

NOZICK and LOCKE'S

IN THE INTRODUCTION to John Locke's *Of Civil Government – Second Treatise*, Russell Kirk said:

"... we are beginning to see what Locke took for granted, that freedom of every sort is founded upon the security of private property."¹

Yes, and one of the main threats to freedom stems from our unawareness of the inadequacy of Locke's theory of property. Nozick's treatment of this subject² is a good example of this, as will become apparent. Locke's theory is stated thus:

"Whether we consider natural reason... or Revelation... 'tis very clear that God... has given the earth... to mankind in common."

It follows, therefore, that every man has an equal right to the earth and its natural produce. Locke agreed:

"... all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature:..."

But this gives rise to the problem of determining the best means of assuring the efficient use and cultivation of the earth and its produce without violating the aforesaid rights. Locke's solution:

"Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this, nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, *at least where there is enough, and as good left in common for others.*" (My italics).

That part of the last sentence is obviously essential to Locke's theory. It is called "the Lockean proviso." He relied heavily on it, and referred to it again and again. For example:

"Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, *since there was still enough and as good left; and more than the yet unprovided could use.*" (My italics).

Nozick also stressed the importance of not violating the Lockean proviso:

"The crucial point is whether appropriation of an unowned object worsens the situation of others."
"Locke's proviso that there be 'enough and as good left in common for others' is meant to ensure that the situation of others is not worsened."

"Once it is known that someone's ownership runs afoul of the Lockean proviso, there are straight limits on what he may do with (what it is difficult any longer unreservedly to call) 'his property.'"

"... an owner's property right in the only island in an area does not allow him to order a castaway from a shipwreck off his island as a trespasser, for this would violate the Lockean proviso."

But – important as is the proviso to Locke's and Nozick's theory of property – a theory which underlines most of our existing laws dealing with property and the taxation thereof – it is hopelessly inadequate. Nozick himself expressed some doubts about it:

"Why does mixing one's labour with something make one the owner of it? Perhaps because one owns one's labour, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't? ... Why should one's entitlement extend to the whole object rather than just to the *added value* one's labour has produced?"

Those are all very provocative and important questions – far too important to be ignored. Yet Nozick, after raising them, proceeds to remove them from his mind

by making the surprising statement:

"No workable or coherent value-added property scheme has yet been devised, and any such scheme presumably would fall to objections (similar to those) that befell the theory of Henry George."

The fact is that Herbert Spencer,³ faced with questions similar to those of Nozick's regarding Locke's theory of property, did precisely what Nozick asserted has never been done. He devised a "workable or coherent value-added property scheme" – one that is infinitely more workable than that devised by Locke and endorsed by Nozick.



ROBERT DE FREMERY (left) analyses *Anarchy, State, and Utopia*, a thought-provoking book by **ROBERT NOZICK**, Professor of Philosophy at Harvard. Nozick proclaims the sacredness of the rights of individuals. His analysis of the right to property is of particular significance. Nozick depends to a great extent on John Locke, whose theory of property was analyzed by Herbert Spencer in 1850. This critique of Nozick, Locke and

Spencer indicates that Nozick is a Spencerian rather than a Lockean without being aware of it.

SPENCER attacked Locke's theory of property mercilessly:

"If inclined to cavil, one might in reply to this observe, that as, according to the premises, 'the earth and all inferior creatures' – all things, in fact, that the earth produces – are 'common to all men,' the consent of all men must be obtained before any article can be equitably 'removed from the common state nature hath placed it in.' It might be argued that the real question is overlooked, when it is said, that, by gathering any natural produce, a man 'hath mixed his labour with it, and joined to it something that is his own, and thereby made it his property,' for that the point to be debated is, whether he had any right to gather, or mix his labour with that, which, by the hypothesis, previously belonged to mankind at large. The reasoning used in the last chapter to prove that no amount of labour, bestowed by an individual upon a part of the earth's surface, can nullify the title of society to that part, might be similarly employed to show that no one can, by the mere act of appropriating to himself any wild unclaimed animal or fruit, supersede the joint claims of other men to it. It may be quite true that the labour a man expends in catching or gathering, gives him a better right to the thing caught or gathered, than any one other man; but the question at issue is, whether by labour so expended, he has made his right to the thing caught or gathered, greater than the pre-existing rights of *all* other men put together. And unless he can prove that he has done this, his title to possession cannot be admitted as a matter of right, but can be conceded only on the ground of convenience."

