

2012

Is There a Right to Healthcare? An Analysis from the Perspective of Liberty and Libertarianism

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Recommended Citation

Robinson, Sarah R., "Is There a Right to Healthcare? An Analysis from the Perspective of Liberty and Libertarianism" (2012). *CMC Senior Theses*. Paper 493.
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CLAREMONT McKENNA COLLEGE
IS THERE A RIGHT TO HEALTHCARE?
AN ANALYSIS FROM THE PERSPECTIVE OF LIBERTY AND
LIBERTARIANISM

SUBMITTED TO
PROFESSOR PAUL HURLEY
AND
DEAN GREGORY HESS
BY
SARAH ROBINSON

FOR
SENIOR THESIS
FALL 2012
DECEMBER 3, 2012

To those that share with me the excitement of new ideas;
to those that encourage – and feed – me when I have doubts;
to all who engage with and challenge me as I grow. Thank you.

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INTRODUCTION

In 2010, the United States spent more than \$2.5 trillion on healthcare. To put this in perspective, the U.S. spent a larger share of Gross Domestic Product (GDP) on health, 17.9%, and a larger average amount per person, \$8,362, than any other country in the world.¹ (The runners up were the Netherlands, at 12% of GDP, and Norway, at \$5,388 per person.)² The OECD-member average is 9.5% of GDP and \$3,265 per person.³ So, even compared only to developed nations, the expenditure on health, both public and private, in the U.S. is stunning.

Yet the U.S. does not receive returns in proportion to this expense. In 2000, the World Health Organization (WHO) ranked the overall healthcare systems of 191 countries; the U.S., spending 13.7% of GDP on health at the time, managed to beat out Slovenia for 37th place.⁴ The top two ranked countries, France and Italy, spent only 10%

¹ *World Health Organization*, “United States of America,” available from <http://www.who.int/countries/usa/en/>, accessed 27 November 2012.

² *Organization for Economic Co-operation and Development*, “Health policies and data: OECD Health Data 2012 – Frequently Requested Data,” available from <http://www.oecd.org/health/healthpoliciesanddata/oecdhealthdata2012.htm>, accessed 27 November 2012.

³ *Ibid.*

⁴ *World Health Organization*, “The World Health Report 2000 – Health Systems: Improving Performance,” available from http://www.who.int/whr/2000/en/whr00_en.pdf, accessed 27 November 2012, 153-155.

and 8% of GDP respectively.⁵ In infant mortality, adult mortality, and life expectancy, the U.S. ranked between 36th and 43rd place.⁶ An estimated 91,000 premature deaths each year could have been prevented if the U.S. were able to match the best-performing countries in terms of timely and effective care.⁷

The vast majority of developed nations offer universal healthcare, usually through a publicly funded insurance program – the U.S. is one among very few exceptions, none of which received high rankings for their healthcare systems.⁸ While 31% of Americans are covered by some form of government health insurance such as Medicare or Medicaid (for 19.7% of Americans, this is their only form of insurance), 49.9 million people, or 16.3% of the population, are without health insurance. Both the absolute number of people who are uninsured as well as the percent of the overall population have been rising steadily since 2001. The remaining 64% of the population is covered by private health insurance, the overwhelming majority of this being through an employer.⁹

⁵ Ibid. and *OECD*.

⁶ Christopher J.L. Murray and Julio Frenk, “Ranking 37th – Measuring the Performance of the U.S. Health Care System,” *The New England Journal of Medicine* 2010, available from <http://www.nejm.org/doi/full/10.1056/NEJMp0910064>, accessed on 26 November 2012.

⁷ *The Commonwealth Fund Commission on a High Performance Health System*, “Why Not the Best? Results from the National Scorecard on U.S. Health System Performance, 2011,” available from <http://www.commonwealthfund.org/Publications/Fund-Reports/2011/Oct/Why-Not-the-Best-2011.aspx?page=all>, accessed 27 November 2012.

⁸ Max Fisher, “Here’s a Map of the Countries That Provide Universal Health Care (America’s Still Not on It),” *The Atlantic*, available from <http://www.theatlantic.com/international/archive/2012/06/heres-a-map-of-the-countries-that-provide-universal-health-care-americas-still-not-on-it/259153/>, accessed 1 December 2012.

⁹ *The U.S. Census Bureau*, “Income, Poverty, and Health Insurance Coverage in the United States: 2010,” available from <http://www.census.gov/prod/2011pubs/p60-239.pdf>, accessed 20 November 2012, 23-24, 29.

The state of affairs in terms of U.S. healthcare is a scary one; we are facing rapidly rising costs, as well as a growing population of people who are without any kind of health insurance. The federal reform of the healthcare system of 2010, the Patient Protection and Affordable Care Act (PPACA), aims to reverse both of those trends, though many of the changes will take several years to implement and have an effect. Furthermore, while the PPACA tackles a substantial amount of much-needed reform, it is not clear that it will be able to address some of the largest, most systematic problems within our healthcare system: an employer-based insurance system, where insurance companies are private and for-profit, individuals rarely have choice beyond the limited options their employer provides and usually do not pay on a per-procedure basis, incentivizing an over-consumption of care and procedures.

Why on earth, then, do we continue to subscribe to this system? Why not convert to any one of the hybrid systems already shown by fellow developed nations to provide better outcomes at lower cost, while also extending coverage to all Americans? One common justification seems to be, at its core, a bias against redistributionism. While infamously criticized as untrue on many counts, and dismissed by Mitt Romney as inconsequential to his election campaign, his 47% comment – that 47% of Americans would vote to re-elect President Obama because they are people “who are dependent upon government... who believe the government has a responsibility to care for them, who believe that they are entitled to health care, to food, to housing, to you-name-it”¹⁰ –

¹⁰ Lucy Madison, “Fact-checking Romney’s ‘47 percent’ comment,” *CBS News*, available from http://www.cbsnews.com/8301-503544_162-57515033-503544/fact-checking-romneys-47-percent-comment/, accessed 20 November 2012.

brought to the forefront of this country's conversation the idea that too many people are net receivers.

On perhaps a higher level of political discourse, earlier this year the Supreme Court heard arguments on the constitutionality of the PPACA, including the individual mandate that required virtually every American to purchase health insurance. (While this requirement brings the U.S. closer to the universal coverage that exists in the rest of the developed world, it still does not provide for a publicly funded insurance option.) The key issue in the case was whether or not it is within the powers of Congress – either as a regulation of commerce or an imposition of a tax – to compel Americans to buy health insurance against their will, i.e. with threat of financial penalty. While the mandate was ultimately found to be constitutional, a minority of four justices was still convinced that such a requirement was an overreach of government, an imposition on the liberty of individuals to choose to not buy healthcare.

We as Americans have long been concerned and fascinated with the concept of liberty; today we are using it to explain why the wealthy do not have to pay so that the poor may receive healthcare, and why those who do not want health insurance are free to abstain. We appeal to liberty as the reason why we don't have a universal coverage, publicly funded system of healthcare. This paper aims to examine and evaluate the plausibility of this justification.

