

The Minimal State v the Welfare State: A Critique of the Argument between Nozick and Rawls

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Abstract

This paper critically assesses the debate between Rawls and Nozick as to whether the minimal state or the welfare state is preferable. The first part provides an overview of Nozick's argument in favour of the minimal state; the second part summarises Rawls' idea of the role and nature of government as being ideally expressed in the welfare state. Nozick's criticisms of Rawls are then considered, and a critique provided of the approaches adopted by both Nozick and Rawls. The author argues that Nozick does not succeed in his attempt to show that Rawls is wrong.

Introduction

In 1994, one out of every 11 residents in New York was on welfare. In 1998 the then Governor of New York, George E Pataki, argued that this was the result of welfare policies that “encouraged dependency, punished initiative and destroyed the spirit.” To remedy this situation he implemented a number of welfare reforms designed to promote individual responsibility and the value of work.¹

Welfare was replaced by *Workfare*. Under *Workfare* able-bodied welfare recipients were required to earn their welfare by completing work assignments. Those who refused faced losing their benefits. All welfare recipients were required to be drug screened, and a lifetime limit of five years was placed on the period of time over which a person could receive cash benefits from the state. A program called *Learnfare*, which provided welfare recipients with incentives to make sure that their children completed their education, was also introduced.

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¹ Pataki G, “Promoting Individual Responsibility”,
<<http://www.state.ny.us/renewdoc/final/promoindi-pg34.htm>>
(30 November 2004).

Under *Learnfare*, parents whose children were absent from school without reason five or more times had their welfare benefits reduced.

As draconian as these reforms might sound, Pataki argued that they were extremely successful. He stated that the reforms transformed the New York State welfare program into one that fostered growth, encouraged initiative and rewarded the taking of responsibility, and that these measures had reduced the state's welfare rolls by more than 37 per cent.²

Nozick, one of the most persuasive supporters of the minimal state, would approve of the policies and changes implemented under the Pataki administration. Rawls, on the other hand, would not. The first part of this paper provides an overview of Nozick's argument in favour of the minimal state whilst the second summarises Rawls' claim that the most ideal form of government is the welfare state. After considering Nozick's criticisms of Rawls the author provides a critique of both approaches, and argues that Nozick's attempt to undermine Rawls' argument in favour of the welfare state is unsuccessful.

A Libertarian Argument in Favour of the Minimal State

Nozick argues that the minimal state is the only morally justifiable form of government. This contention rests upon his understanding of the separateness of each person, the existence of inviolable rights, and the side constraint that these rights impose on the behaviour of others.

Nozick claims that persons are rational, they are moral agents, and they have free will. In addition, they have the ability to regulate and guide their lives in accordance with some overall conception of their choice. Nozick states:

[A person is] a being able to formulate long term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being able to limit its own behaviour in accordance with some principles or picture

² Pataki, note 1.

it has of what an appropriate life is for itself and others and so on.³

When a person shapes her or his life in accordance with some overall plan, that person gives meaning to her or his life.⁴ Persons, as such, are separate entities capable of determining the meaning and direction of their lives. Put slightly differently, we are all separate existences capable of leading separate lives.⁵ According to Nozick, the significance of each person's possession of self-ownership is that people should not be used as resources or as a means of achieving some end. It is wrong, he states, to treat people as if they are merely of instrumental worth, or to sacrifice one person for another.⁶

The separateness of each person means that each person's body and liberty are separate and distinct from those of others. They belong to each person and not to someone else. As such, Nozick states, only each person has the right to decide what happens to her or his life, body, liberty or property. Being inviolable and exhaustive, these rights are absolute.

Nozick claims that the rights of others determine the constraints on our actions.⁷ That is, a person's rights are not merely superficial claims that can be overridden. Rather, they are boundaries not to be crossed without the free consent of the person whose rights they are. Elaborating on this, Nozick writes:

[T]hat there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints, but it also leads to a libertarian side constraint that prohibits aggression against another.⁸

Therefore, a person cannot violate the rights of others through either interference or aggression. Nor can a person infringe upon other

³ Nozick R, *Anarchy, State and Utopia*, Blackwell, Oxford, 1974, p 49.

⁴ Nozick, note 3, p 50.

