, and, if, had B appropriated the land first, B would have ended up with more than he does in the actual situation, why should not B consider that his situation has been worsened by A appropriating the land and offering B a wage of $n + p$?

Now, suppose (b) B's organisational talent is greater than A's, so that had B appropriated the land instead of A, both A and B would each have received more than he does in the actual situation. It would still be the case that B is better off in the actual situation than he would be under common ownership, as Cohen construes it, even if both would have been still better off had B appropriated the land instead. "This means" says Cohen "that Nozick's condition licenses, and protects, appropriations whose upshots make every person worse off than he need be." (p. 97)

Finally, suppose (c) B's organisational talent is less than A's so that, had B appropriated the land, he could not have directed A so as to generate any increase over what gets produced under common ownership, as Cohen envisages it. Even in this case, argues Cohen, A's private appropriation of the land may be said to have worsened B's situation, notwithstanding B's situation having been made better than it would be in a situation of common ownership. For restricting the base-line to the case of common ownership ignores another possibility: namely, that the original position was not common ownership but rather was *joint* ownership. The difference between these two forms of ownership is that, whereas in the case of common ownership each may use the land without the other's consent (provided he leaves the other free to use the land as well), in the case of joint ownership neither may use the land in any way without the consent of both. Where there is joint ownership, "B has the right to forbid A to appropriate, even if B would benefit by what he thereby forbids." (p. 99) According to Cohen, B's right of veto over A's appropriation of the land can enable B to extract from A a greater share of the increased output generated by the new division of labour introduced by A than A would have given B had A been at liberty to appropriate the land without B's consent.

As Cohen puts it:

If joint ownership rather than no-ownership is, morally speaking, the original position, then B has the right to forbid A to appropriate, even if B would benefit by what he forbids. And B might have good reason to exercise his right to forbid an appropriation by A from which B himself would benefit. For, if he forbids A to appropriate, he can then bargain with A about the share of output he will get if he relents and allows A to appropriate. B is then likely to improve his take by an amount greater than what A would otherwise have offered him. (p. 99)

Thus, according to Cohen, even where B's talent is less than A's, B's situation can be worsened by A's private ap-

appropriation of the land and subsequent introduction of a division of labour that yields B more than he obtains under common ownership. For B would likely have been able to obtain still more from the introduction of the new division of labour had the original position been that of joint ownership of the land.

Cohen's discussion of the two-people world is designed to show that, even where the situation of a person P is not made worse by private appropriations carried out by others, when what P's post-appropriation situation is compared with is a pre-appropriation situation of common ownership, nevertheless P's situation may well have been made worse by acts of private appropriation carried out by others, when what P's post-appropriation situation is compared with are other possibilities besides common ownership: notably, P's appropriating in place of others; and, second, a situation where what gets privately appropriated was initially jointly owned.

The relevance of this point to Nozick's theory is that, according to Cohen, it shows that it is arbitrary of Nozick to select the situation of common ownership as the base-line in preference to any of these other possible arrangements.

Once other possibilities besides common ownership are allowed to be included within the base-line, the case for private property is seriously compromised. "For there will always be some who would have been better off under an alternative dispensation which it would be arbitrary to exclude from consideration." (p. 101) Cohen's thought is that all forms of private property will leave some worse off than they would be in a counterfactual situation it would be arbitrary to ignore.

Not only is the case for private property undermined by the introduction of these other possibilities, the entire way of assessing the moral legitimacy of forms of property in terms of whether people would have been better off under alternative dispensations is brought into question. "Since a defensibly strong Lockean proviso on the formation and retention of economic systems will rule that no one should be worse off in the given economic system than he would be under some unignorable alternative, it almost certainly follows that not only capitalism but every economic system will fail to satisfy a defensibly strong Lockean proviso, and that one must therefore abandon the Lockean way of testing the legitimacy of economic systems." (p. 101)