Many arguments for high levels of state intervention in healthcare appeal to access as a right. The preamble to the Constitution of the WHO reads: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every

human being.”¹¹ Similarly, the United Nations issued a General Comment in 2000 stating: “Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”¹² Neither of these assertions of a right to healthcare addresses the obvious tension such a right would have with the conception of individual liberty: even if I have a right to access a certain level of care, in the case that I cannot afford it, it is not clear who has a responsibility to pay. To what extent is a right to healthcare justifiable? To what extent can others be obligated to contribute to my ability to access sufficient care? Can this obligation be consistent with the individual liberty we prize so highly?

It must be said that there are many, many practically and philosophically compelling issues surrounding global health as well. There are many people all around the world who have much lower expectations of health than those in the U.S., and for whom significant marginal improvements in health could be achieved at much lower cost. It is essential that we understand what our obligations are to these individuals in terms of healthcare, and work to achieve them as effectively as possible. However, the topic of rights, duties and justifiable schemes of healthcare is a large and complicated one. I have focused the scope of this paper to healthcare obligations within a single state, such as the U.S.

¹¹ *World Health Organization*, “Constitution of the World Health Organization,” available from <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>, accessed 3 November 2012.

¹² *United Nations, Economic and Social Council*, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 14 (2000),” available from [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En), accessed 3 November 2012.

This paper investigates the relationship between liberty and healthcare from several different perspectives. Chapter I examines an account of liberty on the condition of equal freedom. Chapter II grants the specifically libertarian approach to liberty, which entails inviolable rights of ownership. Chapter III further accepts the right-libertarian interpretation of property acquisition and ownership. Furthermore, each section considers the implications of the particular theory of justice, in particular what kinds of moral constraints and obligations it places on our system of healthcare.

CHAPTER I

AN ACCOUNT OF LIBERTY ON THE CONDITION OF EQUAL FREEDOM

Immanuel Kant, an 18th century philosopher, developed a theory of morality and an account of a justified state based on the fundamental idea that every individual is entitled to be his or her own master; all persons are at liberty to choose what purposes they will pursue with the means available to them. This liberty, however, is not – and cannot be – absolute. As Arthur Ripstein, a contemporary philosopher, writes in explanation of Kant’s philosophy: “A world in which liberty alone is protected is one in which nobody is secure from the acts of others; a world in which security alone is protected is a world in which nobody is free to act for fear of injuring others.”¹ I am not entitled to do unconditionally what I want, for this would threaten completely the security of others. Any plausible account of liberty must therefore give rise to the reasonable conditions of liberty – an explanation of why it is not a justifiable exercise of my freedom to run amok, murdering others at random.

Kant’s account qualifies liberty as follows: “Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human

¹ Arthur Ripstein, *Equality Responsibility and the Law* (New York: Cambridge University Press, 1999), 6.

being by virtue of his humanity.”² Thus every individual is inherently entitled to a certain amount of freedom, which is limited by the right of every other individual to the same –the condition of equal freedom. A corollary of this innate right is the Universal Principle of Right, which “demands that each person exercise his or her choice in ways that are consistent with the freedom of all others to exert their choice.”³ This understanding of liberty gives individuals the right to not be subject to the choices of any other individual:

Your right to be your own master entails that no other person is entitled to decide for you that the benefits you will receive from some arrangement are sufficient to force you to participate in it. You alone are entitled to decide whether a benefit to you is worth the burden it brings. Nor can others justify authority over you, or use force against you, on the ground that the restrictions thereby placed on you will generate greater benefits for others.⁴

The essence of what it means to be your own master, in the Kantian account, consists of the ability to choose which purposes you want to pursue given your available means. A complete account of independence also includes the freedom to use available things for the pursuit of chosen purposes, though this private property right must again be compatible with the equal rights of all other individuals to use their things for their purposes.

It is essential to emphasize that individuals are not entitled to any particular outcomes from their pursuits – to use Ripstein’s example, that someone else took the last

² Immanuel Kant, *The Doctrine of Right*, Part I of the *Metaphysics of Morals in Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 6:237.

³ Arthur Ripstein, *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge: Harvard University Press, 2009), 35-6.

⁴ *Ibid.*, 5.

container of milk from the store means only that they have frustrated your intended plan to buy milk, not that they have somehow interfered with your independence. Others, in the rightful exercise of their liberty, may make choices whose effects in turn disadvantage you. To have otherwise would be an unacceptable limitation of their freedom: “To insulate one person from all effects of the choices of others would subordinate everyone else to that person’s choice.”⁵ A system of equal freedom instead guarantees only that each person is free from being compelled by others to advance another’s purpose (you can’t force me to do your grocery shopping).

In this way, freedom is understood to be an inherent right of human beings to not be constrained by the choices of another, such that every other individual is free in the same way (the condition of equal freedom). However, as Ripstein explains Kant’s argument, this freedom cannot be realized in the absence of public institutions:

[A] system of private right without a public authority is morally incoherent, because the conceptual requirements of private right – the security of possession, clear boundaries between “mine and thine,” and the acquisition of property – cannot be satisfied without a public authority entitled to make, apply, and enforce laws.⁶

It is not just that public institutions, capable of making and enforcing binding decisions on everyone, make rightful freedom more likely; they are in fact necessary to ensure this freedom.

Public institutions address three conditions for the realization of freedom that the state of nature would not. First is the ability to acquire property: “Although a person acquiring an object does so on his or her own initiative without consulting others, the

⁵ Ibid., 39.

⁶ Ibid., 23.

power to do so requires an omnilateral will to make the unilateral act binding on others.”⁷

Your right to acquire property is meaningless unless it places an obligation upon everyone else to respect your acquisition and not instead use that particular item for their own purposes, or dispose of it, etc. A public authority serves to authorize unilateral acquisitions on behalf of everyone else, ensuring the freedom to acquire property.

Second after the acquisition of property is the security of possession. Without a system of public enforcement to which everyone is obligated to adhere, you would have no assurance that your rights would remain intact. No individual could be sure that others would refrain from interfering with her property, and thus, in accordance with universal law, would not be obligated to refrain from interfering with the property of others.

The third condition that must be addressed by public institutions is determinacy of rights – even if rights can be acquired and are enforceable, there may sometimes emerge disputes over the specific boundaries between property or some other particulars of rights. If two people in good faith disagree on the practical application of the concept of rights, again under the provision of universal law neither has an obligation to yield to the other, until judgment from a public institution resolves the indeterminacy.

