

“WILT CHAMBERLAIN REVISITED” REVISITED:  
INTERPRETIVE, PRACTICAL, AND THEORETICAL  
PROBLEMS FOR FRIED’S LEFT-LOCKEANISM

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**I. Introduction**

THE ARGUMENT NOZICK ILLUSTRATES with his famous Wilt Chamberlain (WC) scenario<sup>1</sup> aims to discredit the case for patterned distribution of wealth—that is, cases where the state redistributes the existing holdings of its subjects according to one or more of its own criteria. Nozick first asks us to imagine the distribution stipulated by our favourite patterned conception of distributive justice.<sup>2</sup> He then imagines that Wilt Chamberlain, a popular basketball player, makes a contract with a team under which he plays in the team’s games for one year and receives twenty-five cents from the price of each ticket in compensation. One million people attend Chamberlain’s games, so he ends up with \$250,000. The distribution no longer matches the favoured distribution with which the example started. And yet, the following are also the case: (1) All persons in our scenario were entitled to their holdings at the starting point. (2) Intuitively, being entitled to

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<sup>1</sup> Nozick, 1974: 160-4.

<sup>2</sup> Ibid.: 160.

something entails a right to transfer it to someone else, making them the new owner. (3) Therefore, ticket buyers were each entitled to donate twenty-five cents to Chamberlain, who is thus entitled to the \$250,000. From Nozick's perspective, the concept of entitlement or "ownership" referred to translates, roughly speaking, to the exclusive right to determine the use of some resource.<sup>3</sup>

In her paper "Wilt Chamberlain Revisited," Barbara Fried re-examines the WC example and attempts to show that the right to a piece of property need not entail a right to that portion of its market value that is due to "surplus value" arising from "scarcity conditions of one sort or another."<sup>4</sup> "Surplus value" is defined here as economic rent—the value of a factor of production (such as land or labour) in excess of the cost of bringing that factor into operation. Accepting Lockean theory (at least for the sake of argument), she argues that Nozick only introduces the "right of transfer" to obscure his failure to flesh out a Lockean concept of just appropriation compatible with the entitlement theory of distributive justice.<sup>5</sup> In other words, Nozick's principle of justice in transfer hides the need for a theory of justice in acquisition. There is no way to justify private ownership of the surplus value of goods if the right of acquisition does not do it. Given this failure, says Fried, Nozick cannot justify the right to the exchange value of one's labour or property simply via justice in transfer. Nozick thus confused "two morally unrelated issues: whether we own surplus value in our holdings, and whether we have a right to give others what we own."<sup>6</sup>

I proceed as follows. In section II, I outline Fried's (1995) argument against Nozick's entitlement theory. In section III, I discuss some issues in Fried's interpretation of Lockean property theory. Specifically, I challenge the suggestion that the Lockean Proviso precludes entitlement to the scarcity value of natural resources (partly because of its implausible stringency, and partly because of the theory of value that seems to underlie it). In section IV, I describe the inherent difficulty in the notion that entitlement to a thing is separable from entitlement to its surplus value. I first concede for the sake of argument Fried's (2003) claim that "ownership" is indeterminate, and then suggest a different approach to property theory, according to which it is simply not relevant whether the essential *concept* of ownership is

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<sup>3</sup> Some theories of property do not confer such a right for all, or any, resources. As we will see later, Nozick's definition is not necessarily shared by Fried.

<sup>4</sup> Fried, 1995: 228.

<sup>5</sup> Ibid.: 228-9. For an explanation of entitlement theory, see Nozick, 1974: 150-3.

<sup>6</sup> Ibid.: 229.

indeterminate. In section V, I flesh out some implications of Fried’s view of property that both are intuitively unattractive and indicate that the theory falls short of the criterion I set up in section IV. Section VI concludes.

