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II. ON RECTIFICATION IN NOZICK'S MINIMAL STATE

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IN THE SHORT TIME since its publication in 1974, *Anarchy, State, and Utopia*, by Robert Nozick,¹ has been criticized by several authors for the weakness of its libertarian foundations.² This essay, however, takes Nozick's libertarian principles seriously and applies them to the single most important issue Nozick admits leaving untreated—the theory of rectification.³

The following discussion will advance two central propositions. First, it will be argued that, as practiced, rectification would be limited by Nozick's own "minimal state" principles generally to the correction of wrongs committed during, but not before, an individual's lifetime. In effect, then, initial entitlements would be treated in the same "hands-off" manner in the minimal state as natural assets and cultural background. However, if one remains unconvinced by the case for "limited rectification," the second part of the essay will suggest that nothing in Nozick's exposition precludes a strictly egalitarian distribution of entitlements. That this outcome would be permitted by a libertarian theory should, at the very least, prove surprising to those who are tempted to embrace it.

THE CASE FOR LIMITED RECTIFICATION

Nozick's theory of distributive justice is outlined in his "theory of entitlements." One is entitled to a good or holding under this theory if it

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has been acquired in accordance with the principles of both justice in acquisition and justice in transfer.

The need for rectification arises in the minimal state when either the principle of justice in acquisition or the principle of justice in transfer is violated. What is not immediately apparent from Nozick's exposition, however, is (1) whether or not a rectification claimant must show a personal link between the alleged injustice and his personal welfare, and (2) if so, what degree of proof is required for such a showing.

These issues can be put into sharper focus by distinguishing between intragenerational and intergenerational rectification procedures. Intragenerational rectification refers to compensation for victims who are alive to collect their rectification awards (or compensation awards arising out of legal actions initiated by the victim's estate). Intergenerational rectification encompasses all injustices and, in theory, ensures that the present distribution of entitlements be that which would have obtained had only the principles of justice in acquisition and justice in transfer been observed throughout history. Quite obviously, the undertaking of intergenerational rectification is a far more ambitious task than rectifying only present injustices.

More important, whatever degree of proof is required, it ordinarily is much more difficult to establish a personal link between alleged injustices and the welfare of the individual rectification claimant for intergenerational than for intragenerational claims. The claimant who is alive is obviously in a much better position to prove that, had an alleged injustice not taken place, he personally would have been better off than the direct or indirect descendant of a dead victim of injustice who was never compensated during his or her lifetime.

As a concrete example, consider the case of two individuals, Black and White, in generation "one," each of whom have one child, Black-son and White-son, respectively, belonging to the "second" generation. Suppose that White during his lifetime violates either the principle of justice in acquisition or justice in transfer in such a manner that Black suffers damage. Clearly, if rectification proceeded during the first generation, all future claims by any descendants of Black for rectification awards would be groundless. The interesting question, however, arises if rectification is not accomplished in the first generation. Does Black-son, as a lineal descendant of Black, have a claim against White-son, the lineal descendant of White?

To illustrate the conceptual difficulties here, imagine that Black has waived his right to the award or has spent it entirely on nondurable goods. Under such circumstances, Black-son would have no claim to it. In the absence of some evidence of what Black would have done with the award had he received it, therefore, Black-son would face an impossible task in

attempting to show that by some recognized standard of proof he would have been the beneficiary.⁴ Of course, if he could meet such a burden, Nozick would grant him his claim, since as a matter of law Nozick would require White-son to fulfill the unpaid obligation of his ancestor(s) on the theory that property unjustly inherited is not rightfully owned.