Thus it is in these ways that public institutions with decision-making and enforcement abilities make conclusive property rights feasible, and individuals are able to exercise the right to freedom consistent with universal law. The state acts on behalf of its citizens as a collective body, and makes it possible for all individuals to interact on terms

⁷ Ibid., 150.

of equal freedom. However, these powers do not suggest that the state can come to hold limitless power:

The key to the Kantian analysis is that the state, acting on behalf of citizens as a collective body, has legitimate powers that neither individual citizens nor any group of them have apart from it... the only way the state could have these powers is if they can be regarded and exercised on behalf of the citizens, and that requirement in turn is understood in terms of the possibility of the citizens giving such laws to themselves.⁸

While the state can come to have powers private individuals do not, it cannot, for example, subject one individual to the whims of another. It must act on behalf of the public in accordance with the omnilateral will, consistently with humanity's innate right to choose which purposes to pursue and with the condition of equal freedom.

What kinds of powers, then, might the state legitimately hold apart from enforcement powers? Ripstein uses the example of public roads to show how the state may be obligated to act in order to protect freedom. Imagine that all land was held privately by individuals – I alone am entitled to determine what happens on my plot, and each of my neighbors has the same entitlement, which includes the right to say who enters their land. Thus, in order to get to any other piece of land (unless it happens to border mine), I need the permission of all those whose property I will cross in order to arrive at my destination.

The problem, Ripstein argues, is not that my neighbors can exercise their rights such that I can't do something I wish to do; this restriction of options is generally the case with private property. Rather, the problem is that my neighbors are able to block me entirely from having interactions with others. Regardless of my specific purpose in

⁸ Ibid., 243.

interacting with someone else, I must first secure permission from however many landowners exist between me and my destination. Even if all individuals in my surrounding area are nice, understanding people who do permit me to cross their land whenever I wish, it is still true that my general ability of association is conditional upon the *choice* of others to let me cross their land. In order to reconcile private property with freedom – here the freedom of individuals to voluntarily interact with whomever they wish, without being subject to the choice of others – the state must institute a system of public roads.

More generally, just as public institutions are justified in acting on behalf of all individuals in cases of enforcement, there exist other conditions of freedom that the state is obligated to protect through public provision. While taxation for anything other than a public purpose would be a violation of the freedom of citizens, a tax on private activities in order to fund a public purpose such as the cost of building and maintaining roads is justifiable state action. Individuals may be compelled by the state to contribute to these social projects, because to abstain would be taking advantage of the cooperative efforts of others to sustain a condition of private freedom for all – everyone else would be justified in claiming that they were being required to work for the purposes of the free rider.

What implications does Kant and Ripstein's account of liberty have for health? That universal public healthcare may be beneficial for society but generates a free-rider problem is not sufficient to compel the entire public to contribute to its production; only those things which are necessary for equal freedom can be considered legitimate public purposes. However, as Ripstein points out, the state is necessary to preserve the condition of equal freedom; the protection of public health is necessary to preserve the

state. The state's mandate to see to its own preservation thus justifies health as a public purpose, to which all citizens can be required to contribute.

Furthermore, this account of liberty produces a general obligation upon the state to support the poor, even if this requires a redistribution of wealth among citizens. It is true that the innate freedom of individuals means that no person has a legitimate claim that any specific person accommodate to their purposes, even in cases of need (such as the purpose of staying alive). However, the characteristics of the state – that it can act on behalf of all citizens in ways that private individuals cannot, though it is only able to make agreements that individuals would have been able to make for themselves – require the state to provide a certain level of provision.

Ripstein, using the example of property ownership, shows why no individual could authorize a state that does not provide for basic needs. If in the state, a person owns no land, he is dependent on the choices of others to do something as basic as merely occupy space – he has contributed to an omnilateral will that has made land rights enforceable, which has thus eradicated his capacity to set and pursue his own purposes because he needs permission from others to even stand anywhere. (In the absence of public institutions and enforceable property rights, one would not need permission.)

While the state is required to enforce property rights through public institutions, these institutions also necessarily must preserve the freedom of individuals: “The omnilateral will's power to make law is restricted by the laws the people could give themselves; they could not authorize a situation in which some are completely beholden

to the choice of another.”⁹ Someone who is dependent on the private charity of others to meet even their basic needs is no longer free. Thus the innate right of individuals to freedom makes any system of enforceable rights illegitimate, unless it also protects them from becoming dependent upon the choices of others in order to pursue their purposes. My entitlement to exclude others from my property is consistent with equal freedom only if there also exist provisions, through taxation, that protect others from being dependent upon my choices by providing for their basic needs.

Ripstein further argues that this redistribution by the state is not limited to providing for biological survival; the appropriate level of provision to be guaranteed depends on the features of a particular society. In the matter of health: “[I]f illness and medical expenses regularly lead citizens to fall into conditions of dependency, a state can act proactively to provide publicly funded universal health care.”¹⁰ Public healthcare is thereby justified on two counts— in providing it, the state ensures equal freedom by acting in its own preservation, and by preventing individuals from becoming dependent on others to pursue their purposes.

The account of liberty, given by Kant and Ripstein, holds that freedom is only plausible on the condition of equal freedom, which gives rise to public institutions as necessary for preserving the ability of individuals to pursue their own purposes without being subject to the choices of others. The state is thus able to act in ways that private individuals cannot, though it can only create laws that individuals would be able to agree to themselves, and it must always act on behalf of the public. The condition of equal

⁹ Ibid., 279.

¹⁰ Ibid., 285.

freedom requires the state to not only create institutions of enforcement, but also provide through taxation for other things necessary to realize freedom, whether with specific programs like public roads, or a general protection against dependency through a provision of all basic needs, both of which include public healthcare.

Other theories of justice that also emphasize individual liberty come to very different conclusions. Notably, libertarian philosophy gives a different account of ownership rights, arguing that they are inviolable even in the face of state action – the state is no different from an agreement made up of private individuals for private purposes, and thus has no ability to take the property of citizens through taxation for provisions on behalf of the public. While Kant and Ripstein hold that liberty cannot be plausible without the condition of equal freedom, and that the state must necessarily have distinctive powers as well as certain obligations in order to preserve this condition, the libertarian begins instead with the idea that rightful ownership precludes tax obligations to the state. The next chapter grants this libertarian conception of inviolable rights of ownership, and considers its implications.

CHAPTER II
THE LIBERTARIAN APPROACH TO LIBERTY THROUGH INVIOLEABLE
OWNERSHIP RIGHTS

The libertarian account of liberty begins, similarly to the Kantian approach, with the distinction between positive and negative rights and duties. Some philosophers argue that we have positive duties to others – an obligation of *action*. Someone having a positive right to X must correlate with a positive duty upon someone else to provide him or her with X (for example, a right to eat and a duty to provide food). A negative duty, on the other hand, is one of *inaction* – these correspond with negative rights (for example, a right not to be killed or coerced).

