

On The Ownership of Children

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In *Justice, Gender, and the Family*[3], Susan Moller Okin criticizes libertarianism for failing to properly acknowledge the role of the gendered family in society. Okin argues that Robert Nozick's entitlement theory leads to contradiction or dystopia when applied to the unpaid work of child-bearing and child-rearing. With little more than re-interpretation, however, the entitlement theory, as it applies to children, may be reconciled with Okin's feminist perspective. Specifically, the ownership of children may be seen as an acceptable, if temporary, outcome of child-bearing.

In *Anarchy, State, and Utopia*[2] Nozick presents a libertarian argument for a minimal state in which a just distribution of property is any distribution that may be arrived at through just acquisition and transfer of property. The right of an individual to products of labor is emphasized. A State interfering with this right is only justified insofar as the interference will protect the same rights of other individuals. Any further State goal is illegitimate.

A just distribution of property, for Nozick, is any distribution which is grounded in a just history of acquisition and transfer. His Entitlement Theory lays out the rules by which acquisition and transfer may be considered just, referred to as the principles of justice in acquisition and justice in transfer. Any distribution arrived at through legitimate means by the repeated application of

these principles is, under Nozick's theory, a just distribution.

Nozick takes the principle of justice in acquisition from the theories of Locke[1]. Specifically, unclaimed property may come to be owned by investing labor into it. Two important conditions are placed on this formulation of just acquisition. First, Locke's Proviso demands that for acquisition to be just there remain "enough, and as good left in common for others."¹ Second, Locke considers otherwise just acquisitions unjust if they represent a misuse of the property. Locke argues that the law of nature which grants ownership of property only does so to the extent that the property be used "before it spoils. . . . Whatever is beyond this, is more than [the owner's] share, and belongs to others. Nothing was made . . . for man to spoil or destroy."² Justice in acquisition, then, is contingent on the investment of labor, the continued abundance of like property, and proper use of the property. The principle of justice in transfer is summarized in Nozick's slogan, "From each as they choose, to each as they are chosen."³ The right of owners to decide to whom their property is transferred takes precedence over any claim of need or right.

Okin criticizes Nozick's theory for ignoring a gendered account of individuals and their labor. Nozick's use of the gendered "he" and "man," and the more generic "individual" and "person," according to Okin, obscures the reality of work done by women. This misuse of supposedly generic terms denies the relevant differences in men and women, especially in the area of production where these differences are fundamental: in the realm of child-bearing (the production of people).⁴

Okin takes issue with the Lockean idea of ownership coming through labor. Specifically, the entitlement theory would seem to lead Nozick's theory to sup-

¹John Locke, *Second Treatise of Government* (Wheeling: Harlan Davidson, 1982), p. 18.

²Ibid, p. 20.

³Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) p. 160.

⁴Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1983), p. 76.

port the view that children are the property of their mothers. The ownership of children would be supported, under Nozick's entitlement theory, by the labor invested into child-bearing by a mother.

Okin criticizes Nozick for making the assumption, "that each person owns himself."⁵ If a person did not own himself, instead being owned by his mother (as Nozick's theory implies) or by God (as Locke argues), Locke's theory would make no sense since a person's labor would in turn be owned by someone else. According to Okin, however, Nozick's belief in a person's right to own their own body ignores the labor invested into their conception by their mother. Rather, "a woman's production of an infant," typically involving a "freely given" sperm and "no other resources than her own body and its nourishment" would seem to be a prime example of just acquisition.⁶

That ownership of children seems to find acceptance with Nozick's theory is distressing to Okin. Rather than provide the utopia Nozick proposes, Okin finds contradiction in the theory and sees the outcome as a dystopia. In concluding her *reductio ad absurdum*, Okin suggests that the libertarian position would "have no objection to a woman's producing a child . . . to keep it in a cage to amuse her . . . or even to kill it and eat it."⁷

Okin's disagreement with the logical conclusions of Nozick's principles are clearly stated. Yet just as Okin criticizes Nozick's missing arguments for his theories, Okin fails to provide any substantive support for her disagreement, only assuming her readers share her sensibilities: "It is difficult even to imagine all the absurdities of a society premised on such a principle."⁸ Despite Okin's distaste for the conclusion of Nozick's theory, there appears to be little reason not to support it.

⁵Ibid, p. 79.

⁶Ibid, pp. 82-83.

⁷Ibid, p. 84.

⁸Ibid, p. 86.