"Further difficulties are suggested by the qualification, that the claim to any article of property thus obtained, is valid only 'when there is enough and as good left in common for others.' A condition like this gives birth to such a host of queries, doubts, and limitations, as practically to neutralize the general proposition entirely. It may be asked, for example – How is it to be known that enough is 'left in common for others'? Who can determine whether what remains is 'as good' as what is taken; How if the remnant is less accessible? If there is not enough 'left in common for others,' how must the right of appropriation be exercised? Why, in such case, does the mixing of labour with the acquired object cease to 'exclude the common right of other men'? Suppos-

'PROVISO'

ing enough to be attainable, but not all equally good, by what rule must each man choose?"

Spencer then put forward his own theory – a theory that made it possible to justify each man's right to the wealth he produced while at the same time protecting each man's equal right to the earth. His solution was simple and straightforward: he agreed with Locke that God gave the earth to mankind in common. Therefore, he said, every landholder should pay into a public fund to be used for public purposes the rental value of the land he holds.

"... in doing this, he does no more than what every other man is equally free with himself to do – that each has the same power with himself to become the tenant – and that the rent he pays accrues to all. Having thus hired a tract of land from his fellow-men, for a given period, for understood purposes, and on specified terms – having thus obtained, for a time, the exclusive use of that land by a definite agreement with its owners, it is manifest that an individual may, without any infringement of the rights of others, appropriate to himself that portion of produce which remains after he has paid to mankind the promised rent. He has now, to use Locke's expression, 'mixed his labour with' certain products of the earth; and his claim to them in this case valid, because he obtained the consent of society before expending his labour; and having fulfilled the condition which society imposed in giving that consent – the payment of rent – society, to fulfil its part of the agreement, must acknowledge his title to that surplus which remains after the rent has been paid."

The significance of Spencer's theory can not be overestimated. What he did was to show the interrelationship and interdependence of our natural rights. By acknowledging mankind's equal right to the earth, we can protect each man's right to keep and enjoy – *free of taxation*⁴ – all the results of his productive activity. By acknowledging and protecting our common right to that which mankind did not create (the earth), we can protect each man's right to that which he does create. By acknowledging and protecting that which is rightfully common property (land), we can protect that which is rightfully private property (labour and capital). If we fail to protect the first right, governments – lacking an adequate means of support – will have to violate the second right by taxing labour and capital. The two rights are interdependent.

Spencer's method was modified 21 years later by Henry George.⁵ Instead of having the Government involved in the leasing of land, George suggested having taxes on land increased to the point that they equalled the rental value of 'Nature's gift' and remove all taxes on labour and capital – *thus protecting the right to private property in that which man creates*. In other words, tax – or make common – that which ought to be common property (the rental value of land), and refrain from taxing that which ought to be private property (the wealth produced by man). Then, and only then, would we have a tax system that would be consistent with an ethical theory of private property.⁶

GEORGE'S more practical application of Spencer's theory of property⁷ resulted in a growing clamour for reform. Repercussions were inevitable.

Spencer's carefully reasoned theory of property rights were so clearly stated and so irrefutable that George's followers reproduced it in large quantities to aid the reform movement. But the man who in earlier years had said "Equity sternly commands that it be done"⁸ changed his position without giving any justification for so doing. The resulting attack on Spencer was very distasteful to him. Albert Jay Nock – in a footnote to the introduction to

Spencer's *The Man Versus The State* – commented on this change of heart:

"In 1892 Spencer published a revision of *Social Statics*, in which he made some minor changes, and for reasons of his own – reasons which have never been made clear or satisfactorily accounted for – he vacated one position which he held in 1851, and one which is most important to his general doctrine of individualism. It is needless to say that in abandoning a position, for any reason or for no reason, one is quite within one's rights, but it must also be observed that the abandonment of a position does not in itself affect the position's validity. It serves mainly to raise the previous question whether the position is or is not valid. Galileo's disavowal of Copernican astronomy, for example, does no more, at most, than send one back to a re-examination of the Copernican system. To an unprejudiced mind, Spencer's action in 1892 suggests no more than that the reader should examine afresh the position taken in 1851, and make his own decision about its validity, or lack of validity, on the strength of the evidence offered."

NOZICK presumably knew about Spencer's attack on the Lockean proviso, his tightly-reasoned theory of property, his later recantation and Nock's comments about it, because he listed Spencer's first edition of *Social Statics* and the Caxton edition of Spencer's *Man Versus The State* in his bibliography.