Thus, if rectification claimants are required to establish a “sense of personal grievance” (namely, a connection between an alleged injustice and the claimant’s personal welfare), then rectification will proceed in Nozick’s minimal state only for present injustices and those very few past injustices where plaintiffs can sustain their burdens of proof. In traditional civil actions in the United States today, plaintiffs must ordinarily establish that “more probably than not” their claims are meritorious. But, even under a more lenient standard, it is doubtful, under a rectification scheme where plaintiffs are charged with showing a personal grievance, whether rectification would extend much beyond intragenerational claims.⁵

The foregoing case for limited rectification rests on the view that the rectification plaintiff must establish a personal sense of grievance. If, however, the rectification defendant is charged with proving his personal *right* to a particular set of entitlements, the scope for intergenerational rectification is broadened considerably. Consequently, it is of critical importance in rectification theory who must establish the “personal link”—the plaintiff or the defendant.

Close adherence to the spirit, if not the letter, of Nozick’s libertarian theory argues in favor of the initial view that requires plaintiffs to establish their personal link with the wrong(s) in question. A fundamental tenet of the theory is that it takes the anarchist position seriously, and therefore requires an elaborate justification of even a “minimal night-watchman” state. In the language of the law, a presumption exists against the legitimacy of state action.

Discussing the related issue of rights to natural assests, Nozick remarks:

It is not true, for example, that a person who earns Y (a right to keep a painting he’s made, praise for writing *A Theory of Justice*, and so on) only if he’s earned (or otherwise deserves) whatever he used (including natural assets) in the process of earning Y. Some of the things he uses he just may *have*, not illegitimately. It needn’t be that the foundations underlying desert are themselves deserved, *all the way down*. [p. 225]

The tenor of this discussion is inconsistent with the view that defendants, if challenged by rectification claimants, must prove personal rights to their entitlements. For if each individual is forced by the state to prove historical title for each of his holdings, then a presumption will have been established in favor of the state to take property absent an affirmative

showing that title is vested. Thus, only a rule requiring plaintiffs to prove the legitimacy of their rectification claims is consistent with the libertarian foundations of the minimal state.

Under these conditions, therefore, the scope of rectification would be limited, in practice, almost exclusively to actions concerning present injustices. This would, of course, leave the distribution of inherited entitlements largely untouched in each generation. Consequently, just as individuals are, according to Nozick, "entitled" to the natural assets they bring with them into the world (p. 225), the limited rectification procedure would, in all but a few exceptional cases, award entitlements as a matter of right to members of incoming generations to whom property has been properly bequeathed.

As Nozick recognizes, his entitlement theory of natural assets allows the element of chance to govern the distribution of natural assets. But Nozick sees nothing wrong in randomness *per se*, maintaining that the distributional process, not its result, must be just. The effect of the foregoing arguments for limited rectification should not, therefore, disturb him, since the addition of entitlements to the list of factors to be randomly distributed offends nothing in his conceptual framework.

Nevertheless, it is still puzzling why, in claiming a need for a broader intergenerational rectification policy, Nozick should single out entitlements to property to be governed by the principle of historical determination. Why is it appropriate to trace only the lineage of property, and not genes or family and social background? Why is it just that I should be the product of a relationship between my particular mother and father, both of whom I did not choose to be my procreators? If the answer is that the present generation is bound to live by the free mating choices of prior generations, just as it is bound to live by the free choices of entitlement transfers of prior generations, then what about the products of rape victims or procreative activities where one of the parties did not choose, of his own free will, to be involved (arranged marriages)? Certainly in these cases some doubts must arise about the "justice" of the gene pools that are transmitted to future generations.

More important, the cultural environment one inherits today was influenced by prior property distributions. Thus, while it may be possible to "rectify" the wealth held by the Rockefellers, it would be quite difficult, if not impossible, to "rectify" their social and family background, both of which are products, partial or total, of past property transactions (some of which may have been unjust). Yet, to do nothing to rectify social and family backgrounds is to accept possibly the influence of unjust property transactions on the present distribution of family and social backgrounds.

The foregoing discussion about genes and environment should indicate how truly arbitrary it is to require entitlements alone to submit to rectification. If Nozick is willing to accept the arbitrariness and randomness of the genes and environment of the present-day generation, both of which are either infected by "injustices" of their own (in the case of rape and coerced marriages for genes) or injustices in the realm of entitlements (in the cases of environment and genes), he should not be reluctant to accept the randomness and arbitrariness of inherited entitlements.