The libertarian perspective on individual liberty views negative rights and duties as the only legitimate ones. I am free in my person and possessions because everyone else has an obligation not to interfere. Libertarians will frequently adopt from John Locke, a 17th century philosopher, his description of the state of nature: “a state of perfect freedom [of individuals] to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature,”¹ which requires that “being all equal and independent, no one ought to harm another in his life, health, liberty,

¹ John Locke, *Second Treatise of Government*, 1690, ed. C.B. Macpherson (Cambridge: Hackett Publishing Company, Inc., 1980), 8 (sec. 4).

or possessions.”² Fundamentally, every individual has freedom in terms of his own person and property, except as he is constrained by the corresponding duty not to harm the person and property of others.

For Locke, the origin of these rights – to liberty of one’s life, health, liberty, and possessions –is somewhat ambiguous, but appears to arise from the essential nature of man and the intentions of the Creator; as part of His workmanship, all individuals are equal in their responsibility to carry out His business, and to not interfere with others as they do the same. Others have discussed more in-depth why these absolute, inviolable individual liberties are at the center of their moral philosophy without the same religious appeal. Ayn Rand argues that individual rights derive their extreme importance from the fact that man’s nature and indeed survival depend on reason, and reason is meaningless without the capacity to choose how one will live.³

Robert Nozick, a modern libertarian, looks at traditional proposals for why humans are deserving of these rights, such as rationality, free will, and moral agency, and proposes that these ideas really all add up to something more significant: “the ability to regulate and guide [one’s] life in accordance with some overall conception [one] chooses to accept.”⁴ The kinds of goals we make for ourselves, and the kinds of experiences we value, indicate the importance of agency in our existence. When presented with the option to forgo our lives in favor of a hypothetical machine that can simulate any experience, many of us would choose not to use it – it would not satisfy our desire to

² Ibid., 9 (sec. 6).

³ Douglas J. Den Uyl and Douglas B. Rasmussen, “Ayn Rand on Rights and Capitalism,” in *The Libertarian Reader*, ed. David Boaz (New York: The Free Press, 1997), 170-1.

⁴ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974), 49.

actively live. Self-ownership is morally relevant because it is grounded in the complicated question of the meaning of life: “A person’s shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for meaningful life.”⁵ (We see here that, unlike the account of liberty given in the previous chapter, libertarianism presents this meaning of life as completely satisfied by self-ownership, and not qualified by the condition of equal freedom).

Full self-ownership is considered to comprise the maximal set of ownership rights: over my self, I have maximal *control rights* over the use of my person; *right to compensation* if someone violates my control rights without permission; *right to enforcement* to prevent others from or extract compensation from others for violations; *right to transfer* these rights to others (by gift or sale, for example); and *immunity to the nonconsensual loss* of any of these other rights.⁶ Implied by this explicit set are other rights, such as the right to income generated by the exercise of any of the above.

The libertarian views full self-ownership as imposing moral obligations of inaction upon others: not to kill you, harm you, or steal from you what is rightfully yours. These negative rights thus serve to fully limit, or constrain, the actions of others – the constraints that protect liberty, or full self-ownership, are prioritized as inviolable, even against the state or in the face of high goals such as the ‘social good.’ Nozick acknowledges that individuals will sometimes make sacrifices in order to obtain some

⁵ Ibid., 50.

⁶ Peter Vallentyne, Hillel Steiner, and Michael Otsuka, “Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried,” *Philosophy & Public Affairs* 33, no. 2 (March 2005), 203-4.

greater benefit (he uses the example of going to the dentist now, in order to prevent later worse suffering), but continues:

Why not, *similarly*, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people... Using one of those people for the benefit of others, uses him and benefits others. Nothing more... Talk of an overall social good covers this up.⁷

Because the individual making the sacrifice is not the individual who benefits, even redistributions for the public good are unacceptable; the libertarian holds in all cases that negative rights constrain action, regardless of whether it is private or state action, and redistribution for redistributive purposes is never legitimate.

What kinds of property can individuals come to own, apart from the self? The answer to this question is essential for understanding what kinds of things the constraints preserving individual rights will actually protect. Left-libertarians, such as Peter Vallentyne, Hillel Steiner, and Michael Otsuka, generally hold that while individuals have full self-ownership, the only defensible, coherent theory for natural resources is some form of common or egalitarian ownership. By extension, artifacts can only be rightfully owned by an individual if he rightfully came to own all of the resources involved in production. Harkening back to Locke, who holds that natural resources can only become someone's property if "there is enough, and as good, left in common for others,"⁸ left-libertarianism asserts that this Lockean proviso can only be plausibly interpreted to mean that no individual can freely appropriate natural resources.

Intuitively, this interpretation makes greater sense in the modern world with a population

⁷ Nozick, 32-3.

⁸ Locke, 19 (sec. 27).

nearing 7 million – what plot of land could I appropriate that would leave enough for everyone else to do the same? – than perhaps it did in an ideal time of boundless available land and resources.

Logically too, however, we can see how working backwards would prevent free appropriation even in times of apparent plenty. As Nozick explains:

Consider the first person Z for whom there is not enough and as good left to appropriate. The last person Y to appropriate left Z without his previous liberty to act on an object, and so worsened Z's situation. So Y's appropriation is not allowed under Locke's proviso... And so on back to the first person A to appropriate a permanent property right.⁹

Any appropriation of natural resources, even if there is enough and as good still left at the time, restricts the ability of subsequent individuals from doing the same. Thus no one has the ability to appropriate resources without making a compensatory payment to the commons. (Nozick finds this reading implausible precisely because it cannot support free appropriation of natural resources and thus proposes a less strict interpretation, as we will see later).

The proposals for ways in which natural resources can be owned in an egalitarian manner are almost as numerous as the left-libertarians themselves; however, there are several essential themes among these theories. Primarily, a conception of ownership for natural resources must keep self-ownership reasonably secure. I should be able to use natural resources – breathe air and stand in space – without first asking permission of others, or putting my self-ownership on the line. A corollary to this requirement is that no one can use natural resources in a way that violates the self-ownership of others; I can't chop down a tree and use it to kill you.

⁹ Nozick, 176.

Furthermore, many theories of natural resource ownership include guidelines for ‘fair use,’ and/or unilateral appropriation. The former would restrict the ways in which one can use natural resources further than just by the self-ownership of others – perhaps to exclude the continued possession of a unique resource, as an example. While some branches of left-libertarianism hold that none of the resources held in common may be appropriated without consent of all others, the generally accepted concept of unilateral appropriation provides for individuals to not just use, but appropriate (currently unappropriated) resources without undergoing the likely near-impossible task of first obtaining consent, though an according payment is usually necessary. Unilateral appropriation thus serves first to allow individuals to functionally exercise their shared ownership of natural resources without, for example, getting unanimous agreement. Second, unilateral appropriation ensures that the benefits reaped from these equally owned natural resources are paid back to the commons, to be distributed in an egalitarian manner as well.

