Lockean Provisos and State of Nature Theories\*

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State of nature theories have a long history and play a lively role in contemporary work. Theories of this kind share certain nontrivial commitments. Among these are commitments to inclusion of a Lockean proviso among the principles of justice and to an assumption of invariance of political principles across changes of circumstances. In this article I want to look at those two commitments and bring to light what I believe are some important difficulties they engender.

The state of nature theories I am interested in are nonpattern theories of justice. For these theories the justness of a society is marked by the conformance of the society to procedural principles. Under such a theory, resulting distributions of resources and the like have no particular import for questions of justice. Whatever may later result, so long as it came about in accordance with the rules determined by the principles of justice, is itself just.

Nonpattern principles of justice are not the only sort of principles of justice. There are also pattern principles of justice. Pattern theories focus on structural features of a society. Pattern theories operate by analysis of selected relations among individuals or groups. Such a theory may link rights to desert or moral worth. Thus Rawls's difference principle is n example of a pattern theory.

The Lockean proviso is one of the principles of justice governing property and other rights of nonpattern theories of justice. The Lockean proviso hangs as a "shadow" over the results of the operation of the other (usual) principles of justice. The Lockean proviso is intended to remedy a complaint of justice which arises when the positions of those no longer at liberty to use some resource are worsened in a particular way: (1) by no longer being able to use freely what they previously were free to use and (2) in such a way that it falls below a "baseline." Following Locke, a more traditional formulation of the proviso is to allow acquisition just so long as there is "enough and as good" left over for others. Although these very brief formulations of the proviso could not serve in a full theory of justice, I do not wish to spend the time here working out the details of the proviso. Suffice it to say that the nature of the baseline used , the effect of triggering the proviso, and distribution of costs imposed by the application of the proviso turn out to be fairly complicated problems.

This article is divided into two sections. Section I concerns the relation of the Lockean proviso to pattern and nonpattern principles of justice. Section II is about the relation of the Lockean proviso to the ideas revealed by an examination of a state of nature .

I

As a way of getting at one difficulty for nonpattern theories which include a Lockean proviso, I will examine the sort of rights invoked by the Lockean proviso. The Lockean proviso is ·a positive limit on action and on property dispositions. Satisfaction of the triggering conditions -- however those details may be worked out -- requires that rectificatory steps be taken. Contravention of the Lockean proviso then would seem to involve a violation of rights. (To show this is a bit difficult without tying the argument to a particular account of the proviso.) Where do these rights lie? They cannot be historically or procedurally generated. Under an historical theory, just transfers of just acquisitions should yield just distributions. Principles of justice for nonpattern theories are confined to procedures of acquisition of unowned resources and procedures for transfer of justly acquired resources. Any historical process carried out in a manner that is consistent with those principles should be a just one.

Yet the proviso may come into play even where no action has occurred which by itself constitutes an injustice. The mere acquisition, by whatever legitimate means, may be enough to bring the proviso into play. No particular use of the resource is required to trigger the proviso. The rights then must be attached to the resources. One candidate for the right is that it be a form of ordinary property right. The property right might be a common or joint right, as no one in particular holds the right exclusively, it being held rather by a general population. Yet the wrong which moves the proviso is not the sort involved in a violation of the property right over one's body and labor (from which property rights derive). One difference lies in the independence of the right covered by the proviso from rights to body and labor. That much should be clear. another difference lies in the localization of the rights. A right to property of the sort involved in one's right over one's body and labor is localized to specifiable objects.

The right at work in the proviso is not necessarily a right to any particular thing or to any specifiable set of objects whose identity derives from the individuals who hold the right. That is, the right at work in the proviso is not a right to a set of objects the identity and individuation of which are dependent on the actions of individuals holding these rights. Property rights coming from the right over one's body and labor do meet that condition. Thus one candidate for grounding the rights of the proviso is incompatible with state of nature theories which are reductively individualistic, for the rights here are not grounded in the actions or characteristics of individuals.

Another candidate for grounding the complaint involves assuming that the baseline serves as a test of wrong, a wrong being found when actions make one worse off relative to the baseline. However, if the theory denies there are rights to aid, then plainly there are no rights based on need. The bare facts of one's situation are not themselves sufficient for a complaint of justice or a claim of right under procedural justice theories. Everyone is on her or his own. Yet it is just the bare facts alone which trigger the proviso. The actions are all in accord with procedural justice (by definition), so it cannot be that the acts themselves are unjust but only that the resulting situation is unjust. This last requires, at a minim um, that we countenance claims based on need. If the resulting situation is unjust while the situation came about by just means, it is only the bare facts of the situation (a pattern) which could provide the basis for the claim of injustice. But this allows for a need-based right: structural features (bare facts) account for the right, and not only historical entitlements. Might the right in question be a right to aid? The problem with this suggestion is that it ignores two crucial features of the Lockean proviso : ( I) the proviso is relativized to material conditions and not to needs (in any direct way) , and (2) it does not mandate positive steps to alleviate need but rather prevents action. It does not therefore secure aid.