Logically, then, it is only appropriate that entitlements be treated in the same fashion as natural assets and cultural background. Either all should submit to the process of historical justification or all should be subject to random determination; there is no justification for singling out entitlements alone for historical examination. Given Nozick's obvious reluctance to pursue a program of rectifying genes and cultural background in addition to entitlements, consistency demands that the principle of randomness govern all three.

ALTERNATE RULES OF RECTIFICATION

Suppose, however, that one remains unconvinced by the case presented for limited rectification. In particular, if the burden of proof is placed on individual defendants to justify their rights to their present sets of holdings, under what conditions would one proceed with intergenerational rectification, *knowing that the presence of imperfect information about the past would inevitably lead to mistakes?*

In theory, intergenerational rectification would, under the criteria Nozick outlines, utilize "historical information about previous situations and injustices done in them (as defined by the first two principles of justice and rights against interference), and information about the actual course of events that flowed from these injustices, until the present" to describe a just set of holdings (p. 152). Intergenerational rectification would, then, presumably only be needed once, to bring the initial distribution of entitlements into line with the "just" distribution. Thereafter, intragenerational rectification would be sufficient to correct present wrongs as they occur.

If Nozick's theory of distributive justice is taken seriously, and a broader form of rectification is permissible, determining the "justness" of the present distribution requires an inquiry not only into the justice of all prior transfers, but also into the original acquisitions at some beginning point of time and at subsequent times when groups of men have discovered new, previously uninhabited geographical areas. Compensation

is then required for violations of both the principles of justice in acquisition and justice in transfer.⁶

In condensed form, the state which engages in intergenerational rectification would therefore need the following items of information:

- (1) Those instances in which the principle of justice in acquisition was violated, the parties committing such violations, the victims, and the amounts of compensation owed.
- (2) Those instances in which the principle of justice in transfer was violated, the parties committing such violations, the victims, and the amounts of compensation owed.
- (3) The change in the property distribution at time "one" generated by the different capital distribution following compensation.
- (4) The alteration of inheritance patterns in all subsequent generations induced by the compensation payments.

In turn, these items would require knowledge of the preferences of all persons throughout time (preferences between goods, between present consumption and saving, and between heirs) and each person's productivity (to compute interest rates tailored to each individual) in order to fix levels of compensation payments at each point in time. Furthermore, as one proceeded to determine the effects of compensation paid at time "one" on future generations, the errors would be multiplicative, growing to enormous levels over time.

Listing the informational requirements should illustrate what Nozick's rectification principle, applied on an intergenerational basis, actually entails. While it is true that the informational burden would be considerably eased if instead of beginning at time "one," the rectification inquiry began in, say, 1800 or 1900, the four essential categories of information would still be required, leaving a gargantuan task for the intergenerational rectifier.

In fact, however, a strict application of the principle of intergenerational rectification would preclude "wiping the slate clean" at arbitrary points of time for the sake of convenience. Instead, it would, in the limit, require an inquiry only into those injustices that occurred in the original acquisitions at the beginning of time and the points in history thereafter when previously unowned land and property were appropriated. For if such injustices were, in fact, significant, then certainly the distribution in all subsequent generations would have been markedly different had compensation been paid for violations of justice in acquisition at the times such violations occurred.⁷ In a very real sense, then, historical events between time "one" and the present generation would have little

significance for the present-day rectifier, since the course of history would have been different during that long interim period.⁸

Realizing the serious informational problems with inquiries into either injustices in acquisition at some beginning point of time or injustices in transfer at points throughout history, Nozick offers a second-best solution which employs the best estimate of "subjunctive information about what would have occurred" but for the injustices (pp. 152-153). Interestingly, he admits that pattern rules of distribution may serve as a "rough rule of thumb" to supplement this estimation procedure. Thus, if a case can be made that those who are worst-off in present society have the highest probabilities of being the descendants of victims of past injustices, then a rectifier would, in the short run, be justified in employing a Rawlsian-like rule which suggests redistribution in a manner which maximizes the position of those presently worst-off (p. 231).