## II. Fried’s Argument

Fried aims to show that Nozick’s idea of the right to the exchange value of one’s labour or property cannot be justified by the right of transfer. This is because just appropriation of an object does not straightforwardly entail a right to the scarcity value of that thing. In other words, she disputes that being entitled to something implies entitlement to the portion of its market value that is due to surplus value arising from “scarcity conditions of one sort or another.”<sup>7</sup> The objection is informed by a certain interpretation of Lockean property theory, “Left Locke,” under which entitlement to property is limited to the owner’s “actual cost, or sacrifice, in acquiring it.”<sup>8</sup> The meaning of Locke’s principle of justice in acquisition is important here because it is tacitly adopted by Nozick in his explication of property rights.<sup>9</sup> In short, the problem with Nozick’s theory is that it “confuses two issues: whether each party has a right to the full market value of the asset she holds the moment before exchange; and if so, whether she has a right to transfer it to another person, as a gift or in exchange for another asset of equal value.”<sup>10</sup>

To illustrate this problem, Fried puts forward an alternative WC-type scenario:

Imagine that in the 1950s WC bought a parcel of vacant land in a sparsely populated county adjacent to New York City for \$5,000 in cash, which cash he had saved from his earnings as a day-laborer. Over the ensuing twenty years, economic, demographic, and other social changes spurred large numbers of people who worked in New York City to emigrate to the suburbs, driving real estate prices up 500-fold or more. By the early 1970s, WC’s land is worth \$250,000.<sup>11</sup>

From the perspective of “Left Locke,” WC the landowner is entitled only to the amount it cost him to buy the property (\$5,000), “plus perhaps a fair return on that cost.”<sup>12</sup> Only “administrative or prudential reasons” might

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<sup>7</sup> Ibid.: 228.

<sup>8</sup> Ibid.: 236.

<sup>9</sup> Ibid.: 227n4.

<sup>10</sup> Ibid.: 235.

<sup>11</sup> Ibid.: 235-6.

<sup>12</sup> Ibid.: 236.

stop society from claiming the surplus value of WC's property before he sells it. Beyond that, there is no relevant difference.<sup>13</sup>

Applying this thinking to Nozick's original scenario, Fried questions the assumption that "Chamberlain owns outright to begin with, unencumbered by any obligations to society, the thing for which he was paid by X—the market value of his human capital."<sup>14</sup> While one interpretation of Lockean theory would say that the market value of Chamberlain's labour derives from his self-ownership ("Right Locke"), a different interpretation would say he is only entitled to that part of the market value of his labour that is due to his own effort (not to the "pure luck" of inborn talent).<sup>15</sup> In theory, the state could just as well tax Chamberlain on the value of his inborn talent before he "cashes it out" (endowments tax).<sup>16</sup> This would be equivalent to taxing the land-buying Chamberlain as the value of his property increases, before the moment of sale.<sup>17</sup> The right of transfer cannot justify Chamberlain's right to keep the entire value of his land or inborn talent. In both cases then, contra Nozick, the right of others to give Chamberlain \$250,000 does not entail his right to keep that sum.<sup>18</sup>

### III. Interpreting Lockean Property Theory

Fried endeavours to show that the right to private property cannot be derived from a "Lockean labour theory of ownership," as Nozick apparently tries to do with his principle of justice in acquisition.<sup>19</sup> While she accepts that Locke's theory ostensibly justifies appropriation of the total value of a parcel of land (and presumably any other resource as well), including its scarcity value,<sup>20</sup> this conclusion is undermined by Locke's proviso that there must be "enough, and as good, left in common for others"<sup>21</sup> for appropriation to be legitimate. In Fried's view, a "strict" interpretation of the Lockean Proviso precludes ownership of the "scarcity value" of natural resources.<sup>22</sup> Citing John Stuart Mill, she states that the right to surplus value cannot be derived

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<sup>13</sup> *Ibid.*: 238-9.

<sup>14</sup> *Ibid.*: 241.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*: 242-3.

<sup>17</sup> *Ibid.*: 243.

<sup>18</sup> *Ibid.*: 244.

<sup>19</sup> *Ibid.*: 227.

<sup>20</sup> *Ibid.*: 230.

<sup>21</sup> Locke, 1689: Book II, §27.

<sup>22</sup> Fried, 1995: 230 n14.

from a Lockean theory of property *if* the appeal of that theory is in its promise of “proportion between remuneration and exertion.”<sup>23</sup>

The problem with this view, and with equating it to Lockean theory, is that it would be unworkable for any view other than a labour theory of economic value: value (and therefore “remuneration”) is objective, determined by the amount of “work” put into production rather than by people’s subjective preferences.