By distinguishing between autonomous people (those referred to in Nozick's theory as "person" or "individual") and children incapable of fulfilling Nozick's characteristic of being able to "have or strive for meaningful life" we may see a resolution of Okin's criticisms that does not involve rejecting Nozick's theory.⁹ By applying Nozick's theory only to those capable of satisfying the characteristic, the contradiction Okin saw in owning one's self is resolved. It is the *process* of satisfying the characteristic that should be looked to for granting children their autonomy and self-ownership.

Nozick accounts for the moral side constraints to his theory of rights by attributing to individuals characteristics which must be respected. Okin criticizes this formulation for not being broad enough to extend to infants. An infant certainly does not fall into Nozick's formulation of someone able to "have or strive for meaningful life."¹⁰ It is for this very reason, however, that infants must be interpreted as being the property of their mothers.

An infant growing into childhood, and later into adolescence and adulthood, will (it is hoped) at some point come to be covered by Nozick's stated characteristics. At the point at which the child is capable of striving for a meaningful life, ownership of the child becomes a violation of her rights. It is at this point that an individual comes to own themselves. The child becomes a *person* in the sense for which the moral side constraints were intended to protect.

The situation of just ownership over property (a child) progressing into unjust ownership over that same property (a *person*) when no change is made by the owner is unique to the case of children. Nozick deals briefly with situations in which changes outside of an owner's influence impact the owner's right to subsequently transfer the property, yet these situations *only* impact the transfer of property, not the continued holding of it. Nozick clarifies with an example

⁹Nozick, p. 50.

¹⁰Ibid.

of a person who owns a water hole in a desert: “He [may not] charge what he will if he possesses [the water hole], and unfortunately it happens that all the water holes in the desert dry up, except for his. This unfortunate circumstance, admittedly no fault of his, brings into operation the Lockean proviso and limits his property rights”.¹¹

The singular situation of injustice in merely the continued possession of property appears in the possession of children. Given that the stated goal of the libertarian State is to protect the rights of the individual, the State would seem to have an obligation to protect the rights of a child-turned-person. The owner of the child, then, would be compelled, by a respect for another’s rights, to relinquish ownership over the child or face State intervention.

Given Okin’s criticisms, this proposal may at first seem just as objectionable as Nozick’s original theory. It does, however, find itself in agreement in many respects with commonly accepted views of children in society. Currently, children are not allowed many of the rights and responsibilities that individuals (adults) are. Instead, a child’s parent assumes responsibility for, and can sometimes grant rights to the child.

As a society, it is generally accepted to withhold from children certain “rights” such as that of voting, driving, and drinking. At a specific age children are granted these rights, whether they are ready for them or not. Similarly, children who become ready for these rights and responsibilities before the legal age must wait until they reach the legal age. By the same logic, the right to self-ownership might be granted at an agreed upon age at which the majority of children are thought to be able to “have or strive for meaningful life.”

Certainly it will be objected, much as Okin does, that owning a child grants a parent the unacceptable right to “keep it in a cage,” “kill it and eat it,” or beat it. An answer to this objection may be found in the second condition

¹¹Ibid, p. 180.

placed on just acquisition by Locke. Since children are already being considered property under this theory, Locke's demand of proper use applies to children. The beating or killing of a child certainly falls under Locke's categorization of unacceptable use that will "spoil or destroy." Keeping a child in a cage also may be considered misuse, as it spoils the child and his future prospects of a meaningful life. Therefore, in circumstances of misuse of children, the State has an interest in protecting the child. At such a point, the child "belongs to others."¹²

Nozick's libertarianism appears to be in sharp contrast to Okin's feminist philosophies. Okin's criticisms of Nozick, and his entitlement theory, are well formulated, hinting at contradiction in a strict reading of Nozick. However, re-interpreting Nozick's application of his theory to "individuals" as not including children allows the entitlement theory to apply to the case of children without contradiction. While Okin may find the situation of children under this theory dangerous and appalling, most of her concern is addressed by the same passages in Locke that Nozick uses in explaining the Proviso. Therefore, the proposed re-interpretation would appear to reconcile the entitlement theory with Okin's feminist position.

References

- [1] John Locke. *Second Treatise of Government*. Wheeling: Harlan Davidson, 1982.
- [2] Robert Nozick. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- [3] Susan Moller Okin. *Justice, Gender, and the Family*. New York: Basic Books, 1989.

¹²Locke, p. 20.