Suppose, however, that the rectifier is adamant about the pursuit of a "first-best" rectification procedure. What, then, should be his operative rule of rectification in the absence of perfect information about previous injustices and the subjunctive behavior of all those who should have been involved in some type of rectification program at the times those injustices occurred?

One proposal would abandon the intergenerational rectification effort altogether, but for different reasons than those presented in the preceding arguments for limited rectification.

A strong tenet of Nozick's theory is that it is designed not to sacrifice the individual on the "alter of social welfare." Indeed, to speak of "social welfare" apart from the welfare of each of the individuals who make up society is, in Nozick's view, misplaced. Thus, a rectification procedure which inherently commits mistakes arguably violates the rights of the victims of those mistakes by "unjustly" taking their property for the purpose of compensating others.

But this objection to rectification itself misreads Nozick's theory. Although it may be true that some will receive "unfair treatment" under a program of intergenerational rectification, the rights of those "unjustly" treated are not being sacrificed for the sake of a social good, but rather are being traded for the rights of others. If this trade is highly imbalanced, such that four people are unjustly treated for every one that receives just treatment, then it would be illegitimate to impose the rectification procedure. But if the trade were the other way around, four just treatments for every single unjust treatment, it is not clear that rectification must be abandoned.

In particular, if it is true that no man has any more importance than another, then a strong case can be made for a second proposal—namely,

that an intergenerational rectification program is legitimate if and only if the number of those receiving just treatment outweighs the number receiving unjust treatment. Yet, because it would be coincidental in a world of imperfect information about how rectification should proceed for persons to receive perfectly just treatment, the more general intergenerational rectification rule would appear to be:

Rectify if and only if the number of those whose property allocations are made "more just" by the rectification procedure exceeds the number whose property allocations are made "more unjust."

Operationally, this suggests that if A's and B's current property holdings are 5 and 6, respectively, and if their "just" distributions under a regime of perfect information and rectification are 3 and 8, respectively, that A's holding is more just after rectification if it is closer to 3, and B's holding is more unjust after rectification if it is further away from 8.

Alternatively, suppose the rectifier overshoots, so that the postrectification holdings are 2 and 9, respectively. Since the rectification rule above speaks only in terms of absolute deviations from "justice," overshooting in this case would be legitimate: A is closer to his just set of holdings, and so is B. Notice that the rule applies with equal force to gainers and losers under rectification programs.⁹

Given Nozick's heavy emphasis on the rights of individuals and the antiutilitarian tone of the book, it would appear that this second rectification rule—that which counts persons and not utilities—is the most consistent with the principles developed in the rest of Nozick's book. Accordingly, in the section which follows, this particular rectification rule will be applied to the general problem of intergenerational rectification and will be used to demonstrate the manner in which the timing of the rectification inquiry and information uncertainty affect the outcome of the rectification procedure.

IMPERFECT INFORMATION AND EQUALITY

As just outlined, the intergenerational rectifier should, in theory, utilize his "best estimate of subjunctive information about what would have occurred" if injustices had not taken place (p. 152) to determine the "just" or "ideal" set of holdings that should reign in the minimal state. Nozick remarks parenthetically that the nature of this problem can be phrased in probabilistic terms (pp. 152-153) in which, for each individual, a probability distribution, call it the "just entitlements probability distribution," can be formed over his "ideal" set of holdings.

According to the intergenerational rectification rule developed in the preceding section, the rectifier would choose the statistic (mean, median, or mode) of these distributions in a manner which ensures that the number of persons whose rectified holdings are made closer to the "ideal" set of holdings outweighs the number whose allocations are pushed further away. Given the probabilistic nature of the ideal allocations, the total deviation from ideal will represent the sum of the deviations at each ideal allocation times the probability with which that ideal allocation may occur.