I don't think the problem here is merely how one is to account for the complaint which moves the proviso -- how, that is, to describe the rights involved. The difficulty with the rights is symptomatic of a more fundamental flaw. That flaw may be summed up in the question, Is the Lockean proviso consistent with procedural claims of entitlement or historical theories of justice founded on a state of nature analysis?

The proviso applies to complete chains of acquisition and transfers. But to work in this way, it must invoke limits in transfers, limits which are based on the pattern of distribution of resources of that kind. There would then be no significant procedural content to the proviso but rather a pattern content.

Typically, cases used to explain or illustrate the proviso are concerned with monopolization or other distributive concerns. For example, water holes in a desert figure prominently in discussion of the Lockean proviso (Nozick and Hayek).[[1]](#footnote-1) Other typical cases involve "discoveries." The cases do not all receive uniform treatment: monopolies are not barred uniformly, and different writers have varying responses to "discovery" cases. But it is important to notice that these cases often do not involve either an acquisition or a transfer. The proviso may be triggered in such cases merely by distribution of resources. This is most apparent in desert water-hole cases. Indeed, applied consistently, the Lockean proviso works to limit prices for (some) resources, however ownership may be distributed. In water-hole cases, after all, the proviso may work to prevent acquisition. Suppose there are only two water-holes in a desert. One is found by Alphonse and the other is found by Belle. However the proviso might be formulated, it will exert powerful influence over what Alphonse and Belle may do with their discoveries. They will be constrained to provide water to travelers at prices which reflect concern for the baseline conditions of those travelers. Alphonse and Belle may thus either be barred from acquisition or have to accept price controls. The Lockean proviso is here invoked without regard to the history of the situation. But this cannot be the case except where there are pattern principles of justice at work. The constraints here imposed are distributive. Thus nonpattern principles of justice alone cannot be squared with the Lockean proviso.

A defender of nonpattern theories may reply in the following vein. He might say that the proviso does not overrule entitlements. It limits the kind of entitlement one may have in the first place. The limitations of the proviso are inherent in the entitlement. Moreover, the proviso is directed at mitigating certain effects of a property system, not at bringing about certain patterns of holdings.

This rejoinder is insufficient to salvage the claimed nonpattern character of the Lockean proviso. The claim that the proviso is motivated by effects should be rejected. In the first place, such a claim misconstrues the role played by considerations of effect in the proviso. These considerations operate in the determination of the compensation of those whose position has motivated the complaint invoking the proviso. Effects then do not serve to trigger the proviso in a direct way. On the contrary, the proviso is triggered by patterns of holdings. The pattern may have a historical component, but that component does not dominate within the proviso. Rather it plays a subordinate role. These patterns are patterns of differences in holdings and in free use of or access to resources. So price controls on water are legitimate and some limits on monopolies are legitimate because these are particularly important (and objectionable) patterns of distribution. This also explains why not every monopoly must run afoul of the proviso. Not every monopoly sufficiently constrains the distribution of wealth.

Further evidence that the proviso is a pattern principle can be found in other features. It mandates massive inspection and monitoring activities as well as market controls. These are just the sorts of features one would correctly attribute to pattern principles. That compensation is selective poses no problem. A pattern principle may be concerned with particular kinds of disadvantage, not all.

Where the defense succeeds is in establishing that the proviso is not to be understood as an "absolute" pattern, a rigid mold to be forced on circumstances like, say, the principle that tells us to distribute equally. It is a weaker, more complex pattern. but still very far from the kind of powerless pattern that ought to be the minimum acceptable. If the Lockean proviso is not a purely historical principle but a pattern principle, the hope of establishing purely procedural principles of justice is dashed. It is a pattern principle in the same way Rawls's difference principle is. The proviso seems to be a necessary condition for the completeness of an entitlement theory. It is a "shadow" over all holdings. The rest of the theory of justice operates within a sphere marked out by the proviso. In that sense procedural justice is subordinate to a pattern principle.

II

One might respond to the arguments of Section I by discarding the Lockean proviso on the ground that it was a mistake to claim that the proviso is necessary to an adequate non pattern theory of justice.

This would .be to deny that nonabundance of resources is a special problem and to assert that principles that apply in an abundant state of nature apply in all circumstances. But the source of the complaint to which the proviso responds is precisely the assumption of invariance of political principles across circumstances. This poses a serious challenge to state of nature theories because it points to a methodological flaw.