⁵ Nozick, note 3, p 33.

⁶ Nozick, note 3, p 33.

⁷ Nozick, note 3, p 29.

⁸ Nozick, note 3, p 33.

people's rights in the pursuit of some object or goal, even if that goal is to achieve an overall minimisation of the violation of rights.⁹ It is on this basis, therefore, that Nozick rejects utilitarianism.

Nozick asserts that a person's rights are so strong and far-reaching "they raise the question of what, if anything, the state and its officials may do." In *Anarchy, State and Utopia* Nozick considers this issue. Is it possible, he asks, to justify the existence of a state? If so, what are the limits on the state's exercise of its coercive power? Alternatively, is anarchy the only available option?

Nozick commences his treatment of these questions by stating that if having government is superior to the most favourable state of anarchy then the existence of the 'state' is justified. The best possible state of anarchy that could reasonably be hoped for is one in which people had the freedom to do as they chose, but nevertheless restrained their actions in such a way that they respected the rights of others. In the Lockean "state of nature", for example, anyone can do what he or she wants so long as it is within the bounds of the laws of nature.¹⁰ The laws of nature hold that no one may harm another in health, life, liberty or possessions. They also hold that a person has a right of self-defence against those who would transgress those rights. When such transgressions do occur, Nozick notes, individuals have a right of rectification.

Although Nozick agrees that people have a right of self-defence he considers that, as a result, there are a number of difficulties with the Lockean "state of nature".¹¹ Nozick explains that in the "state of nature" the understood natural law may not provide for every contingency. Given the potential ambiguity of the natural law with regard to some circumstances, it is possible that in judging their own cases people will give themselves the benefit of the doubt and assume they are correct.¹² Nozick states: "they will overestimate the amount of harm or damage they have suffered, and passions will lead them to attempt to punish others more than proportionately and to exact excessive compensation." That is, in exercising their right of self-defence, people will often be emotional and exceed the scope of such

⁹ Nozick, note 3, p 29.

¹⁰ Nozick, note 3, p 10.

¹¹ Nozick, note 3, p 11.

¹² Nozick, note 3, p 11.

right. In turn, this will lead to further retaliation and feuds. Without a firm means of settling such disputes, these feuds will be ongoing. On the other hand, if people lack the power or ability to enforce their rights, they may be unable to exact compensation when those rights are transgressed.¹³

How might this situation be resolved? Nozick answers that, for various reasons including friendship or the recognition that in unity there is strength, groups of people might form “mutual protection associations” in order to defend themselves and to exercise their right to rectification. Under such an arrangement, all members of the association are “on call” to defend and enforce the rights of other members.¹⁴ However, this means that everyone is always “on call”, and any member may call upon any other member or members for protection. Nozick writes: “protective associations will not want to be at the beck and call of their cantankerous or paranoid members, not to mention those of their members who attempt, under the guise of self-defense, to use the association to violate the rights of others.”¹⁵

Protection associations might resolve these problems through the division of labour (that is, someone would be paid to provide protection services and others would sell it), and by adopting a procedure to determine the validity of claims. While this might go some way to resolving intra-agency disputes, it would not provide for the difficulties involved in conflicts between associations.¹⁶

Nozick argues that initially there may be several protective associations within the same geographical area. When clients from different agencies enter into dispute and the agencies cannot agree on how to resolve the matter, they too will enter into conflict. The result of such conflict will be that over time a natural monopoly will occur. Eventually there will be only one protective association within a geographical area: the dominant protective association.¹⁷

¹³ Nozick, note 3, p 12.

¹⁴ Nozick, note 3, p 12.

¹⁵ Nozick, note 3, p 12.

¹⁶ Nozick, note 3, p 16. Nozick notes that there will also be a problem with resolving disputes that arise between members. He states that this can be resolved if associations do not provide protection against counter-retaliation when a client privately enforces his or her rights against some other member but that this reduces intra-agency enforcement of rights to a minimal level.

¹⁷ Nozick, note 3, p 16.