How we determine the payment due for unilateral acquisition is a very challenging question. The most permissive theories include just the competitive value of the resources one has claimed – you couldn’t make a profit just by acquiring and reselling the rights to a resource, though you could sell what you produce from resources and your own labor at a presumably profitable price. From there, the theories become more egalitarian. A ‘full-benefit-taxation’ conception of natural resource ownership holds that

appropriators of natural resources must pay taxes of up to 100% on *all* subsequent benefits they reap.¹⁰

Another key element of these egalitarian natural resource ownership conceptions (that differs from those of right-libertarians) is the subsequent creation of a social fund, representative of the value of the natural resources. Payments under the left-libertarian's system for natural resources are also equally owned, raising the question of how this fund is to be fairly spent. Some left-libertarians endorse equal shares for all individuals; others would divide the fund such that each individual got an equal gain in (some defined notion of) well-being from their share, taking into account that the spending opportunities of individuals depend heavily on their circumstances; yet others would spend the fund in pursuit of equality of opportunity for well-being for everyone.

Though the diversity among left-libertarian philosophies on many important subjects may appear overwhelming, as a set they do address some coherent, interesting ideas. In summary, left-libertarianism generally holds that while individuals have full self-ownership, natural resources are owned in an egalitarian way – thus any individual appropriating natural resources must make a payment of the value of what he has appropriated, which will be spent in some egalitarian fashion as well.

Right-libertarians, such as Nozick, argue that taxation is a violation of individual rights, the equivalent to slavery:

Whether it is done through taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big *social pot* so that it's not clear what's coming from where and what's going where, patterned principles of distributive justice involve appropriating the

¹⁰ Peter Vallentyne, "Left-Libertarianism: A Primer," in *Left-Libertarianism and Its Critics: The Contemporary Debate*, ed. Peter Vallentyne and Hillel Steiner (New York: Palgrave Publishers Ltd., 2000), 9.

actions of other persons. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities.¹¹

Just as it would be a violation of self-ownership to force an individual to do work for you as a slave, the argument goes, taxing the results of his work is the same kind of violation. A right-libertarian, observing the taxes levied by the left-libertarians and the collection of the social fund, would protest a huge violation of individual liberty.

As Barbara Fried points out, the jump from protecting full self-ownership to prohibiting all kinds of taxation is perhaps a little too far and quick to be believable.

[S]uch questions as “But might there be some reasons why we would condemn forcibly removing someone's kidney or sticking a knife in someone's back that don't necessarily carry over to the state's imposing an ad valorem property tax?” are simply treated as longwinded rhetorical questions to which the only possible answer is “no”... [T]he Nozickian argument seizes on one formal likeness between taxation and slavery, disregarding all the differences in the degree and kind of constraints imposed by the two that do not merely weaken the analogy but may defeat it entirely.¹²

The ways in which taxation might to a limited degree affect the autonomy of an individual's labor choices do not, Fried argues, automatically characterize slavery.

The left-libertarian, however, has a much stronger claim. The taxation of the value of natural resources is *not* a compromise of autonomy that just happens to be in a different class than the kind of compromise that happens in cases of slavery. Rather, taxation of the value of natural resources is not at all an infringement on full self-ownership, because this value never properly belonged to the individual being taxed in the first place.

¹¹ Nozick, 172.

¹² Barbara H. Fried, “Left-Libertarianism: A Review Essay,” *Philosophy & Public Affairs* 32, no. 1 (January 2004), 71, 80.

The left-libertarian shares the emphasis on moral constraints on action. The question of how the benefits of the world are to be divided must be secondary to the question of what kinds of actions are permissible or impermissible, given the inviolability of individuals. It is an essential distinction that no individual is obligated to pay a tax to the social fund just by virtue of existing, or for using unappropriated natural resources – only by choosing to appropriate resources does one become obligated to make a payment. Moreover, no methods of promoting equality are acceptable that violate the rights of individuals in their person: “agents may not be killed, tortured, or assaulted without their consent if they have committed no past injustices. Nor may they be coerced into providing involuntary services for others (e.g. mandatory labor).”¹³ Just process must be ensured prior to – and is in fact necessary for – just outcomes. The difference for the left-libertarian is merely that if natural resources are owned in an egalitarian fashion, fewer constraints apply.

Thus the taxation and creation of the social fund is distinct from the types of redistribution generally endorsed by egalitarians and protested by libertarians, because it represents the value of the natural resources owned in common – no individual is justly entitled to take the value for himself, and the due payment represents his compensation to others for this appropriation. To appropriate natural resources without making such a payment would be illegitimate theft from the commons, a violation of the rights of all other individuals.

Some have criticized left-libertarianism as failing to provide meaningful protection to individual rights. Barbara Fried argues that the left-libertarians construe

¹³ Vallentyne, “Left-Libertarianism: A Primer,” 9.

self-ownership so narrowly, and what is owned in common so broadly, that they produce “suspicions that left-libertarianism is just liberal egalitarianism in drag.”¹⁴ While left-libertarianism does still provide constraints on permissible action, Fried points out that, at least in some variations, “the only forms of state power that it would prohibit (stealing others’ eyeballs, enslaving them) are ones that no sane government would contemplate.”¹⁵ Amongst realistic options, and especially in the area of taxation and distribution of the social fund, left-libertarianism comes out much more left than it does libertarian.

Once we have begun to divide goods into the ‘fruit’s of one’s labor’ component that is inviolable as part of full self-ownership, and the value from natural resources component that is taxable, arriving at Otsuka’s conclusion that only things like a shirt that one weaves out of one’s own hair are protected from taxation becomes a very realistic possibility.¹⁶ On the other side, natural resources can be construed very broadly, even to include individual talents or genetic differences.¹⁷ When one includes the possibility to distribute the social fund differentially according to existing inequalities – where those with less opportunity or fewer talents can be given a larger share of the fund – it is unclear whether left-libertarianism functionally differs in terms of individuals’ rights from an egalitarian theory.

¹⁴ Fried, 85.

¹⁵ Barbara H. Fried, “Left-Libertarianism, Once More: A Rejoinder to Vallentyne, Steiner, and Otsuka,” *Philosophy & Public Affairs* 33, no. 2 (March 2005): 219-20.

¹⁶ Fried, “Left-Libertarianism: A Review Essay,” 83.

¹⁷ *Ibid.*, 86.

The left-libertarian responds, however, by pointing out that not only are full self-ownership and egalitarian ownership of natural resources perfectly compatible principles, but in fact the latter is the most plausible reading of the proviso. Vallentyne, Steiner and Otsuka write:

Left-libertarianism holds that there is a very significant difference in the moral status of agents (self-directing beings with full moral standing) and natural resources (resources that have no moral standing...). About the former they maintain that full self-ownership is the most appropriate reflection of the status... and about the latter they *independently maintain* that egalitarian ownership is the most defensible stance.¹⁸ [emphasis mine]

There is nothing inherent in self-ownership that implies or guarantees any entitlement to natural resources or the value they contribute to produced artifacts. Furthermore, any other reading of the proviso would allow for violations of liberty by permitting some individuals to disadvantage others through the free appropriation of resources.