Consequently, if the ideal set of holdings for the i^{th} individual is I_i , his actual set of holdings is A_i , his postrectification set of holdings is R_i , and the probability distribution over the ideal holdings for that individual is represented by the function $f_i(I_i)$, then the deviation of the actual set of holdings from the ideal set for that individual is the absolute value of $\sum f_i(I_i)(A_i - I_i)$. The deviation under a proposed rectification scheme would be the absolute value of $\sum f_i(I_i)(R_i - I_i)$. Finally, denote the "actual deviation from ideal" as D_a and the "postrectification deviation from ideal" as D_r . Under the rectification rule used here, the rectifier is directed to compare D_a and D_r for all individuals in society and then to determine whether the number of people for whom D_a exceeds D_r is greater than the number of people for whom D_r exceeds D_a .

Not all rectification rules will accomplish this result; some may cause enough overshooting such that the absolute deviations are not reduced for a large enough fraction of the population. There is one rule, however, which will consistently guarantee that 100% of the population will be moved closer to their ideal allocations: selecting the mean of the just entitlements probability distribution for each person. Such a rule will reduce the deviations for each group or person to 0, since it is a statistical property that the first moment around the mean of any probability distribution is equal to 0. Rectification rules that use measures other than the mean of the just entitlements probability distribution, such as the mode or median, will not necessarily reach this result and, hence, are dominated by the procedure which utilizes the mean.

Recall now from the earlier discussion the list of informational items required for intergenerational rectification. A brief rereading of that list should convince one that the task facing the rectifier is truly monumental. Clearly, if the rectifier is required to look back to Adam and Eve, he will have no basis for claiming that the just entitlements probability distributions vary for different individuals. Indeed, even if the rectifier were to begin his inquiry with, say 1776, he still would not possess the amount of information that would be necessary to enable him to establish that the just entitlements probability distribution for a Rockefeller, for example, differs from that of an inner-city ghetto resident.

In formal terms, therefore, intergenerational rectification seems to require identical probability distributions of the just set of entitlements for each individual. These distributions need not be uniform; that is, they each may have an identifiable point of central tendency, but there is no reason to believe that they will differ as between individuals. If the rectification rule which chooses the means of these distributions is implemented, this will imply that *an intergenerational rectification scheme which treats individuals seriously must redistribute the entitlements in society equally among all of the members of that society.*¹⁰ Needless to say, this is a rather startling result in light of the antiegalitarian flavor of much of Nozick's book.

It can be argued, of course, that the egalitarian result is predicted on the assumption that the rectification inquiry begins at a date in history when no meaningful way exists to generate differences in the just entitlements probability distributions of those living today. If, however, the "starting date" of the rectification inquiry is advanced far enough toward the present, it is possible to employ a "pattern" rule of rectification to generate different just entitlements probability distributions. Indeed, Nozick himself offers the Rawlsian suggestion that society should be organized so "as to maximize the position of whatever group ends up least well-off in the society" on the theory "(1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in society have the highest probabilities of being the (descendants of) victims" of serious past injustices (p. 231).

In more general terms, if the ground rules of rectification are changed in the manner just suggested, the proper procedure will consist of identifying those characteristics of the present-day population that are most likely to be correlated with past injustices. Thus, a very simple rectification procedure would award compensation to the Blacks and Indians for the prior injustices suffered by both groups at the hands of Whites.¹¹

TABLE 1
Distributions of Just Entitlement Shares
(p = probability)

	Actual	p = .1	p = .2	p = .3	p = .4	Mean
Indians	50	30	70	100	100	87
Blacks	150	170	100	300	250	197
Whites	800	800	830	600	650	686

To implement the procedure, the rectifier would first form a just entitlements probability distribution for each group. In the Black, White, and Indian example hypothesized, suppose the probability distribution of possible just outcomes is compared to the actual holdings each group possesses (the numbers in Table 1 are shown for purposes of illustration only). If the rectification procedure is then to select the mean of the just entitlements probability distributions for each group, then the rectified entitlements for Indians, Blacks, and Whites would be 87, 197, and 686, respectively, as indicated by Table 1.