The dominant protective association will occur because unless an oligarchy is formed (under which all agencies within a region operate), the protective associations cannot co-exist.¹⁸ The relative worth of the product offered by each agency depends on its strength. Unlike other goods and services, the agencies compete for clients and enter into violent conflict when disputes arise between their clients. All its customers will eventually leave an association that most often loses, and join a stronger association.¹⁹ Alternatively, if agencies are stronger in different geographical areas, a boundary will be established dividing the different areas for which the associations are responsible.²⁰

The dominant protective association, although similar, is not a state. A state, Nozick writes:

[C]laims a monopoly on deciding who may use force and when; its says that only it may decide who may use force and under what conditions; it reserves to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries [and] claims the right to punish all those who violate its claimed monopoly.²¹

Under a minimal state (the night-watchman state), all citizens receive protection. The minimal state protects everyone against violence, theft and fraud, and it provides for the enforcement of matters such as contracts.

In contrast, the dominant protective association does not protect everyone (since some people may choose not to join), and it allows some scope for the private enforcement of rights.²² An ultraminimal state differs from this situation only in so far as it claims a monopoly over the use of force except that which is necessary for immediate self-defence.²³ Under both the dominant protective association and the ultraminimal state there will be individuals who do not purchase

¹⁸ Nozick, note 3, p 17.

¹⁹ Nozick, note 3, p 16.

²⁰ Nozick, note 3, p 16.

²¹ Nozick, note 3, p 23.

²² Nozick, note 3, p 23.

²³ Nozick, note 3, p 26.

protection, and who reserve (and act on) their right of self-protection. As with the anarchic state of nature these individuals, influenced by emotion, selfishness or revenge, may exceed the decrees of natural law when exercising their right of self-protection and demand excessive rectification. This is problematic.

It might be said that the ultraminimal state does not face this difficulty since it claims a monopoly over the use of force. There is, however, an inconsistency in this since if the protection of rights is the sole concern of this type of government, it acts contrary to its legislative function and purpose when it leaves some people's rights unprotected.²⁴ This can be resolved if the ultraminimal state offers protection without cost to those whom it prohibits from exercising self-defence but who wish to retain this right. In doing so, however, it becomes a minimal state.

On account of the difficulties associated with the state of nature, Nozick claims that anarchy naturally gives way to either a dominant protective association or ultraminimal state. In turn, these also give rise to the minimal state. Nozick explains that this progression occurs, even though unintended, similarly to how a pattern may be produced without having a pattern in mind.²⁵ On account of this (and given the fact that it provides protection for all), Nozick concludes that the minimal state is preferable to either anarchy or the ultraminimal state.

However, having said this, is the minimal state morally legitimate? It might be argued that unless everyone pays for the protection provided by the minimal state, those who pay are being forced to subsidise the protection received by others.²⁶ This amounts to redistribution and is a violation of people's property rights. Nozick notes that although the minimal state appears to be redistributive, it is not. The minimal state, he argues, may prohibit self-protection in order to protect the rights of others. In return it is able to compensate for the loss of the right of self-defence by providing protection. Therefore, the action of the state is compensatory not redistributive.²⁷

24 Nozick, note 3, p 29.

25 Nozick, note 3, p 18: The invisible hand explanation.

26 Nozick, note 3, p 25.

27 Nozick, note 3, p 67.

Although the state can provide for the protection of people's rights it cannot legitimately exercise its political power in any other way. This is because the existence of a state can only be justified when it constitutes a minimal political authority. If the state were to seek a wider role than the narrow function of providing protection, it would interfere with the liberty and property of its citizens and in so doing contravene their absolute rights. Nozick writes:

Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right. Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.²⁸

The Liberal-Egalitarian Argument in Favour of the Welfare State

In contrast to Nozick, others argue in favour of a more expansive state. They claim that government is obliged to provide citizens with access to those things that are basic to human life (should they choose to accept them from the government), and to look after the welfare of those who are least well off. Rawls, for example, argues in favour of 'big' government (including expansive state provided welfare, education and health services funded through taxation) on the basis that it is sometimes justified to treat people unequally where unequal treatment results in improvements for everyone (most especially the least well off).

Rawls defines society as "a more or less self-sufficient association of persons" undertaken as a cooperative arrangement for the purpose of mutual advantage.²⁹ By forming an association and acting in cooperation, those who belong to society can obtain benefits they would not be able to achieve if they were acting on their own. Rawls

²⁸ Nozick, note 3, p ix.