I do not think Cohen has succeeded in showing that Nozick's restriction of the base-line to the case of what Cohen calls common ownership is arbitrary. Because he has failed to do so, I do not think Cohen succeeds in showing Nozick's principle of justice in acquisition to be unwarranted. To see why Cohen's project fails, let us return to the two-people world. Now, in the way in which Cohen understands Nozick's theory, the alternative to A's appropriation with which B has to compare his situation under A's appropriation, in order to ascertain whether A's appropriation has worsened B's situation, is that in which A and B each work independently of each other for the respective yields of m and n . But why should we agree that that is the only way in which A and B must be imagined as continuing to work under common ownership? Suppose that A did not privately appropriate the land and that B's organisational talent was equal to A's. Then, apart from privately appropriating the land himself (which we shall consider

presently), B would also have been able to say to A: "Let us adopt that new division of labour which we can both see would be more productive than each of us working independently of the other, and let us divide the resultant extra yield equally between us." If A agreed, then each would gain an extra yield of $(p + q)/2$. Both would have reason to accept this new division of labour and distribution of extra yield. And, what is most important, B would be better off under this new arrangement than he would be were A to appropriate the land and hire B to work on it for a wage of $n + p$. For recall: when A privately appropriates the land, A receives $m + q$ and B receives $n + p$, where q is greater than p . Under the system proposed by B, A would get $m + [(p + q)/2]$, and B would receive $n + [(p + q)/2]$. Since q is greater than p , it follows that B would be better off under his proposed scheme than he is where A appropriates all the land and pays B $n + p$ to work as his labourer. But notice: B's scheme does not involve either party in privately appropriating any of the land; it remains in common ownership. So, there is an alternative to either A or B privately appropriating the land in which both A and B are better off than they are working it independently of the other, and in which each is better off than he would be were the other to appropriate the entire land and hire the other person as a wage labourer.

The fact that, if B had appropriated the land instead of A when B's talent is equal to A's, B would have ended up with more than he receives under A's appropriation, does not give B good cause for complaint. For had B appropriated in such circumstances, he would have fallen foul of Nozick's version of the Lockean proviso vis-a-vis A. Thus, private appropriation of all the land by neither is legitimate, when the productive talents of both A and B are equal.

Cohen would no doubt reply that, if A and B were to decide to introduce the new division of labour that improves productivity beyond what is is when they work independently of each other and were they to divide up the extra yield equally between them, what they would have done is collectively to appropriate the land. He writes: "To be sure, A and B might have agreed to a division of labour without either of them privately appropriating the land. But then, so I would argue, they would, in effect, have appropriated it collectively. They would have instituted a form of socialism." (p. 98)

I do not think that Cohen is correct in saying that, if A and B agree to some form of division of labour where previously they have been working independently, they have collectively appropriated the land. My reason is this. If A and B had collectively appropriated the land, it would have become their joint property as Cohen defined that expression. If the land had become the joint property of A and B, then, according to Cohen, each would have a right to veto the use made of the land by the other. How they each could use the land would have to be agreed by both. But suppose that, after instituting the new form of division of labour (which Cohen says is in effect collectively appropriating the land on which they work), one day A and B have a quarrel. Suppose A was such a spiteful person that he came to prefer B starving to death to B continuing to live, even if this meant A had to starve to death as well in consequence. If, as Cohen says, A and B had truly instituted joint ownership of the land by adopting the division of labour, then A would have acquired the right to veto B

using the land, even in the case where A's exercising that right meant B starved to death, for lack of being able to produce any means of sustenance. But, surely, when A and B agreed to cooperate and adopt the division of labour that improves their productivity, neither gave the other the right to deny the other the wherewithal to produce means of sustenance that were necessary for that person's own survival. In any event, Nozick's principle of justice in acquisition would seem to prohibit collective appropriation if it did give people such rights. For in being given such rights they are given the right to make others worse off than they would be had common ownership prevailed, as Cohen understands it. And, such a right violates Nozick's principle of justice in acquisition.

If it is accepted that, when A and B agree to jointly adopt a division of labour between them, neither gave the other the right to prevent the other from doing what was necessary to ensure his own survival, then joint ownership of the land was *not* instituted by this agreement. Each would retain the right to use the land and work on it independently of the other, if the other were to refuse to cooperate in some form of division of labour that improved productivity and secured for each a return on labour that was at least as good as what each would produce for himself if working independently of the other on unappropriated land. This suggests that, when A and B agree to work land, which was previously in common ownership, according to some system of joint cooperation, they leave the status of the land so far as its ownership goes exactly the same as what it was before the agreement.

I suggest, therefore, that, if A and B are equally talented, and both can perceive the improvement in productivity brought about by some form of division of labour, then each is entitled to regard private appropriation of the land by the other as morally illegitimate, since it would worsen their own situation in comparison with what it would otherwise be if no private appropriation occurred but both agreed to cooperate in some form of division of labour. Thus, Nozick's principle of justice in acquisition prohibits unilateral private appropriation of all the land by one person in a two-peopled world whose inhabitants were equally talented and both can see that some form of division of labour would yield more than the combined product of each working on his own.