Mill did not hold a pure labour theory; he also recognised the value created by the “abstinence” of those who invest their money rather than spend it. But he believed that the institution of property must come with a “guarantee to individuals of the *fruits* of their own labour and abstinence.”<sup>24</sup> He evidently took for granted that giving people the “fruits” of their labour is equivalent to rewarding them in proportion to their “exertion.” If Locke’s writings on property are to retain their relevance, they cannot be predicated on a theory of value that has been widely discredited<sup>25</sup> since Mill’s era. Locke’s treatment of property never indicates that he was motivated by such a theory. Throughout the last century, economists have expressed a wide range of views about Locke’s possible sympathies: some claim that he held a labour theory of value, others a form of exploitation-of-labour theory, others that he was inconsistent or otherwise partially supportive, and still others that his theory of property had nothing to do with the labour theory of value.<sup>26</sup> Coming to terms with this vagueness, Nozick suggests that “labour-mixing” is part of Locke’s theory because labour generally improves an object and “makes it more valuable, and anyone is entitled to a thing whose value he has created.”<sup>27</sup> In other words, value is defined *independently* of labour (although labour is a thing known to add value), and entitlement to an object instead comes from value added to it—whatever the true theory of value is.

Could we hold that one’s degree of “exertion” determines the extent of one’s property while rejecting the labour theory of value? Without going into detail regarding the difficulties that would arise under such an approach, suffice it to say that to hold a prescriptive theory (the moral foundation of property) whose implementation is impossible or detrimental according to a true descriptive theory (of value) is incongruous at best. This is a significant problem for Fried’s Left-Lockean conception of property. However, it is

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<sup>23</sup> Mill, 1848: 208.

<sup>24</sup> *Ibid.* (Emphasis added.)

<sup>25</sup> Rusmich and Sachs, 2003: 20.

<sup>26</sup> Vaughn, 1978: 324.

<sup>27</sup> Nozick, 1974: 175.

worth addressing an apparent motivation for that view: the Lockean Proviso. One interpretation of the Proviso states that one may not appropriate the “scarcity value” of land or resources—or that we may only appropriate the things themselves when they are not scarce.<sup>28</sup> There are several reasons to oppose this view.

Firstly, it leads to a paradox: if appropriation of a given kind of resource is only permissible when that resource is not scarce, we are only permitted to appropriate it when there would be no value in doing so, as the resource would be superabundant.<sup>29</sup> This interpretation is not only paradoxical. It directly contradicts Locke’s claim that “there must of necessity be a means to appropriate [the earth’s resources] some way or other, before they can be of any use, or at all beneficial to any particular man.”<sup>30</sup> Some may be comfortable with assuming Locke’s theory contains a paradox, or that it contradicts itself. However, Nozick provides an alternative way of interpreting Locke. He suggests that there are two ways of viewing the Proviso. The more stringent way would require that appropriation not make anyone worse off by (1) taking away the opportunity to appropriate some of a given kind of resource, or (2) making him unable to *use* (without appropriating) a kind of resource that he previously could use.<sup>31</sup> The weaker requirement is to forbid only the second of these two. The stronger requirement, to forbid the first, is problematic: if the supply of a given resource is about to run out, person Y may not appropriate the final portion, since it would leave person Z without enough and as good. Not just person Y but also person X, the last one to appropriate before Y, will be prohibited from appropriating, since it would leave Y worse off by making him unable to claim his share. This can be iterated right up to the first person who tries to appropriate a share of the resource. If we charitably assume that Locke’s theory does not contain a so clearly self-defeating implication, the weaker requirement is more plausible. It requires only that no one be made worse off by being unable to use what he previously could.<sup>32</sup>

Does private ownership of the scarcity value of land violate this weaker proviso? While the land owned by Fried’s Chamberlain was not scarce *when he appropriated* it, it is possible to violate the Proviso through no fault of one’s own, even long after appropriation. For example, the owner of a water hole

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<sup>28</sup> Fried, 1995: 230 n14.

<sup>29</sup> Ibid.

<sup>30</sup> Locke, 1689: §26 at 353.

<sup>31</sup> Nozick, 1974: 176.