²⁹ Rawls J, *A Theory of Justice*, revised ed, Oxford University Press, Oxford, 1999, p 4.

observes that this creates a “convergence of interests” but that it can also lead to disputes, since it is possible for people to disagree over how mutual benefits and the burdens incurred in obtaining such advantages are to be distributed.³⁰ Because of the scope for conflict, Rawls argues that well-ordered society must be guided by a set of related principles providing for the assignment of benefits, burdens, rights, and duties. When these principles effect a proper distributive balance within society, and are agreed upon and publicly affirmed by all citizens, they constitute what Rawls defines as a public conception of justice.³¹

Rawls claims justice is “the first virtue of social institutions”.³² The principles encapsulated within public conceptions of justice apply to the basic structure of society. That is, they govern the functions and interrelationships of a society’s basic institutions, and determine how these institutions make distributive decisions as to the assignment of rights and duties.³³ In providing for the assignment of rights and duties, public conceptions of justice determine the scope of government, and indicate the circumstances within which government might legitimately exercise state power.

Rawls proposes a conception of justice called “justice as fairness”: he abstracts it from social contract theory, and defends it as the most reasonable and preferable conception of justice possible. By “justice as fairness”, Rawls means the set of principles that would be selected by persons in “the original position” to regulate society. “The original position” is a hypothetical situation in which rational but mutually disinterested individuals, capable of a sense of justice and concerned to further their own interests, select, from behind a “veil of ignorance”, principles of justice applicable to the basic structure of society.

The “veil of ignorance” means that persons in the hypothetical original position are unaware of such things as their wealth, intelligence, social standing or conception of good.³⁴ As a result they are unable to predict what effect their decisions will have on their own

30 Rawls, note 29, p 4.

31 Rawls, note 29, p 8.

32 Rawls, note 29, p 3.

33 Rawls, note 29, p 11.

34 Rawls, note 29, p 11.

life circumstances. If individuals in the original position choose distributive principles that benefit some but disadvantage others, they cannot be sure whether they will be favoured or whether they will be disadvantaged. Rawls argues that because of this they will select principles beneficial to all.

Since no one is able to select principles designed to be in her or his own favour, persons in the original position are in an initial position of equality. The principles they choose will be free from bias and the result of a fair agreement. It is on this basis that Rawls asserts that a society which satisfies the requirements of “justice as fairness” comes as close as possible to being a scheme of cooperation to which free and equal persons, under circumstances that are fair, would assent.³⁵

According to Rawls, two principles of justice would be selected in the original position. Those two principles would be:³⁶

- (1) Individual citizens are entitled to an equal right to the “most extensive scheme of basic liberties compatible with a similar scheme of liberties for others.”
- (2) “Social and economic inequalities are to be arranged so they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”

The first principle requires equality in the assignment of basic rights, and guarantees various liberties such as freedom of speech, political liberty, and liberty of conscience.³⁷ The second principle applies to the distribution of wealth and authority. It states that while the distribution of income and power does not have to be equal, it must result in compensating benefits for everyone, and it must occur in such a way that the least advantaged gain the greatest benefit.³⁸ This is known as “the difference principle”.³⁹ In addition, the second principle requires that positions of authority and responsibility be accessible to all under conditions of fair equality of opportunity.

³⁵ Rawls, note 29, p 12.

³⁶ Rawls, note 29, p 13 and 53.

³⁷ Rawls, note 29, p 53.

³⁸ Rawls, note 29, p 65.

³⁹ Rawls, note 29, p

These two principles of justice are subject to a lexicographical ordering in which the first is given priority over the second.⁴⁰ This means that the liberties protected by the first principle must not be infringed on the basis that doing so will result in improved overall social and economic conditions.

Rawls states that justice as fairness requires procedural justice in the handling of any particular situation, and that procedural justice occurs within the context of a social system designed to ensure that the resulting distribution (derived outcome) is just.⁴¹ Rawls means that not only do the two principles of justice require procedural justice, but also they demand what he calls “background fairness”. This occurs when there is “a properly organised democratic state that allows private ownership of capital and natural resources.”⁴²

A properly organised state conforming to “justice as fairness” is one in which the basic structure of society is regulated by a just constitution securing the liberties of equal citizenship.