However, it certainly looks at first sight as if Nozick's principle of justice in acquisition permits private appropriation by A if A's talent is greater than B's, so that B would never have hit upon the more productive division of labour. That is, suppose B works for himself producing n , and A works for himself producing m on land which neither has privately appropriated. Suppose B cannot think of any more productive system than that, but A hits upon a division of labour that would increase joint yield by an amount $p + q$, where q is greater than p . Is A entitled privately to appropriate all the land and institute the new form of production, if he pays B $n + p$? B's situation would not have been worsened by A's appropriation. Nozick's principle of justice in acquisition would, thus, seem to license A's appropriation of the land in such circumstances.

Cohen says that B can still claim to have had his situation worsened by A's appropriation of all the land. For suppose the original position had been not common ownership but

joint ownership from the start. By unilaterally appropriating the land, A has deprived B of the advantages he could have gained from bargaining with A.

Again, I do not think Cohen has established what he thinks he has. Even if A appropriates all the land, he cannot produce any more by himself and without B's cooperation than what he used to produce for himself when working for himself independently of B before the appropriation of the land by A took place. A needs B's participation to increase A's income above m , even after A has appropriated all the land. It is true that, after A has appropriated all the land, unless B agrees to work for A, B will die for lack of being able to produce means of sustenance. By contrast, after A has appropriated all the land, if B refuses to work for A, A will not die: it will merely be the case that his situation will fail to improve from what it was prior to his appropriating the land. But A gains nothing by B's death. If both A and B are rational and self-interested, both have every reason to prefer that they reach an agreement to terms than that they do not. Consequently, if A needs B's labour to improve his situation, then B has as much bargaining power as he would have if he had a power of veto over A's using the land.

It might be said that, in negotiating an agreement, A can afford to hold for longer than B before agreeing to terms. But A suffers if B dies through want of their being able to agree. A has every bit as much of an incentive as B does for reaching an agreement with B. It is certainly true that, if A fails to agree terms with B, A loses nothing in the sense that he is not made worse off than he was prior to his appropriating the land, whereas B is. But that is no consolation to A: for all he was concerned with in appropriating the land was to improve his situation relative to the pre-appropriation situation, and this he fails to do unless he reaches agreement with B. I suggest, therefore, that B has as much bargaining power in the situation where A appropriates all the land as he would have in a situation where there was joint ownership of the land. Consequently, I cannot see how the power of veto on A's using the land which joint ownership of the land is supposed to give B increases B's bargaining power when it comes to A and B negotiating terms of an agreement to adopt some scheme of A's to improve productivity.

In any case, as previously remarked, I think joint ownership of land is tyrannical. It means that others have a legitimate life or death power over others who are not posing threats to their own life. Such power over others, I submit, is excessive. No one has the right to forbid another individual to do what is necessary for that individual's survival, provided what is necessary for that individual's survival falls short of killing someone who is not threatening that individual's survival or exercising force over someone not threatening that individual's survival. Consequently, joint ownership, as Cohen defines it, is not a morally viable alternative to common ownership as being a candidate for occupancy of the original position that prevails prior to appropriation.

The up-shot is that we are offered no reason for refusing to select Lockean common ownership as the base-line when considering whether private appropriation is morally legitimate. And Cohen has therefore failed to provide any rea-

son for rejecting Nozick's principle of justice in acquisition.

II Paul Russell

As is well-known - indeed, as is notorious, part of what Nozick's Entitlement Theory implies is that governments violate the rights of property owners who have come by their property in morally legitimate ways, when these governments compel by force of law these property-owners to make over part of their holdings in the form of taxation in order to provide these governments with revenue from which to provide welfare for those in need.