Use of a state of nature derivation of a theory of justice allows us to develop (although it sometimes seems "reveals" is more apt) certain root ideas which stand as moral constraints on just political systems and their development. The state of nature is delineated by three reductive assumptions: (1) no prior complications due to injustice, (2) no prior government (and hence no prior complications due to government actions or omissions), and (3) relative abundance of resources. The characterizations of Section I are concerned with the form that theorizing takes in light of the state of nature framed by these three conditions. The assumption of invariance of principles across circumstances, however, has a deeper connection to the above three conditions: it is implied by the state of nature methodology itself. How that is and why it is a mistake is the subject of this section.

The "root" ideas illuminated by the state of nature are the guides by which the limits of political relations are determined. Root ideas, in brief, are ideas which constitute fundamental moral commitments. They constitute the bedrock principles and concepts of which more sophisticated critical theory is to serve as an explanation. Political theory must be consonant with these root ideas. For example, the root ideas that Nozick presents in *Anarchy, State and Utopia* fall under the general rubric of "separateness of persons": first, that no person is a resource for any other person; second, that each person owns her or his own body and labor; and, third, that what people are entitled to is a function of what they legitimately acquire by their own effort or what is freely given. The most basic of these root ideas is the first. The others are derivative from this one, providing guides to its application. I t is in light of these ideas that Nozick works out his theory of natural rights and absolute property rights. Consideration of political theories is limited to those compatible with the root ideas.

The Lockean proviso is itself inconsistent not only with Nozick's root ideas but also with nonpattern theories of justice generally, as shown in Section I. It places limits on ownership and provides entitlements without respect to effort. The entitlements derive from the requirement of compensation. Admittedly, there need not be entitlements under the proviso to specific things or resources. But there is a clear entitlement to access to resources that is not based on successful effort. A minimal standard cannot be avoided under any of the interpretations of the baseline.

The proviso is necessary just because nonabundance challenges and undermines the plausibility of the root ideas. The pattern of the proviso places limits on the domain of the principles derived from separateness of persons, and this is just the converse of what ought to be the case, for the root ideas must be prior to the proviso. Any solution to the problem of nonabundance commits us to a political theory, and if that solution constrains the realm of the root ideas, then those ideas have been made subordinate to political theory.

It might be urged that this is a problem in the formulation of the proviso and may be solved by tinkering with the details. This could be a successful strategy if the proviso were extraneous to the circumstances which move it, but it must fail if the circumstances themselves give reason to doubt the depth of the root ideas. That this is the case I show below. If acquisitions have been made such that those who have not acquired resources are no longer at liberty to use resources, then the proviso applies. There are two general cases in which individuals are no longer free to use resources. The first is that of those born after all the initial acquisitions have been completed and no acquirable resources remain (I leave aside complications due to the presence of acquirable but inaccessible resources). Here what individuals acquire and the extent of their holdings no longer depend on conformity to procedural principles or successful effort. The latecomers are no longer as free to form life plans as they would have been had they been born earlier. This is not a trivial fact, for, unlike their predecessors, the latecomers must rely on the largesse of others even to begin to fulfill any life plan. Latecomers are limited to gifts and jobs others are willing to bestow on them. The latecomers' prospects are effectively limited by luck. They cannot alter them through any legitimate efforts of their own. Further, the relations of exchange (a matter of great importance to the theories under discussion) are greatly compromised. The latecomers have no reason to accept the extant pattern of holdings. They lack even the opportunity to make acquisitions. So if they are compelled to cooperate in the scheme of holdings, they are forced to benefit others. This forced compliance with the property system constitutes a form of exploitation and is inconsistent with the most basic of the root ideas, rendering as it does the latecomers mere resources for others.[[2]](#footnote-2)

The second case to consider is that of those who, though initially present, failed to acquire resources. Their complaint, though less stark perhaps, is much the same as that in the first case. They are no longer in a position to act on their life plans, no longer in a position to carry out their lives as they will. They are now reduced to dependence on others by conditions unrelated to their efforts or talents. They too are subject to economic coercion, for they have nothing but their labor as a resource.[[3]](#footnote-3)

This should direct our attention to the conditions motivating the proviso, chiefly that of nonabundance of resources. It is this feature of the situation which gives generality to the complaint outlined in the first case above. In conditions of nonabundance, every acquisition worsens the lot of others -- and worsens their lot in relevant ways. Those who do not acquire are disadvantaged -- and merely by that fact. They are disadvantaged because their opportunities for acting on their life plans are compromised through no fault of their own. Disposition of resources is the ground of the complaint, and it is the disposition of resources which links individuals to each other.

The problem the Lockean proviso is intended to solve is a challenge to the root ideas. In conditions of scarcity, persons are no longer separate in the same ways as they are in conditions of abundance. The assumption of abundance allows for separateness of persons because it permits a wide range for actions which do not adversely affect others; the standards for disadvantage are raised by means of a structural guarantee of opportunities that mitigates those effects. Thus the separateness of persons is plausible only because of the way the state of nature was framed. Conditions of nonabundance constrain the range of opportunity which is essential to the root ideas. With relative scarcity of resources the separateness of persons takes on a completely different coloring; it hardly seems an obvious root idea or even a plausible candidate for such a fundamental role. The upshot is that the root ideas do not serve to constrain the response to the problems of nonabundance of resources. The root ideas are revealed by the state of nature, but they are "root" ideas only for that abundant state of nature.