Put in the terms just outlined, the Black, White, and Indian example is quite simplistic. The high level of aggregation required for the example to be meaningful forces one to overlook the fact that many Whites are descendants of recent immigrants to this country who played no role in the commission of the major injustices suffered by the Blacks and Indians that allegedly require compensation today. Why compel these descendants to pay for the sins of others' ancestors?

The careful rectifier may see some merit in this claim and attempt to identify specifically those Whites who are descendants of persons who actually committed the injustices. Thus, the descendants of slaveholders, participants in Indian wars and raids, and so on would be singled out for compensation obligations. Unfortunately, this highly disaggregated procedure begs the question of whether particular individuals in the past or whole groups or societies can be held responsible for the commission of past injustices. Certainly, more individuals were responsible for the theft of Indian lands than just those in the U.S. Army. What about the political leaders who founded such activities, individuals who voted for these leaders, and the like? Where does the buck of responsibility come to rest?

Assuming that the thorny issues involved in the assignment of responsibility can be resolved—and it is doubtful whether they can be—the remaining danger of rectifying on a pattern basis is that many people, descendants of both victims and perpetrators of injustice, may be misclassified. If enough persons are incorrectly classified, a preponderance of the population may be moved further away from the ideal set of holdings, thereby violating the rule of intergenerational rectification developed earlier.

Thus, moving the starting date of the rectification inquiry far enough toward the present (so as to generate differences in just entitlement probability distributions) is a necessary, but not sufficient, condition for departing from the egalitarian rectification result. The departure will only be legitimate if the characteristics on which rectification awards and obligations are based are defined with enough specificity to eliminate the

danger that misclassification could upset the rectification rule. In short, the rectifier must be sure that the characteristics he chooses do in fact alter the probabilities of being a compensation obligor or recipient. A sophisticated procedure could then be devised to indicate, on the basis of certain well-chosen characteristics, who would be entitled to compensation, who would be obligated to fund such efforts, and in what amounts.

To depart from the egalitarian result, therefore, it is necessary to begin the rectification inquiry at a point in history where it becomes possible to generate differences in the just entitlements probability distributions of present-day members of society. At what date such differences appear is not clear, however. Nor is it clear that one is bound to pick the date at which such differences first appear.

More important, on what basis, in the first place, is it correct to begin the rectification inquiry at a point in time conveniently defined so as to generate any differences in the just entitlements probability distributions of the present population? Why is it legitimate to "wipe the slate clean," so to speak, at 1900, and not at 4000 B.C. or, more appropriately, at some mythical "time one"?

The distributional results of intergenerational rectification are therefore completely dependent on when the rectification inquiry is started. On this crucial issue, however, Nozick's theory provides no guidance. Yet, the historical tenor of the theory strongly implies that if there is no basis for starting the rectification inquiry at a point in time after "Adam and Eve," then intergenerational rectification requires an egalitarian distribution of entitlements.

CONCLUSION

The scope of rectification rests on who must prove the personal link with the alleged wrongs, the plaintiff who could be charged with showing how he or she has been personally aggrieved, or the defendant who could be required to prove his personal right to his present set of holdings. Nozick's theory seems to be consistent only with the view that plaintiffs must establish such personal links, implying that rectification in the minimal state should, in all but a few exceptional cases, be limited to intragenerational claims for compensation.

Supposing, however, that intergenerational rectification is pursued, the rule of rectification that is most consistent with Nozick's theory is one in which entitlements are distributed to conform with the means of the "just entitlements probability distributions" of the individuals in society. Depending on what date in history the rectification inquiry commences, this procedure may require entitlements to be redistributed in an

egalitarian fashion. Indeed, the egalitarian result can only be avoided if the date at which the rectification inquiry is started is moved close enough to the present to generate meaningful differences in the just entitlements probability distributions of the members of society. And, then, such unequalitarian redistribution can only be legitimately pursued if the characteristics on which the rectification procedure is based are specified with sufficient care.