Yet he did not consider Spencer's original position worthy of refutation. Why not? Was it because of his (Nozick's) stated belief that "any such scheme presumably would fall to objections (similar to those) that befell the theory of Henry George"? If so, that is not adequate. That would be making the unwarranted assumption that the objections to George's theory were valid.

If that is actually what Nozick thinks, one wonders how well acquainted he is with George. Not one of George's books is listed in Nozick's bibliography. Has he ever made a serious attempt to understand George? Or did he make the mistake of accepting the verdict of other scholars whom he respected? If the latter is true, what about Nock,¹⁰ whose razor-edged mind and passion for individualism are well-known to all libertarians? And what about such intellectual giants in their field (economics) as Alfred Marshall, A.C. Pigou, and John R. Commons? They all agreed George was right *but they thought it was too late to do anything about it*. Too late? Too late for men to establish a state that protects their rights? That is what they said. But surely a philosopher cannot take such a position?

The most puzzling thing of all about Nozick's position becomes apparent when he makes the following statement, which is consistent with Spencer's theory of property and George's practical application of that theory:

"Someone whose appropriation otherwise would violate the proviso still may appropriate provided he compensates the others so that their situation is not thereby worsened; unless he does compensate these others, his appropriation will violate the proviso of the principle of justice in acquisition and will be an illegitimate one."

Is that not precisely what Spencer and George said? Spencer would have each landholder pay rent to society as a whole. George thought it would be simpler to have each landholder pay taxes equal to the rental value of the land he wished to use. In either case society – all of us – would be compensated by every landholder and no person would have his situation worsened by the private use of part of our common heritage.

How does Nozick propose to compensate the others? He says it must be done. Of course it must. But how is he going to do it? Can he suggest a simpler way than that which George suggested? And if Nozick doesn't wish to have his minimal state recover – via taxation – the rental value of our common heritage for public purposes, what

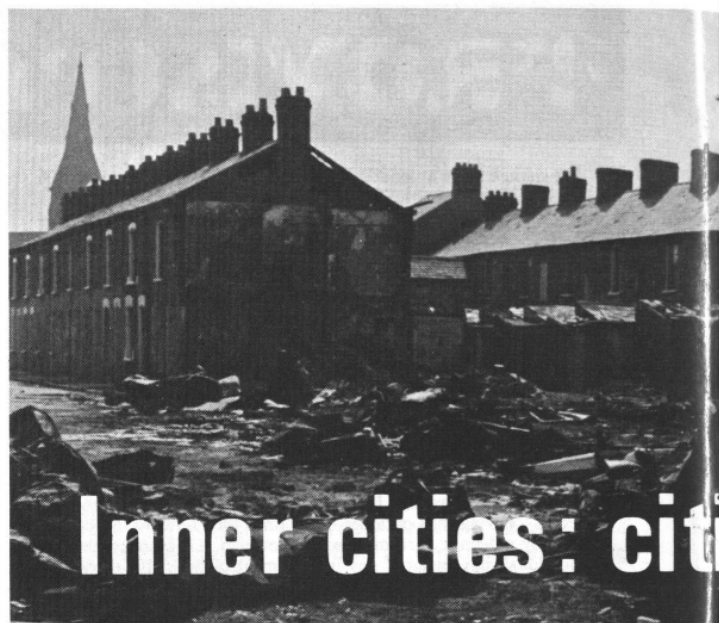
happens to our equal rights to that heritage? Will they not be violated? Spencer showed how to avoid violating those rights. If Nozick does not like the Spencer-George solution, what does he suggest as an alternative *that will still protect those rights*? How else can we make a reality of the Jefferson principle "Equal rights for all – special privileges for none"?

Consider what has happened as a direct result of our failure to protect our equal rights to our common heritage. A class of privileged landholders came into existence that are able to live off the ground rents charged others for the use of "their" land. The sums paid for the use of valuable sites can be enormous. Can anyone seriously claim that such payments are in exchange for a *service*? Does Nozick call this "distributive justice"? If not, what does he propose to do about it?

I hope I have not been too harsh in my criticism of a very small part of Nozick's book. It is a great book in spite of what I have said. I admire the thoughts of this deep-thinking individualist – particularly his repeated emphasis on the importance of not violating the Lockean proviso and his defiant attitude toward any state that violates men's rights. *That shows his keen sense of justice.* That his theory of property needs tightening is a minor thing by comparison. And I feel certain that when he re-examines Spencer – as Nock suggested – he will find the coherent, workable value-added scheme he badly needs to strengthen the philosophical foundation of his minimal state.