In his article 'Nozick, Need and Charity',² Paul Russell has challenged Nozick's Entitlement Theory by arguing that this thesis which the theory implies is mistaken. Russell's argument is "that we are not always entitled to everything we legitimately acquire because we may, depending upon our circumstances, be obliged to be charitable. What charity requires of us we have no rights over and we must relinquish. Accordingly, if we fail to be charitable our property rights are not violated when that which we are not entitled to is forcibly taken away from us." (p. 211)

Russell concentrates on showing that charity is not supererogatory but is obligatory. He seems to take it for granted that, once it has been established that those who possess more than they need *owe* charity to those who are without what they need, the former may legitimately be compelled to make over part of their holdings for the benefit of the latter. Thus, he writes:

If an individual owes charity then he is not entitled to keep all of his wealth, even though all of his wealth may have been legitimately acquired ... In short, as charity is an ... obligation or duty it should be regarded as not so much given as owed. This terminological difference is of some importance because it emphasises the fact that as there exists an obligation to be charitable one is *not entitled* to keep that which must be relinquished for the benefit of the needy. (p. 213)

Now, it may readily be conceded to Russell that those with more than they need owe charity to those with less than they need - in the sense that the former have a moral obligation to give the latter charity. It may, thus, be conceded that the well-off have a moral obligation to be charitable, so that charity is obligatory rather than supererogatory. It need not, however, be conceded - until we have been supplied with some argument that Russell conspicuously fails to provide - that, if one has a moral obligation to be charitable to someone else, one is not entitled to keep what must be relinquished in order to fulfill that obligation of charity. In other words, Russell has failed to provide any reason for supposing that, if one has a moral obligation to be charitable, one may legitimately be forced to be charitable.

Nor only does Russell fail to provide any reason for supposing this essential step which his argument needs in order to reach its desired terminus, there is reason for supposing that it cannot be taken. For there seems overwhelming reason to believe that it is not true that we may legitimately be compelled to discharge all our moral obligations. For example, if I have promised to meet you at a certain time and place, I think it will be readily conceded that I have an

obligation to meet you at that time (at least, assuming I am able to meet you at that time). It does not follow from my having such a moral obligation that I may legitimately be compelled - even by you - to meet you at that time and place. Likewise, if you have done me some favour, I thereby incur a debt of gratitude - or, as it is sometimes put, I become obliged to you. It does not follow that I may legitimately be compelled to discharge this debt of gratitude.

I conclude, therefore, that it does not follow as a general rule that, if A owes x to B (in the sense that A has a moral obligation to give or do x to B), A may be legitimately compelled to give B what A owes him. I conclude, therefore, that, even if Russell has succeeded in showing that the well-off owe charity to the needy (in the sense of have a moral obligation to give charity), he has not shown that the rich are not entitled to keep all their wealth, if it has been acquired in accordance with Nozick's three principles. He has not shown, that is, that it should not be up to the rich, and not the state, whether the rich meet their obligations to the needy.

III Samuel Scheffler

At this point, I wish to consider the view of a third critic of Nozick who has argued that everyone has a moral right to means of subsistence purely by virtue of their need, and that consequently Nozick's theory which denies this is mistaken.

Nozick denies that the needy automatically have a right to welfare in virtue of their need. The core of Nozick's reason for denying a right to welfare is that provision of such welfare must come from the holdings of the well-off, and the well-off may be fully entitled to these holdings. In a memorable passage Nozick remarks:

The major objection to speaking of everyone's having a right to various things such as equality of opportunity, life, and so on, and enforcing this right, is that these "rights" require a substructure of things and materials and actions; and *other* people may have rights and entitlements over these. No one has a right to something whose realisation requires certain uses of things and activities that other people have rights and entitlements over.³

Now, it is also part of Nozick's view that, if individuals have acquired what they possess in accordance with the principles that make up the Entitlement Theory, then they have a right to their property. Consequently, if someone's life depended upon his having what another has acquired in accordance with the principles of the Entitlement Theory, the first person has no right to be given what he needs to live from the other's holdings.

Samuel Scheffler⁴ challenges Nozick's Entitlement Theory by denying that people have such stringent property rights as exclude enforceable welfare provision for the disabled. He offers in contrast to the rights Nozick recognises what Scheffler calls "an alternative theory of rights". And he argues that the rationale which Nozick gives for the rights that Nozick acknowledges offers more support for

Scheffler's own alternative theory than it does for Nozick's rights.

Scheffler's alternative theory of rights is this:

Every person has a natural right to a sufficient share of every distributable good, whose enjoyment is a necessary condition of the person's having a reasonable chance of living a decent and fulfilling life, subject only to the following qualification. No person has a natural right to any good which can only be obtained by preventing someone else from having a decent and fulfilling life. (p. 153)

On this alternative theory, the needy have a right to such holdings of the non-needy as are not needed by the latter for their having a reasonable chance of a decent and fulfilling life but which are needed by the former for such.