What impact would embracing left-libertarianism have on healthcare? While the exact outcomes would depend on the particular form of left-libertarianism, the premise that natural resources are owned collectively would undoubtedly have a great capacity for improving overall health, and overall access to healthcare, in a society. The social fund, created by monetizing the value of appropriated natural resources, would ensure that the benefits of resources were distributed equally across society. Material inequality would most likely still exist for reasons other than profitable appropriation of natural resources; for example, individuals would probably make different choices about how to spend or invest their money (except under the most extreme cases of left-libertarianism, where even inequalities in genetic differences like spending habits may be accounted for and

¹⁸ Vallentyne, Steiner, and Otsuka, 209.

equalized). However, with even fairly conservative left-libertarianism, the distribution of assets across society would undoubtedly be much more equal than they are today.

It is not obvious that under left-libertarianism, anyone could be compelled to spend their money on healthcare. However, for the many individuals for whom adequate – or even minimum-level – healthcare is currently unaffordable, access to their share of the value of natural resources via the social fund would serve to at least increase their opportunities. With greater material equality, more people would be *able* to make more positive choices about their health. Furthermore, among people who are able to afford adequate healthcare but choose instead to allocate their money elsewhere, receiving their share of the social fund may encourage some to begin doing so (the marginal utility of spending this money on healthcare would be greater than the increase in utility spending it elsewhere). In all probability, left-libertarianism in action would have a positive impact on access to healthcare.

Thus even an account of liberty that does not include a condition to equal freedom does in some ways give rise to a certain amount of equality. The left-libertarian contends that though self-ownership is inviolable, the only coherent understanding of natural resources and the Lockean proviso is one that holds natural resources as owned in an egalitarian fashion, thereby requiring a compensatory payment from anyone who wishes to appropriate resources back to the commons. Right-libertarians, on the other hand, protest this interpretation of the proviso precisely because it prevents individuals from freely appropriating natural resources – something that the right-libertarian prioritizes as necessary in a theory of justice. For the sake of argument, the next chapter accepts the right-libertarian interpretation of the proviso.

CHAPTER III
THE RIGHT-LIBERTARIAN READING OF THE PROVISIO AND THEORY OF
PROPERTY OWNERSHIP

While right-libertarians such as Robert Nozick reject the stringent reading of the Lockean proviso exactly because it prevents individuals from freely appropriating natural resources, they do maintain that the proviso carries weight. The weaker reading does not cover any disadvantage to others from no longer being able to *appropriate* as before, but does prevent appropriation such that there is no longer enough and as good for others to freely *use* as before. Under this reading, there can be some legitimate appropriation of natural resources, as long as it is not so extensive as to limit the ability of others to use this kind of resource – an individual may appropriate a water source for himself, for example, as long as he does not appropriate all of the available water sources.

To the libertarian, on both the left and the right, the liberties in one's person and property that are taken to be constraints on action (both private and state) rule out the possibility of redistribution – to redistribute resources or wealth across a group or society is a violation of the rights of those from whom something is taken (their right to choose how their money is spent, for example). We cannot simply take the rightful property of the wealthy and give it to the poor. If we grant the right-libertarian's interpretation of the Lockean proviso, however, the amount and type of property to which an individual may justifiably be entitled expands dramatically.

What are then the relevant rules for guiding property ownership? Nozick summarizes his neo-Lockean theory of justice in holdings as follows:

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 the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.¹

Thus the question of whether or not a person is entitled to a ‘holding,’ or some item or wealth, depends solely on whether or not his or her process of acquiring it abided by two principles: the principle of justice in acquisition, and the principle of justice in transfer. The former describes how unheld things may come to be held; the latter describes how held things may be transferred from one person to another. While a complete account of either of these two principles will necessarily be quite complicated, generally we can describe what the principles might look like. Voluntary exchange and gift-giving would in most circumstances qualify as legitimate transfers – theft or coerced exchange (forced redistribution for purely redistributive purposes) would not, because these would violate an individual’s rights of ownership.

The requirements set by the proviso obviously apply to the principle of acquisition, setting the rule for when unheld things can come to be held. Thus we can see here how the weaker reading of the proviso dramatically departs from left-libertarianism; the principle of acquisition considers natural resources, in this reading, to be generally unheld and able to be appropriated freely by individuals as long as no others are disadvantaged in their ability to use similar resources. Furthermore, the proviso so read

¹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974), 151.

has additional applications to the principle of transfer. Just as I cannot justifiably appropriate all of the water sources in the first place, I can neither purchase all of the water sources from others, nor can I continue to legitimately hold my water sources if all the others dry up.

Additionally, this requirement does not just fall upon a single individual who has appropriated all of a resource; the proviso “excludes [an individual] transferring [his holding] into an agglomeration that does violate the Lockean proviso and excludes his using it in a way, in coordination with others or independently of them, so as to violate the proviso by making the situation of others worse than their baseline situation.”² Even if I would *otherwise* have an entitlement to a holding under the principles of acquisition and transfer, if exercise of my ownership of it disadvantages others in their access to resources, I cannot justifiably be so entitled.

Thus the question of whether or not a particular distribution of holdings – how wealth or resources are distributed among individuals – is derived from the process by which the distribution came about. If I steal an item, violating the principle of justice in transfer, I am not entitled to it, nor would I be entitled to anything I might trade or sell the item for. Just distributions can only come to be if the previous distribution was just, *and* the process by which the new distribution occurred was also just. One challenge of this type of entitlement theory is, as Nozick points out, “That from a just situation a situation *could* have arisen via justice-preserving means does *not* suffice to show its justice. The fact that a thief’s victims voluntarily *could* have presented him with gifts does not entitle

² Ibid., 180.

the thief to his ill-gotten gains.”³ An examination of a current distribution scheme is not sufficient to assess whether or not it is a just one.

However, as Roderick Long holds, historical entitlement theories also have an advantage in how strongly they expose the roots of inequalities:

Merely pointing to the fact that some people have a lot more than others is less compelling as a critique; it invites the response “So what? Those who have more aren’t hurting anybody; you’re just appealing to envy.” By contrast, being able to show that those who enjoy a higher socioeconomic status have to a considerable extent achieved and maintained that status by forcibly expropriating and oppressing the less affluent provides for a far more effective indictment.⁴

This is not to say that all inequalities are *prima facie* due to violation of the principles of acquisition and transfer. Rather, the historical entitlement theory separates inequalities into two categories: those that have come to be in a just fashion, and those that have not. In the former, the property rights of those who have greater shares of resources or wealth must be protected, because they have acquired them legitimately. In the latter, it is absolutely clear that those with greater shares have acquired them at the expense of others, they are definitively not entitled to protection of (all) their holdings, and the current distribution of holdings is an unjust one.