<sup>32</sup> Ibid.

would lose full ownership rights if all other water holes suddenly dried up. However, Nozick suggests that this would not violate the Proviso if, say, the owner were the only one who took precautions to stop his water hole from drying up.<sup>33</sup> One cannot violate the Proviso whenever the supply of a given resource runs out merely by holding a portion of it—for that would ultimately invalidate appropriation of any finite resource (as we saw). Such a rule would also be intuitively unfair. If I appropriate one parcel of land for myself, and someone else later appropriates ten, leaving an insufficient amount for others, why is it the case that *I* should lose (the value of) my land and not the person who violated the Proviso?

Relatedly, Preston J. Werner suggests that while instances of brute luck (e.g. all other water holes suddenly drying up) can lead to a violation of the Proviso, instances of *option luck* may not have the same effect:

[I]ntuitively it won't always be the case that unequal future distributions of a resource will be unjust, even if they are a result of luck. For example, suppose that A and B both agree to distribute plots of land based on a lottery. If B's ticket gets drawn rather than A's, and as a result B ends up with the better plot of land, this doesn't entail that B has violated the shadow of the proviso against A.<sup>34</sup>

Does this distinction apply to Fried's WC example? On the one hand, the land-investment case resembles an instance of option luck: all land buyers freely decided where to buy, knowing that the investment may or may not pay off. On the other hand, WC may have bought land for unrelated reasons, and simply got lucky when its value increased. But given that it is widely known that land values change, it is not really an instance of unforeseeable, “brute” luck when they do. (As such, Werner's argument that the historical shadow of the Lockean Proviso sometimes requires violations of people's property rights—specifically self-ownership—is not applicable to Fried's WC example, because he assumes that those violations are required only “when the would-be-violatee's condition is a result of brute luck.”<sup>35</sup>)

Is anyone made *worse off* by WC holding the land and its surplus value? Part of the answer to this question will be addressed in sections IV and V. We can suggest that even without Nozick's weak version of the Proviso, it is unclear that scarcity as such entails that someone is left without enough and as good of the *supply of natural resources*. Land located near New York City is

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<sup>33</sup> Nozick, 1974: 180 n13.

<sup>34</sup> Werner, 2013: 4.

<sup>35</sup> *Ibid.*: 5.

scarcer for (almost) entirely non-natural reasons, relating to the development of the city, which causes people to prefer living there. Commenting on Locke's discussion of land scarcity, Fried suggests that only "locational disadvantages" made land superabundant in America while it was scarce in England. It is true that land in America is not an economic substitute for land in England. Accepting for the sake of argument that people should be compensated for the cost of relocating, the difference in land value does not reflect a violation of the Lockean Proviso, but rather the fact that "the provisions serving to the support of human life, produced by one acre of enclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common."<sup>36</sup> Fried addresses this issue in a comment on Nozick's principle of acquisition. She challenges the view that justice in acquisition applies only to previously unheld things, and therefore does not apply to value accruing to "previously owned property acquired by the owner through gift or exchange,"<sup>37</sup> arguing that "previously nonexistent economic value" counts as previously unheld. The problems with separating physical holdings from their value will be discussed in the next section.

Should we accept Nozick's weak Proviso? We have seen that the weaker interpretation avoids paradoxes or contradictions suffered by stronger interpretations. Another hint may lie in Locke's framing of the problem of justice in appropriation. In chapter 5 of his *Second Treatise of Civil Government*, Locke first presents a dilemma: how can it be that God gave the earth to mankind in common, and, on the other hand, that any individual may take a part of the earth as his own property?<sup>38</sup> Since God gave man not just the world, but also his reason, man is meant to use it "to the best advantage of life, and convenience."<sup>39</sup> Thus, the purpose of these natural gifts to humans is "the support and comfort of their being." As such, Locke reasons, there must be a way for the earth's resources to be justly appropriated by individuals, so that they can be used.<sup>40</sup> Thus, a motivation—or at least a limiting factor—for Locke's rights-based theory is the assurance of human welfare. In the light of this limiting factor, the Proviso may be intended to ensure that Locke's rights-based property theory does not compromise welfare. This may make it more plausible that the Proviso only applies to appropriation that makes

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<sup>36</sup> Locke, 1689: §37.

<sup>37</sup> Fried, 1995: 233 n19.

<sup>38</sup> Locke, 1689: Book II, §25.

<sup>39</sup> *Ibid.*: Book II, §26.