Scheffler considers Nozick's answer to the question 'Why do human beings have rights?', and claims that the answer Nozick gives supports Scheffler's alternative theory of rights better than it supports the set of rights which Nozick recognises. The answer which Scheffler claims Nozick gives to the question 'Why do individuals have rights?' is that they have them in virtue of their having *the capacity to live a meaningful life*.

Scheffler then claims that, if beings with the capacity to live a meaningful life have rights in virtue of having that capacity, "then presumably the function of the rights is to safeguard the ability of beings with this valuable capacity to *develop it*." (p. 158-9)

Scheffler next writes:

But then it seems clear that the alternative conception of rights is a much more accurate specification than the Lockean conception of the rights which people actually have. (p. 159)

His reason is "that the alternative conception of rights ... alone insures that all the necessary material conditions for having a reasonable chance of living a meaningful life will be met." (p. 159)

For a long time I was persuaded by this line of reasoning of the superiority of Scheffler's alternative theory of rights to Nozick's. (Indeed, so persuaded was I that I adopted Scheffler's theory in my book *A Farewell to Marx*.⁵) However, I am no longer convinced that Scheffler has proved the superiority of the alternative theory of rights to Nozick's. This is because I am no longer convinced that Scheffler is right that Nozick's view of why human beings have the rights which Nozick maintains they do is that they each possess the capacity for meaningful life. It is true that Nozick conceives of the rights of one being as imposing side constraints on other people's actions. And it is true that Nozick has a section entitled 'What are Constraints Based Upon?' in which he answers this question by saying that they are based upon the capacity of humans to have a meaningful life. However, Nozick also has a section entitled 'Why Side Constraints?' in which he says that the reason there are side constraints, such as he thinks the rights of one individual impose on others, is that "individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent."⁶ If individuals are ends who may not be sacrificed or used as means, then it is not true, as Scheffler says,

that "the function of rights is to safeguard the ability of beings with the valuable capacity [for a meaningful life] to develop it." (p. 159) Rather, the function of rights is to safeguard the status of beings with the capacity for a meaningful life as ends who may never be used as means only.

Nozick is thus to be understood as subscribing to the following pair of theses:

- (i) A being is an end in itself, and may not therefore be used only as a means, if and only if that being has a capacity for a meaningful life.
- (ii) If a being is an end in itself, then it has such rights as if respected would ensure that it is never used as a means only.

(A being is not used as a means only in some transaction with another being, according to Nozick, if the first being is a willing participant in the transaction.)

In other words, Nozick is maintaining that, first, we are ends because we have a capacity for a meaningful life; and, second, that side constraints exist in the form of the rights we possess in order to protect our status as ends who are never to be used as means only.

If Nozick is interpreted in the way I suggest he should be, then Scheffler's alternative theory of rights, contrary to what Scheffler says, is not better supported than the rights Nozick recognises by the justification Nozick supplies for the rights he recognises. Indeed, it is less well supported. For protection of the rights of beings according to the alternative theory may require that the well-off be compelled against their will to provide welfare for the disabled. The well-off would in such a case be making sacrifices which did not benefit themselves: they would be being used as means only.

Of course, this raises the question: Why should one not be concerned to maximise the development of the capacity for a meaningful life rather than be concerned with preventing beings who are ends from being used as means only? In other words, if what one ultimately values is the leading of meaningful lives by beings with the capacity to lead such lives, why should one not be ultimately concerned with securing the ability of beings with this capacity to develop it - which may involve the acknowledgement of rights to be given welfare - rather than being concerned to make sure no beings with that capacity are ever treated as means only by anyone - which is incompatible with the recognition of rights to welfare as such?

We touch bed-rock with this question. And I think here one has to go beyond what Nozick says. Nozick says of someone who is used as a means for the benefit of another:

To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that this is the only life he has.⁷

Scheffler would say by way of reply: Failing to provide welfare for a being in need, when one can do so without sacrificing one's ability to enjoy a meaningful life, equally fails to respect that human being in need.

How is one to decide between these two competing moral visions? In other words, what does one regard as more important: no one being treated as a means only; or, no one

being allowed to forgo fulfilment of the capacity for a meaningful life?

Another way of approaching the rift that divides Nozick and Scheffler is to ask: Is person A allowed to coerce person B to provide welfare for person C? In being forced to provide such welfare, B is being used as a means, but C is thereby being provided with the wherewithal for a meaningful life which otherwise he lacks.