REFERENCES

1. John Locke *Of Civil Government – Second Treatise*, Chicago: Henry Regnery Company, 1955, p. xl
2. Robert Nozick *Anarchy, State, and Utopia*, New York: Basic Books Inc., pp. 174-182
3. Herbert Spencer *Social Statics*, New York: D. Appleton and Co., 1870, first published 1850.
4. William Penn suggested the same thing in 1693. He said: "If all men were so far tenants in common to the public that the superfluities of gain and expense were applied to the exigencies thereof, it would put an end to taxes, ...". See Penn, *Fruits of Solitude*, Part II, p. 222.
5. Henry George, *Our Land and Land Policy*, 1871, later expanded to become *Progress and Poverty* (1879)
6. For the benefit of libertarians who look upon *all* forms of taxation as legalized robbery committed by the state, it should be pointed out that a distinction needs to be made between a tax on the rental value of raw land and a tax on wealth produced by man. The former is really a *quid pro quo* – not a tax. It is a payment to all of us, through the government, for the right of exclusive use of part of our common heritage. Such a payment is necessary to prevent what would otherwise be the robbery of all citizens by a few, i.e., the private pocketing of the rental value of our common heritage.
7. To avoid any misunderstanding I should point out that George did not appropriate Spencer's theory of property. He arrived at it independently. There were also many others who arrived at the same principle long before Spencer. See George R. Geiger, *The Philosophy of Henry George*, New York: Macmillan, 1933.
8. Spencer, *op. cit.*, p. 144.
9. Spencer, *The Man Versus the State*, Caldwell, Idaho: Caxton, 1946, p. VII.
10. Nock looked upon Spencer's theory of property and George's adaptation thereof as "irrefutable". Of George's second "missionary journey" through England and Scotland he wrote: "On this whirlwind tour of incessant propaganda, he had two main objectives in view. The first was to make unmistakably clear his attitude towards all the works and ways of collectivism. He did this in so aggressive and workmanlike a style that one wonders anew at Spencer's ludicrous error in classing him with the collectivist. He preached straight individualism by day and by night, in and out of season. On the Marxians, led by the brilliant and able Hyndman, he declared open war, no quarter, and no prisoners taken. Socialists and near-socialists of whatever breed or brand went into debate with him only to die a horrible death under torture of the rack and thumbscrew. Never was he worsted, never forced to a tactical retreat. Never had the world seen such a powerful, popular exponent of uncompromising individualism, nor has it seen another like him since his day." Albert Jay Nock, *Henry George*, William Morrow and Co., 1939.
11. Nozick, *op. cit.* p. 178.



IN 1976 THERE were about 1,200 acres of vacant or unused land in the City of Liverpool.¹ It is suspected that similar situations exist in other urban areas throughout the country although the statistics are not available. The new Secretary of State for the Environment, however, intends to find out exactly how much vacant inner city land is held by local authorities and the nationalised industries. Mr. Heseltine's initiative in this matter will be welcomed by many people including the Royal Town Planning Institute which strongly advocated similar action in a draft report circulated in 1978.²

Having at last ascertained the facts about public land banks, the next step should be to value them. Privately held land should also be included. A requirement to value such land should have the effect of focusing the minds of both developers and local authority planning committees. Where conflicts of interest exist Mr. Heseltine and his officials should take swift action to sort things out. An excellent example of conflict of interests is currently being considered in London at the Coin Street public enquiry.

The Coin Street debate is about the use of a major development site on the Thames South Bank close to the National Theatre. Most of the site is owned by the Greater London Council. Numerous applications for development are being considered by the inspector. The local planning authority, Lambeth, supported by strongly voiced community action groups favour fairly low density predominantly residential, open space and community uses. The developers are seeking permission for offices, hotel and some high density residential uses. It has been estimated³ that the site-value for residential purposes is about £3 million under the present compensation code (say £15,000 a unit) while the value of commercial use of the land could be £11-13 million.

Of course, if the planning philosophy was to exploit the highest potential use of the land there would be only one logical outcome of the enquiry. Whether Mr. Heseltine will take this view remains to be seen. The case presents extremes of option for public policy planning in a field where many people feel that the decision should be left to the market place. Others raise their voices at the mere thought of such considerations being held to be paramount.