What happens in these situations, when an individual is not justly entitled to some or another of her holdings? Nozick refers to the principle of rectification, which would describe how violations of the principles of acquisition and transfer must be remedied. While there are certainly numerous complicating factors to resolve among many cases

³ Ibid., 151-2.

⁴ Roderick T. Long, “Left-Libertarianism, Class Conflict, and Historical Theories of Distributive Justice,” *unpublished manuscript, Auburn University (2010)*, available from <http://praxeology.net/historical-justice.pdf>, accessed 22 November 2012, 13.

(“How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example their descendants? ... How far back must one go in wiping clean the historical slate of injustices?”⁵), generally speaking the victim of a rights violation will need to be compensated, by the perpetrator, up to the point where he would have been had the injustice not occurred.⁶ This principle of rectification for the right-libertarian is similar to the payments owed for appropriation of any natural resources under the left-libertarian scheme insofar as they are both legitimate forms of redistribution. The important distinction for the libertarian is whether the redistribution is meant to compensate for an injustice, or if it meant to adjust away from a just distribution in favor of a differed desired pattern (a more equal one, for example). While redistribution for redistributive purposes is unacceptable, redistribution for non-redistributive purposes is fine, and moreover required.

Both the proviso so read, as well as the conception of compensation in cases where one has violated another’s person or property rights carry real weight in this theory of justice, and will be relevant to all aspects of society, including our system of healthcare. Having granted the libertarian account of liberty; even granting the limited right-libertarian interpretation of the proviso – where does this leave us in terms of health?

⁵ Nozick, 152.

⁶ It is not sufficient to merely return the value of what was unjustly taken: “The principle of rectification presumably will make use of its best estimate in subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized.” (Ibid., 152-3).

Though the Lockean proviso, as interpreted by the right-libertarian, certainly continues to apply to situations of health and healthcare, it is unlikely that it would require the institution of substantial changes to our healthcare system. The proviso so understood prevents individuals or groups from acting such that others generally fall below the Lockean baseline. Estimating such a baseline, the position comparable to where everything is enough and as good, is a difficult task. Free access to materials and land is not common today, making it a challenge to estimate how much wealth one would be able to generate with such access.

Nozick generally equates the baseline to “the general economic importance of original appropriation,” and suggests:

Perhaps this importance can be measured by the percentage of all income that is based upon untransformed raw materials and given resources (rather than upon human actions), mainly rental income representing the unimproved value of the land, and the price of raw material *in situ*, and by the percentage of current wealth which represents such income in the past... David Friedman... suggests 5 percent of U.S. National Income as an upper limit for the first two factors mentioned. However he does not attempt to estimate the percentage of current wealth which is based upon such income in the past.⁷

With an estimated GDP per capita of \$48,300 in 2011, Friedman’s estimate likely would not exceed \$2,500 as a yearly income that would be equivalent to the baseline situation.⁸

A more precise calculation than the one presented here of what this economic baseline entails is undeniably a worthwhile project. Anyone found to be below this estimated baseline would be entitled to due compensation up to that point.

⁷ Ibid., 177 and footnote *.

⁸ *CIA World Factbook*, “United States,” available from <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>, accessed 28 November 2012.

Upon whom would the obligation be to compensate these people who are found to have fallen below the baseline? Under the conditions of the proviso, all those who have appropriated or acquired through transfer natural resources, or used their holdings in a way that contributed to the fall of others below the baseline face an obligation of compensation – likely equivalent to everyone else in the U.S. A very modest tax on all individuals above the baseline condition would serve to properly compensate those who had been previously disadvantaged.

There is likely additional ground that must be guaranteed in terms of the health benefits that arise from baseline access to natural resources. Before the private appropriation and development of natural resources, when there was enough and as good, individuals had a certain level of access to raw, naturally growing foods, and water free of contaminants from other humans. It is an empirical question as to how many Americans currently lack this access and must be compensated. However, there are measures across the nation to ensure potable drinking water, and the U.S. government spent almost \$77 billion in food assistance in 2011, serving more than 46 million people.⁹ The framework exists already in the U.S., through federal taxes and programs, to provide approximations of the baseline situation to those who would otherwise be below it. While the Lockean proviso surely carries significant weight in terms of global health, with millions of people living below the economic baseline situation as well as, more seriously, lacking basic food and water access, the changes it demands on the health system in the U.S. are most likely minor.

⁹ *U.S. Department of Agriculture*, “Program Information Report (Keydata): U.S. Summary, FY 2011 – FY 2012,” available from http://www.fns.usda.gov/fns/key_data/march-2012.xlsx, accessed 23 November 2012.

The question of what implications the libertarian understanding of compensation requires from our healthcare system is a more complicated one. I will examine four categories of compensation that may be relevant to health: compensation for injustices generally, compensation in cases of direct harm between individuals, compensation in cases of harm due to activity on the societal level, and compensation as a consequence of the reduction of risk. 1) General overdue compensations. Are there individuals or groups against whom rights violations have been committed but not compensated for? In the U.S., the large-scale historical injustices perpetrated against African-Americans and Native Americans have never been thoroughly subject to the principle of rectification. The fact that a calculation of how extensive the injustices were and what impact they have had on today's distribution of holdings is extremely complicated does not relieve us of our obligation to compensate. The prompt compensation to those who have been subject to past rights violations, may in some cases make the difference in being able to afford healthcare.

The next category of possible compensation is 2) direct compensation, due to those who have had their health worsened by another – people who need care because they have been hit by cars or shot by guns, etc. When one individual has worsened the health of another, whether as an accident or an act of violence, the individual at fault is required to pay full compensation, which would presumably include not only the cost of healthcare, but additional compensation for the economic loss due to any short or long-term disability as well as pain and suffering.¹⁰

¹⁰ There remains the question of whether financial payments can actually fully compensate for harm, especially in the realm of health – is there any amount that can make amends for losing an arm; losing your sense of sight; life-long illnesses; death? The libertarian

Our current legal framework generally requires these types of payments already. However, we must examine the extent to which this requirement is functionally being met. First, there is the question of access to the legal system, with cost as the most prominent barrier. Ensuring that those who have already been disadvantaged by injury and cannot incur extremely expensive legal costs are actually able to make claims on and receive their due compensation is essential for achieving justice. Presumably, the perpetrator must pay any costs of obtaining compensation; however, the investment of time and resources required to resolve a legal claim may currently be unacceptably prohibitive.

Second, there is the issue of broadly distributed obligations of compensation. If, for example, I get lung cancer due to second-hand smoke (or, perhaps, it is a matter of scientific consensus that my exposure to second-hand smoke significantly raised my chances of getting lung cancer by a certain percent), from whom can I reasonably seek compensation for my healthcare costs? The process of litigating against every individual who smoked tobacco in my vicinity over my lifetime would be absurd; the benefit from litigating against just several contributing individuals would be far outweighed by the costs. Even if it were absolutely clear who would be required to compensate me for what exact amounts, there are significant practical difficulties involved in actually procuring what I am owed that must be overcome in order to ensure justice.