<sup>40</sup> *Ibid.*



someone worse off than he would have been in a world without private property. Nozick claims that this is the intention of the Proviso.<sup>41</sup>

More to the point, Locke states that his Proviso can be overcome “by a tacit and voluntary consent”; someone may come to own more land than he can personally use by receiving it in exchange for some non-perishable good, “which may be hoarded up without injury to anyone.”<sup>42</sup> Moreover, Locke holds that when someone appropriates land and improves it (by building a fence, tilling the soil, etc.), he does not merely remove land from the commons: the value of his improvements gives back many times the value of the unimproved land “to mankind.”<sup>43</sup> Taken together, these aspects of Locke’s theory lend plausibility to Nozick’s interpretation of the Proviso (which says we can appropriate scarce things so long as doing so does not make others worse off than they would have been without private property) over that of Fried (which says appropriation of scarce things is forbidden). Regardless of Locke’s original intention, Nozick’s weaker version of the Proviso has the advantage of avoiding the self-defeating implication of Fried’s version.

#### **IV. Surplus Value and the Nature of Ownership: Towards a Better Theory**

Before proceeding to the main points of this section, I will note a potential weakness of Nozick’s argument that can be drawn from Fried’s discussion. Ostensibly, she ignores the initial assumption that the distribution in Nozick’s WC scenario is her ideal one (whatever it may be)—and therefore that everyone is fully entitled to control over the resources they hold.<sup>44</sup> But if the ideal distribution involves people being taxed on the “surplus value” of their assets, it cannot be reconciled with the scenario Nozick sets up. It could not be that there is a supremely talented basketball player who has not been taxed on the *full* value of his natural talent, and so is able to earn \$250,000 simply by playing one season. As such, Nozick’s scenario does not account for all conceivable distributional ideals. This may be the main reason for which Fried does not accept the conclusion of Nozick’s thought experiment. But the example could be saved by imagining that Chamberlain had developed some highly valued talent purely by his own labour (since when is

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<sup>41</sup> Nozick, 1974: 175.

<sup>42</sup> Locke, 1689: §50 at 366.

<sup>43</sup> *Ibid.*: §37 at 359.

<sup>44</sup> Nozick, 1974: 161.

talent inborn, anyway?), and proceeded to upset the favoured distribution that way.

But the basic problem with Fried's argument is that accepting property rights to "the thing itself" but not to its "surplus value" is unworkable. Expropriating the latter necessarily involves an infringement of rights to the former. In other words, there is no way to separate entitlement to a thing from entitlement to its value. Fried claims that in principle, there is no difference between taxing Chamberlain on the high value of his land before he sells it, and taxing him afterwards: there is merely a practical difficulty of evaluation in the former case.<sup>45</sup> Yet if he is taxed beforehand, this imposes a coercive pressure on him to sell, by destroying the incentive to keep the land in expectation of its value rising. Such a tax may even force him to sell, if he does not have any other assets with which to pay the tax. If he did not sell at this point, the government may expropriate the land itself.<sup>46</sup> Similarly, taxation pressures Chamberlain the basketball player to spend more time working to make up for the loss—which Fried acknowledges.<sup>47</sup> In both of these instances (not just the latter), there is an infringement of WC's property.

If the tax is levied *after* sale of the asset, this simply imposes different coercive pressures. If the landowner knows that most of the value of his land will be taxed away at the moment of sale, he may be pressured instead to settle on it, exploiting its increased value by finding a job in New York City. More generally, in a world where the surplus value of land is expropriated, before or after sale, most people who would have been investors in the free market would not bother to purchase the land at all. The athlete may respond by working fewer hours than he would if paid in full. As such, even the after-sale tax infringes on the entitlement to the thing itself. Fried appears to grant this kind of entitlement when she states that the problem with Nozick's theory is not in its assertion of the right to hold or transfer something, but in its presumption that "each party has a right to the full market value of the asset she holds the moment before exchange."<sup>48</sup> However, she may take issue with the very concept of ownership assumed by Nozick, which could be called "full, liberal ownership"<sup>49</sup> (with the qualification that there exist forms

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<sup>45</sup> Fried, 1995: 242-3.

<sup>46</sup> Attas, 2006: 138.

<sup>47</sup> Fried, 1995: 243.

<sup>48</sup> *Ibid.*: 235.