[In such a society] liberty of conscience and freedom of thought are taken for granted and the fair value of political liberty is maintained. The political process is conducted, as far as circumstances permit, as a just procedure for choosing between governments and for enacting just legislation.⁴³

Justice as fairness also requires that there is fair, as opposed to formal, equality of opportunity. This means, Rawls states: “in addition to maintaining the usual kinds of social overhead capital, the government tries to ensure equal chances of education and culture for persons similarly endowed and motivated either by subsidizing private schools or by establishing a public school system.”⁴⁴ The government must also enforce equality of opportunity in economic activities and employment. This is to be achieved by “policing the conduct of firms and private associations and by preventing the establishment of monopolistic restrictions and barriers to the more desirable

40 Rawls, note 29, p 55.

41 Rawls, note 29, p 243.

42 Rawls, note 29, p 243.

43 Rawls, note 29, p 243.

44 Rawls, note 29, p 243.

positions.” Finally, government needs to guarantee a social minimum either by making available family allowances and welfare payments for illness or unemployment, or by more systematic devices such as a graded income supplement.⁴⁵

Nozick on Rawls

Rawls’ idea of the role and nature of government as required by “justice as fairness” is vastly different to that envisaged by Nozick. This is due to their very different understandings of justice and the relationship between equality and liberty.

In competition with Rawls’ “justice as fairness”, Nozick proposes “an entitlement theory of justice”. Nozick claims:

[If the world] were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings:

- (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to that holding, is entitled to the holding.

No one is entitled to a holding except by (repeated) applications of 1 and 2.⁴⁶

In summary then, a distribution is just “if everyone is entitled to the holdings they possess under the distribution.”⁴⁷ Whether or not this is the case depends on whether the principle of justice in acquisition and the principle of justice in transfer have been satisfied.

The principle of justice in acquisition deals with such matters as how unheld things may come to be held, and the process by which this occurs. Nozick states this principle is complicated, and declines to give a more precise formulation. However, he notes that it does include the

⁴⁵ Rawls, note 29, p 243.

⁴⁶ Nozick, note 3, p 151.

⁴⁷ Nozick, note 3, p 151.

Lockean proviso, namely, a person's entitlement to an acquisition depends in part on there being "enough and as good left in common for others."⁴⁸

The principle of justice in transfer "specifies the legitimate means of moving from one distribution to another."⁴⁹ The final principle, that of exhaustiveness, holds that the only means by which a person is entitled to property within her or his possession is if:

- (1) The property was initially acquired by just means; or
- (2) The property was justly acquired from someone else who had just possession of it.

The entitlement theory of justice is historical and unpatterned. It is historical in so far as it takes into account past actions and circumstances in determining whether a particular distribution is just. It is unpatterned because it does not require distribution to occur in correlation with some natural dimension or ordering such as merit or need. On the other hand, Rawls' "justice as fairness" is both a patterned and an end-state theory of justice. It holds that just distributions are to be determined by some ordering or natural dimension as well as in accordance with structural principles of justice.⁵⁰

Nozick notes that Rawls' conception of justice is incapable of yielding a historical theory of justice since it depends on the original position.⁵¹ People "[in the] original position either directly agree to an end-state distribution, or they agree to a principle; if they agree to a principle they do it solely on the basis of end-state considerations." As such, "the *fundamental* principles that they agree to ... *must* be end-state principles."⁵² Since Rawls' approach excludes the possibility of persons in the original position ever endorsing a historical theory of justice, if it can be shown that any historical theory is correct then Rawls' approach is wrong.