The third functional challenge of direct compensation is what might happen in cases where the perpetrator is unable to pay. If I am hit by a reckless driver who has no

claims that these kinds of injuries can all be made morally acceptable, as long as the proper payment is made. In this paper I acquiesce to this assumption, though find it a compelling criticism of the libertarian framework as a whole.

wealth or property, how will I be compensated for my injuries? Am I given instead a portion or period of ownership over this person – say, however many years of indentured servitude it will take him to properly compensate me? The libertarian would find this compromise of self-ownership intolerable. Consider the current system of requiring that all drivers have car insurance, such that an ability to pay for damages is ensured prior to being allowed into the streets. Is this an acceptable form of state action over how individuals may allocate their wealth? Would it still be acceptable to require general damages insurance to let anyone leave their homes, so that if they cause harm to another person or property we can be sure that they will be able to compensate?

These questions of functionally ensuring the payment of compensation will obviously have implications for all areas of the libertarian perspective; however, they are particularly salient when discussing health, because of its inherent relationship to rights in one's person. While healthcare consists of more than responding to accidents or incidents of violence – damages caused by an individual to another's person – it is vital to the libertarian framework to be able to effectively ensure compensation in such cases. A coherent theory of justice must incorporate processes for guaranteeing compensation in cases of harm, even in the face of practical difficulties like those listed above. (I suspect that these at least include a tax in order to cover the costs associated with enforcing compensation, as well as perhaps a form of mandatory insurance to account for cases where the individual at fault is unable to pay.)

Next we will evaluate 3) the category of compensation, due to an individual for worsening her health situation, but due from society as a whole. For example, the widespread use of antibiotics by virtually all those who have participated in the system of

modern medicine has given rise to antibiotic-resistant infections such as MRSA, which can quickly become very serious and even lethal. Individuals who face these kinds of infections must be compensated for the additional care required, most plausibly by way of some modest general tax.¹¹ While this type of situation may not be very common, it nonetheless establishes that some situations of worsened health are a consequence of societal action and must be compensated as such.

The final category of compensation relevant to health is 4) compensation as a result of action taken to reduce risk. To use Nozick's example, allowing an epileptic to drive imposes a risk on everyone else – even if the epileptic would never have actually caused any accidents, the high probability that he might is problematic. However, to prohibit him from driving on only the grounds that he *might* cause an accident is to seriously disadvantage him, and therefore all those who benefit (everyone else using roads) are required to compensate the epileptic for this disadvantage.¹² The balance between these two concepts is highly contextual – not all risks will be worth the cost of compensating the disadvantaged, and not all restrictions require compensation (you don't need to compensate someone for restricting their ability to play Russian roulette on you).

¹¹ Alternatively, this obligation could be met through a tax on the specific institution, i.e. some kind of tax on the consumption of antibiotics. (Similarly, this method of compensation could potentially be used to resolve the problem of second-hand smoking, by taxing tobacco products for the purposes of paying for the healthcare of affected individuals.) Problematic to this strategy is that the relevant, specific taxes could only be levied *ex post facto* (once MRSA has been discovered). A general tax to be used in every case where effectively all of society has contributed to the obligation resolves this issue, though may need to include some process by which an individual can demonstrate his independence from a particular obligation and be reimbursed.

¹² Nozick, 78-9.

In terms of health, this category of compensation has powerful implications. An individual with a communicable disease presents a risk to everyone else he may come in contact with; they are justified in acting to mitigate this risk, as long as he is compensated for any disadvantage, most likely through a system of taxation. In some cases, mitigating the risk may mean some limited forms of quarantine, though the value of the disadvantage would likely be quite high. In other cases, however, everyone may elect to prevent risk of exposure by treating or curing the disease; this would usually incur very low costs of compensation, such as those resulting from side effects of treatment. Furthermore, *preventative* care is even warranted in circumstances where the cost of prevention is low enough to be worth addressing such a small risk (i.e. the risk that an individual will contract and then spread a disease). In situations of communicable disease, care, treatment and even prevention can be justified as action taken to reduce risks of transmission to all others in society, as long as due compensation is paid.

Under the right-libertarian reading of the proviso and account of property ownership, an overall system of public healthcare constitutes illegitimate redistribution of resources. However, the effects that this theory of justice has on health are, as demonstrated, quite extensive. Even the weaker interpretation of the proviso sets a baseline condition under which individuals cannot be situated, either in terms of economic circumstances or some specific matters that likely relate to health. The rules regarding compensation also generate many obligations on a system of healthcare. In addition to ensuring the general rectification of past injustices, a justifiable system must guarantee compensation to individuals in cases of direct harm by other individuals and by

society overall. Moreover, compensation for disadvantage in cases of risk reduction allows for a wide range of methods for dealing with communicable disease.

These implications that right-libertarianism, properly understood, has for healthcare are not functionally equivalent to a publicly funded, universal system. Individuals would still be responsible for any self-inflicted harm to their health, naturally occurring accidents, the incidents of aging, etc., as well as disease under certain conditions of risk. However, a consistent right-libertarian will hold that there are some important aspects of healthcare which are not individual matters, and are in fact circumstances of compensation that the state is obligated to enforce, sometimes through taxation. Finally, as a practical matter, one side effect of the state fulfilling these obligations may be an increase in the affordability of health insurance. As more instances of healthcare are understood as rightful compensation, insurance companies will expect to cover fewer instances themselves, bringing down the cost of health insurance and thereby increasing its accessibility.

CONCLUDING REMARKS

Common assertions of a right to healthcare ignore the question of individual liberty; appeals to liberty are commonly used to preclude a right to healthcare. Starting from a perspective of liberty, this paper has extensively explored what kinds of obligations one individual has in terms of the health of another. A plausible account of liberty requires a condition of equal freedom, which in turn demands a state to realize this freedom through public institutions – including a system of publicly funded healthcare.

Those who believe ownership is inviolable even to state action protest this account of liberty, properly understood. But even if you grant them their account of liberty, a plausible interpretation of natural resources and the Lockean proviso restricts legitimate property ownership. The resulting, fairly egalitarian, distribution of resources and wealth significantly promotes equal access to healthcare. But *even if* you turn to those who read the proviso to allow for extensive property ownership, and grant them *their* interpretation and the necessary accompanying rules of compensation to prevent or rectify injustice, *still* there are important and substantial aspects of healthcare that the state is obligated to ensure. Liberty may not give one an absolute positive right to healthcare; however, accounts of liberty from a range of perspectives all give rise to theories of justice that require substantial protections of health.

Perhaps there are those who wish to go one step further in the name of ‘liberty,’ and would contest even the right-libertarian’s claims that compensation can be used so

extensively, or as a method of restricting the actions of others in order to reduce risk. Such a position, however, would hold every individual to the absolute whim of every other. Such a position is no longer consistent with a meaningful understanding of liberty; it is only consistent with the absurd.

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