To those who oppose Nozick it probably seems obvious that C's being provided with a meaningful life by B's being treated as a means is to be preferred to C's failing to have a meaningful life as a result B's not being treated as a means, provided the treatment of B as a means does not deprive B of the capacity for a meaningful life. I think Nozick is right to deny this, but it is difficult to say why.

To see why I think Nozick is right, suppose I am physically disabled and unable to provide for myself by working. Suppose that the only way I can obtain my means of subsistence is by telepathically producing in some able-bodied person excruciating pain while making it clear to that person that I will desist from producing this pain in him so long as he continues to provide me with my means of subsistence. Would I be entitled to obtain my means of subsistence in this manner, if there were no other way I could obtain them?

You might say that, if it only required a small sacrifice on the part of the other person to provision me, I am entitled to coerce him to provide me with means of subsistence. But exactly why? Why should anyone owe another succour merely in virtue of the latter person's need for it? A being in need may ask, and the person able to satisfy the need should supply it, but may force be used?

People accustomed to the welfare state, I suspect, will be inclined to say that, in the circumstances described above, I would be entitled to use coercion to compel another to provide for me if I were unable to provide for myself and there was no other means by which I could be sure of means of subsistence. But I do not believe that this is so. The other person should help me - but I have no right to be given help in these circumstances.

I have so far merely offered assertions here. But then so has the other side: for it simply asserts that need takes priority over autonomy where they conflict. I think an argument can be provided for this intuition of mine but it goes beyond what Nozick writes.

Person A's being compelled to refrain from harming person B does not exact from A any greater sacrifice than is exacted from B for A's benefit when B is likewise compelled to refrain from harming A. A's being compelled to help B does exact from A a greater sacrifice than is exacted from B for A's benefit, where B is permanently disabled. There is no reciprocity of sacrifices demanded in the two cases. Nozickian rights as against Scheffler's welfare rights preserve moral equality between persons: they make morally reciprocal demands of people. Scheffler's rights are not reciprocal: they do not make morally equal demands.

It might be said: Should the demands placed on an able-bodied person be no greater than the demands placed on a disabled person? To which I would reply by asking: Why should the able-bodied be required against their will to

make a non-reciprocable sacrifice in the form of being obliged to provide welfare for the disabled? The able-bodied were not responsible for the distribution of natural assets. No one was.

To go back to the imaginary case I sketched before where through being able to induce pain in you telepathically I could compel you to provide me with welfare. I could only do this with impunity provided you could not use force to stop me from doing this. Where there is equality of power, then reciprocity of sacrifice is the only morally equitable standard in the assignation of rights.

I conclude, therefore, that Scheffler has failed to demonstrate that Nozick's Entitlement Theory is mistaken. The rights acknowledged by that theory preserve moral reciprocity between all individuals who are bound by side constraints, whereas the rights that individuals possess according to Scheffler's alternative theory do not.

However, one last point should be made. Able-bodied people who are denied the possibility of procuring means of subsistence for themselves in consequence of the previous appropriation by others of all land and other natural resources are being made worse off in being so denied. Consequently, they have an entitlement to either paid work or as much welfare as is necessary to bring them up to the level of well being they would have attained had land been held in common and had they been able to use it without appropriating it.

Some compulsory welfare provision might be legitimate, therefore. But the disabled would have no moral entitlement in the form of a right to welfare, for their position has not been worsened by private appropriation by others. To say this, however, is not to say that people who are able to should not make provision for the disabled. And, nowhere has Nozick ever said otherwise.

NOTES

1. G. A. Cohen, 'Nozick on Appropriation', *New Left Review*, no. 150, 1985, pp. 89-105. All subsequent page numbers in brackets that appear in section I of the text are page references to this article.
2. Paul Russell, 'Nozick, Need and Charity', *Journal of Applied Philosophy*, vol. 4 number 2 1987, pp. 205-216. All subsequent page numbers in brackets that appear in section II of the text are page references to this article.
3. Robert Nozick, *Anarchy, State and Utopia*, Basic Books, New York, 1974, p. 238.
4. Samuel Scheffler, 'Natural Rights, Equality, and the Minimal State', in E. Paul (ed.) *Reading Nozick*, Basil Blackwell, Oxford, 1982. All subsequent page numbers in brackets that appear in section III of the text are page references to this article.
5. David Conway, *A Farewell to Marx: An Outline and Appraisal of His Theories*, Penguin Books, Harmondsworth, Middlesex, 1987.
6. Nozick, *Anarchy, State and Utopia*, pp. 30-31.
7. *Ibid.*, p. 33.