One way around these arguments is to drop as a root idea the separateness of persons. To a certain extent, that tactic would succeed. But the arguments also go to a point which cannot be sidestepped in that manner. The problem lies not in the idea of separateness of persons but in the methodological assumption by which the idea is generalized. The arguments that I have presented arise at the point where the assumption regarding material conditions is dropped: the shift from abundance to nonabundance. This marks the introduction of the Lockean proviso into a theory of justice. And that is just the puzzle , for the Lockean proviso is not to be found among the root ideas and cannot be derived from the root ideas. No nonpattern theory can accommodate the proviso, and among pattern theories there is no point to a Lockean proviso.

The connection between material conditions and a theory of justice as developed by a state of nature theory is crucial. Material conditions at least constrain, if not determine, the nature of the theory of justice. In conditions of absolute scarcity, the ideas likely to be accepted as root ideas are markedly different from the ideas so classed in conditions of absolute abundance. These variations due to material conditions are present as well when we attend to variations in biology of persons.

The variations found at polar extremes are clear enough, it may be replied, but most theories of interest deal with a middle range of conditions.[[4]](#footnote-4) This response will not do. If we know that extremes create obvious variations in root ideas, we must be prepared to show how a given range of variations will fail to influence the root ideas. That is, once variation is admitted, the burden shifts. Those who believe that changes of moderate circumstances (relative abundance to relative nonabundance) have no effect must show that this is so. That effort, I think, will fail. The root ideas of state of nature theorizing are ideas revealed under certain assumptions regarding conditions. They are thus root ideas only for those conditions. The introduction of a Lockean proviso shows that there is a problem of transferring political theory across changes of circumstances. I have argued that the proviso fails to solve the problem. Why then attempt to transfer theories? What is it that is gained by theorizing about nonexistent conditions when we have no reliable means of interpreting such theories in application to actual conditions?[[5]](#footnote-5)

Invariance of moral constraints and root ideas must be argued for rather than presumed, for the supposedly invariant ideas are formulated within a context plainly contrary to actual conditions. Consequently, we have no reason to prefer ideas tied to abundance of resources to ideas tied to scarcity of resources (or to prefer ideas tied to stateless conditions to those tied to a state).[[6]](#footnote-6) The ideas to be preferred are those derived 1from conditions most closely resembling actual conditions. Hence there must be independent arguments given which justify the choices. Much state of nature theorizing is defective in this way.

1. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 174- 82; F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 136. [↑](#footnote-ref-1)
2. That is, the latecomers must treat their bodies – labor -- as a resource. This should be understood as treating the body as capital. As there are no other resources available to the latecomers to use to insure survival, treatment of the body as capital highlights the structural disparity of their condition. For the latecomers, though not for their predecessors, capital investment is nontransferable. For the latecomers it is not possible to liquidate and reinvest in other means of production. The fixity of their capital and the obvious need to protect this form of capital (and the obvious inseparability here of person and capital) make these individuals subject-as a structural feature of their situation- to coercion and exploitation as a source of labor, i.e., a resource. [↑](#footnote-ref-2)
3. One may be tempted to raise the question of whether their position is their fault. I think such a question out of place. The problem raised by the failure of the Lockean proviso is that entitlement relations are in doubt, hence what is relevant to title is not yet settled. This means that questions of fault are not yet appropriate because we do not yet know what will count for such a charge. So earlier lack of effort cannot justify present disadvantage until that effort is shown to be relevant. [↑](#footnote-ref-3)
4. That inattention to the range of cases can have serious repercussions is clear. For a similar problem on an unrelated topic, cf. John Roemer, *A General Theory of Exploitation and Class* (Cambridge Mass.: Harvard University Press, 1982), and "Should Marxists Be Interested in Exploitation?" *Philosophy and Public Affairs* 14 (1985): 30-65. [↑](#footnote-ref-4)
5. It seems that similar arguments may be constructed which would show an obstacle to subordinating political theory to moral theory. Moral philosophy concerns itself with interactions among a few individuals at a time. Political theory consideers a rather different set of subjects – large numbers of individuals and social organizations. The conditions of the two theories seem quite different unless we assume a successful reductionism. [↑](#footnote-ref-5)
6. Not all the arguments require all the conditions enumerated at the beginning of the article. A state of nature theory which accepts organizations or communities as persons will run afoul of the points directed at nonpattern theories if it is a nonpattern theory. [↑](#footnote-ref-6)