48 Nozick, note 3, p 177.

49 Nozick, note 3, p 151.

50 Nozick, note 3, p 153.

51 Nozick, note 3, p 202.

52 Nozick, note 3, p 202.

Nozick also criticises Rawls' theory on the basis that it is a patterned theory of distribution. He states that any given pattern in society may be changed through voluntary exchanges and gifts. Where voluntary acts of giving disrupt a perfectly just pattern of distribution, it follows (if a patterned theory of justice is upheld) that such acts are unjust. However, this alters the concept of possession, and also ignores the fact that an integral part of self-ownership is the liberty to give things to other people. Nozick writes:

The view that holding must be patterned perhaps will seem less plausible when it is seen to have the consequence that people may not choose to do acts that upset the patterning, even with things they legitimately hold.⁵³

Nozick notes that on hearing the term "distributive justice", people often presume that there is one principle or mechanism that effects distribution within society. There is, however, "no *central* distribution, no person or group entitled to control all the resources, jointly deciding how they get doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift."⁵⁴ This means, Nozick argues: "if things fell from heaven like manna, and no one had any special entitlement to any portion of it [then] there might be a more compelling reason to search for a pattern." However, "since things come into existence already held (or with agreements already made about how they are to be held), there is no need to search for some pattern for unheld holdings to fit; and since the process whereby holdings actually come into being or are shaped, itself needn't realize any particular pattern, there is no reason to expect any pattern to result."⁵⁵ Thus, in Nozick's view, there is no need for Rawls' patterned theory of justice.

⁵³ Nozick, note 3, p 219.

⁵⁴ Nozick, note 3, p 149.

⁵⁵ Nozick, note 3, p 198.

Who is correct, Nozick or Rawls?

At the heart of the conflict between Nozick and Rawls is a disagreement over the relative priority to be accorded to liberty and equality. For Nozick, liberty will always be of the utmost concern in justice and to the state. Equality, he notes, is irrelevant in determining whether or not a just distribution of property has been achieved. Rather, what matters is whether or not a holding was acquired by legitimate means. If it was, then the distribution is just. Accordingly, it will be unjust for anyone (including the state) to deprive a person of such a holding even if this is done in order to aid another person. As such, systems of taxation for the purposes of redistribution and social welfare are unjust since they amount to the imposition of forced labour. This is contrary to an individual's rights of liberty of body and property: that is, an individual's right not to be forced to do certain things.

Rawls, on the other hand, allows the government to prioritise equality over liberty when the results of doing so may be reasonably expected to be to everyone's advantage: provided, however, that a person's most basic rights are not involved. An individual's basic rights are provided for under Rawls' first principle of justice and can never be subjugated to equality. Anything contrary to this would transgress the demands of "justice as fairness".

Whether Nozick's argument in support of a minimal state, and against Rawls' theory of justice, ultimately succeeds depends on whether or not he is correct in assuming that the holdings that a person has justly acquired can be held without regard for the needs or claims of others (except claims created by contract). Finnis, for example, argues:

If we see no reason to adopt his assumption that the goods of the earth can reasonably be appropriated by a few to the substantial exclusion of all others, and if we prefer instead the principle that they are to be treated by all as for the benefit of all according to the criteria of distributive justice ... then the question of [the legitimacy of] State coercion, which dominated Nozick's argument, becomes in principle of very secondary importance.⁵⁶

⁵⁶ Finnis J, *Natural Law and Natural Rights*, Clarendon Press, Oxford, 1980, p 187.

This is so because if the rights of property and liberty are not as absolute as Nozick presumes, then by effecting redistribution through taxation the government may simply be doing no more than enforcing the various duties that property holders already have.⁵⁷

Is Nozick wrong in assuming that a person's right over her or his property is absolute, and that he or she is not obliged to assist others?

Nozick grounds his arguments in favour of an absolute right to property on the separateness of every person. Although Nozick is correct in holding that people should not be used as resources or means of achieving some end, this does not conclusively preclude people from being under positive duties to assist others through material contribution to their welfare. Consider, for example, that Nozick concedes that the need to respect the liberty of others places limits on a person's ability to exercise liberty in doing what he or she wants, whenever and wherever he or she wants. Similarly, it can be argued that if unheld property is of a common or public nature before acquisition, that is, before it is mixed with labour, then there is a need to compensate others for their loss of interest in these previously public or common goods. This, it might be said, acts as a constraint on people's ability to fully exercise their right to property such that they ought to provide in some way for the welfare or needs of others.

Having said this, the author is not suggesting agreement with the justification given by Rawls in favour of the welfare state, but only noting that Rawls' argument in favour of the welfare state has not been fatally undermined by Nozick's critique in the way he might have hoped.

⁵⁷ Finnis, note 56.