<sup>49</sup> As expounded, for example, in Honoré, 1987.

of partial ownership, such as renting a house<sup>50</sup>). Elsewhere she has argued that ownership is indeterminate:

Consider first proposition (1): that self-ownership implies “full liberal ownership” over one’s body, which in turn implies a right “to control [one’s] body free of coercive interference.” What exactly does this right mean in operational terms? Suppose I stand two inches from you and blow smoke in your face intentionally, or three feet from you and blow it in the direction of your face without knowing you are there. Have I coercively interfered with your right to control your body? Or suppose I try to prevent you from yelling at the top of your lungs in your front yard at 2 AM, thereby assaulting my eardrums and disrupting my sleep. Or suppose I imitate your voice in a commercial, passing myself off as you. Which of these forms of interference does the right of self-ownership protect you against?<sup>51</sup>

In a certain sense, Fried is right that the concept of ownership is indeterminate. Ownership cannot reasonably be taken as absolute. The idea that it should be taken as absolute is a misconception analogous to what Popper described as taking “who should rule?” as the fundamental question to be answered by political philosophy and by a political system. The same misconception is present in the idea that the nature of ownership can be pinned down at all, or even that the fact it is “indeterminate” proves anything about the morality of private property.<sup>52</sup> Popper’s criticism was directed against the notion that a single person, group, or entity should be designated as ideal ruler and given some degree of unquestioned power over the rest—be it the Philosopher King, the majority, the law, the wisest, or anything or anyone else.<sup>53</sup> The problem with this kind of thinking is the implicit assumption that once we have selected such a ruler, their authority can remain (to some extent) unquestioned: they are treated as infallible.

My contention is that it is equally problematic to hold that institutions should be made to conform permanently to any particular theory. To do so would entrench any errors that theory might contain. It is problematic because questions about who owns what are contextual. A person living in a tribal society that has no concept of property cannot be guilty of “theft” in the same way a citizen of the United Kingdom might be—just as we cannot

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<sup>50</sup> Wolff, 1991: 94.

<sup>51</sup> Fried, 2003: 20.

<sup>52</sup> I am indebted to David Deutsch for discussions which led to the application of Popper’s argument.

<sup>53</sup> Popper, 1945: 134.

be guilty for violating moral rules that have not yet been invented. This is not to say that there is no truth of the matter. Rather, the truth is not about which account of property is correct as such, but about what laws and institutional rules should say about property. Popper proposed that we “replace the question: *Who should rule?* by the new question: *How can we so organize political institutions that bad or incompetent rulers can be prevented from doing too much damage?*”<sup>54</sup> Analogously, I suggest that we replace the question *What is property?* (or *Who essentially owns what?*) with the question *What kinds of laws and institutional rules promote the correction of errors or inadequacies in the distribution of property?*<sup>55</sup>

That being the case, we can defend the value of Nozick’s WC argument (and criticise Fried’s alternative view) regardless of the fact that “ownership” is indeterminate. The next section will consider some issues that affect the viability of Fried’s proposals about how to treat WC’s claim to property, especially arising from implications about the general, institutional treatment of property.

## V. Problematic Implications

Fried’s approach to property and value has several peculiar implications. For example, her approach becomes bizarre when applied outside the context of taxation.<sup>56</sup> Imagine a scenario in which A sells a work of art to B, and B thereafter owes A money for every appreciation in its value. Intuitively, the kind of highly contingent control B has over the artwork is not the same as owning it; A is still the owner. Another peculiar implication of Fried’s argument is the following. If we commit to saying that WC is not entitled to the added value of his land, on the grounds that the builders of New York are responsible for it, this would imply that New York entrepreneurs are not entitled to much of their profit. The lucrativeness of opportunities in New York is due to the city’s ongoing development. If I open a pizza stand in Lower Manhattan, my high profits are not due solely to my effort, but also to the businessmen who employ the workers who flock to my stand at lunchtime. Does every New York producer owe every other producer the bulk of his profits? Does every celebrity who moves to New

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<sup>54</sup> Ibid.: 115.

<sup>55</sup> Popper saw that the “who should rule” misconception, and his alternative, error-correcting approach, were wide in scope. For example, he attributed the misconception to an aspect of Plato’s moral philosophy, 1945: 114, and to the question of “the authoritative sources of our knowledge,” 1963: 33-34.

<sup>56</sup> Attas, 2006: 138-9.