Nothing in Nozick's theory enables us to determine at what date the rectification inquiry should be started, however. Unfortunately, it is on the resolution of that threshold issue that the results of a broader intergenerational rectification procedure depend. Without an answer to that important issue, however, there can be no theoretical objection to the egalitarian solution. In light of the antilibertarian criticism—much of it imbued with notions of egalitarianism—which Nozick's theory is certain to receive in the next few years, this egalitarian result is paradoxical, to say the least.

NOTES

1. Robert Nozick, *Anarchy, State, and Utopia* (New York, 1974).
2. See Thomas Nagel, "Book Review: Libertarianism Without Foundations," *Yale Law Journal* (November 1975): 136-149; Milton Himmelfarb, "Liberals and Libertarians," *Commentary* (June 1975): 65-70; Hal R. Varian, "Distributive Justice, Welfare Economics, and the Theory of Fairness," *Philosophy and Public Affairs* (Spring 1975): 221-247; and the book review by Brian Barry, *Political Theory* (August 1975): 331-336.
3. See Nozick, p. 152.
4. In the language of David Lyons, Blackson would not acquire a "right" to his award unless he could show that he was the "intended beneficiary." For a full discussion of the rights of beneficiaries, see David Lyons, "Rights, Claimants, and Beneficiaries," *American Philosophical Quarterly* 6 (1969): 173-185, and a response by H.L.A. Hart, "Bentham on Legal Rights," in *Oxford Essays in Jurisprudence*, A.W.B. Simpson, ed. (Oxford, 1973), pp. 171-201.
5. Hal Varian offers another method of weakening Nozick's rectification requirement by attacking the legitimacy of inheritance (Varian, pp. 237-238). For if inheritance itself lacks justification, then there is no link between present and past distributions of entitlements, and therefore there can be no foundation for efforts toward intergenerational rectification. Varian's approach is not pursued here, however, since it can be argued that the right of transfer legitimates inheritance and, second, that the incentive effects of the right to bequeath property may generate more benefits than harms (thereby justifying a resort to the Lockean exception).
6. Presumably, Nozick's criteria for compensation for violations of the principle of justice in acquisition would be the same as for prohibitions of certain risky activities: pay enough compensation to put the victim back at his original level of indifference. Needless to say, the task of determining the amounts of compensation

owed to persons long dead for previous injustices, themselves often unknown, would be extremely difficult, if not impossible.

7. If injustices at "time one" were not "significant," then presumably at some point in time transfer injustices achieved a level of significance at which it could be said that the course of subsequent distributions was markedly affected. The argument therefore retains its force under slightly different conditions.

8. Assuming that justice in transfer obtained in subsequent generations, then, the justice of today's distribution depends on the distribution of such abilities among all of our ancestors throughout history. Given that the distributions of these abilities were random at each stage in history, it follows that today's "just" distribution, too, has been randomly determined. This fortifies the claim made earlier that since Nozick is undisturbed by randomness per se, he should not be bothered by arguments which, in practice, limit his rectification inquiry to intragenerational injustices. See the discussion in the preceding section.

9. The second rectification rule, just proposed, counts heads and not utilities. Nevertheless, a third rule could be advanced which somehow accords different weights to various deviations from justice. Thus, it might be permissible under such a scheme to put a single person closer to his just holding, which happens to be much larger than the one he currently possesses, at the expense of pushing four other persons slightly away from their just entitlements. Such a result can only occur when the intensities of the deviations from justice are registered by the rectification rule; it could not occur under the rule developed above, which considers only persons and not the utilities implied by or the intensities of the individual deviations from justice.

10. It has been shown by Lerner that if the marginal utility of income declines as income increases, utilitarianism dictates an equal income distribution. If Lerner's argument is applied to wealth, utilitarianism would also require an egalitarian distribution of property entitlements. See Abba Lerner, *The Economics of Control* (New York, 1944), ch. 3. The analysis above, however, reaches the egalitarian result without appealing to utilitarian theory.

11. For an excellent discussion of the contemporary legal issues posed by reparation payments to Blacks, see Boris I. Bittker, *The Case for Black Reparations* (New York, 1973).

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