York owe his hometown compensation? Do his neighbours owe him compensation for the resultant increase in the value of their homes? The argument is not just peculiar in its logical implications. In practice, Fried’s redistributive demands would destroy the incentive to create surplus value in the first place by destroying its anticipated benefits and rewarding only “raw” labour.

Fried’s argument appeals to notions of fairness, intuitive to many, whose flaws are not obvious. These notions are (1) the state is entitled to its surplus value as representative of society and as “passive co-investor” in natural resources, and (2) WC does not deserve the value of the land, since it was not his labour that caused its increase. The assumption in (1) seems to be that “society” created the added value (in the form of a developed New York City)—and the government contributed by providing services—and therefore the government should retrieve it on behalf of society. But it is not true that society as a whole created that value. Those who built New York created it.<sup>57</sup> Even assuming that the government represents these individuals, it is still impossible to identify each of them—let alone to measure the contribution of each to the surplus value of WC’s land. If it is outright impossible for government (or any other body) to do something, it can hardly be obliged by the demands of justice to do it. It also seriously calls into question the notion that government is *entitled* to do it, since it is impossible to know whether redistributive actions are compensating and penalising the right people. Fried admits that it may be “too costly administratively to separate the rent component from a fair return”<sup>58</sup>—but this puts the case too mildly. In addition, it can be pointed out<sup>59</sup> that the builders of New York carried out their works voluntarily, and already received an agreed level of compensation: there is no reason to pay them for externalities, which they did not deliberately create.

An important part of the argument for taxation comes in the underlying principle of (2)—that people should not be rewarded for that which they did not work to earn. Here it is worth recalling Mill’s demand for “proportion between remuneration and exertion” and its obvious problem: how is it possible to quantify, let alone to know, the effort exerted by one

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<sup>57</sup> In a footnote, Fried acknowledges “the argument that however weak an individual’s claim to the surplus value of her holdings might be, the claim of the fictional entity, society, working through its fictional agent, the state, is even weaker” (245n39). But she does not address, let alone solve, this fundamental criticism of her own theory.

<sup>58</sup> Fried, 1995: 245n39.

<sup>59</sup> Jasay, 2002: 48.

person as opposed to another? If it were possible, it would still not be possible to do perfectly: the estimates would be subject to human error. In light of this unavoidable propensity for error, the ability to *correct* errors should be the top criterion for any institution or system of resource distribution—as I argued in the previous section. The above considerations suggest that Fried’s vision of property faces serious difficulties in fulfilling such a criterion. As for Nozickian entitlement theory, we can invoke

the various familiar social considerations favoring private property: it increases the social product by putting means of production in the hands of those who can use them most efficiently (profitably); experimentation is encouraged, because with separate persons controlling resources, there is no one person or small group whom someone with a new idea must convince to try it out; private property enables people to decide on the pattern and type of risks they wish to bear, leading to specialized types of risk-bearing; private property protects future persons by leading some to hold back resources from current consumption for future markets; it provides alternate sources of employment for unpopular persons who do not have to convince any one person or small group to hire them, and so on.<sup>60</sup>

The common feature of the items on this list is that they are all factors that encourage the correction of errors (or alternatively, inadequacies or inefficiencies)—in the use of resources, in business ideas, risk-bearing, consumption levels, and so on. It can also be suggested that property law itself has evolved in a case-by-case process of error correction, in the search for ways to internalise externalities and to clarify what counts as an externality.<sup>61</sup>

## VI. Conclusion

The ideal of rewarding people “in proportion to exertion” is not what motivated Locke’s theory of property. Even if it were, this would not be a good direction to take the already-established Lockean tradition, because such proportion of rewards is an impossible ideal. Even if it were possible to realise this ideal *imperfectly*, the aim of realising it by intervening in people’s voluntary exchanges would not be a good aim—because taxation would entrench errors in evaluating “amounts” of exertion. Private property, on the other hand, includes multiple mechanisms for error correction. Constantly changing prices correct producers’ ideas about whether an enterprise is worth

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<sup>60</sup> Nozick, 1974: 177.

<sup>61</sup> Schmidtz, 1994: 1 and 2010: 96.

pursuing, what to buy and sell and at what prices, and so on. In precedent-driven systems of law, property law is continually honed and updated. If redistributionists want to undermine these customs, they need a better reason than that Wilt Chamberlain didn't work hard enough.

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