

# What is justice?

egalitarianism

utilitarianism

justice as  
fairness

libertarianism





What is justice?

This question breaks down into a number of sub-questions. We can ask what it means for a **person** to be just. We can also ask what it means for an **international system** of distinct societies to be just.

Today we are going to focus on the question of what it means for an individual society — which for our purposes we can take to be a nation — to be just.

This question is sometimes called the question of **distributive justice**, because it asks about the just distribution of goods within a society at a time.

What goods are we talking about?

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One category is what we might call **material goods**. These include things like food and property and income.

But these are not the only goods. Other goods include **political rights** (such as the right to vote) and **liberties** (such as the freedom to choose where one lives or whom one marries or what job one pursues). As we will see, there are others.

It is easy enough to describe societies where the distribution of goods is unjust. What might be some examples?

Our question is: what makes some societies unjust? What is required for the distribution of goods in a society to be a just distribution? We'll look at four kinds of answer to this question.

Our first theory of justice provides a very straightforward answer to this question. On this view, what makes a society unjust is **inequality**. On this view, a just society is one in which goods are distributed equally.

This view is called **egalitarianism**.

What would it mean for goods to be distributed equally? A simple answer would be that everyone gets exactly the same goods. Everyone gets just the same food, just the same kind of residence, etc.

But if you think about it, this wouldn't be an ideal set-up. Suppose that I love broccoli and hate spinach, and you are the reverse. Wouldn't it be better for me to get more broccoli and less spinach, and for you to get more spinach and less broccoli? And yet this would seem to be unjust on our simple egalitarian view.

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The natural response to this on behalf of the egalitarian is to say that an equal distribution of goods need not mean that we each get exactly the same goods. Instead, perhaps we each should get exactly the same opportunity to buy goods. In a society like ours, this would mean that we would each get the same amount of **money** and the same **income**.

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Even if we specify that you and I get the same income at every period in our lives, we might still end up with very unequal distributions of goods. I might be very wasteful with my resources whereas you might be very clever with yours, so that after 20 years you have accumulated a large amount of resources. Or maybe my house was destroyed by a tornado, and yours was not.

The problem is exacerbated if we think about families. Suppose that you are clever with your resources and want to pass them along to your children, whereas I give my children nothing. Then it looks like your children will have much greater resources than mine from the start. Obviously over a number of generations, the difference might become vast.

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The egalitarian seems forced to say that when inequalities in wealth and income develop, we must **redistribute** goods to regain the just situation in which all have the same wealth and income.

But this leads to two different objections. The first is that this is an unacceptable restriction on the freedom of individuals. Surely, some think, we should be free to accumulate goods which we can pass on to our children.

The second is that this policy would remove any incentives for individuals to do things — like creating inventions — which might both give them greater wealth and be to the benefit of all. In this way, egalitarianism might make everyone worse off than they would be if some inequalities were permitted.

This might convince you that the egalitarian's goal of securing equality of goods across people is not, in the end, viable. Let's look at an alternative theory, which is in some ways the opposite of egalitarianism. This is **utilitarianism about justice**: the view that the just society is the one which leads to the greatest total happiness.

This view might be motivated by considerations similar to those used to argue against egalitarianism. We all have an interest in living in a society in which there are inventions and innovations which make life better for everyone. So, we should aim to have a society which maximizes goods of this kind. And wouldn't that just be a society which has the maximum amount of pleasure, and the least pain?



Here is an objection to utilitarianism:

The utilitarian thinks that the most just society is the one in which the most total goods are produced. For simplicity, we can imagine that this is the society with the highest total GDP. But it might be that the way of maximizing GDP would concentrate wealth in the hands of very few people, so that (for example) 5% of the population controlled almost all of the wealth, and most of the population lacks the income to afford basic goods like safe housing, a constant food source, and access to health care. No society like this could be just.

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The utilitarian will reply that this objection is based on a misunderstanding of their position. The utilitarian does not say that the most just society is the one with the most overall goods; it is the one with the most total **happiness**.

And, they will continue, a society like the one described above is very unlikely to be the one with the most total happiness. That is because of the phenomenon of **diminishing marginal utility**.

Imagine two people — one a billionaire, and one living paycheck to paycheck. Now imagine that we give each of them \$50,000. It is plausible that this would increase both of their levels of happiness. But would it increase both of their levels of happiness to the same degree?

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It would not. It seems that that sum of money would mean much more to the person living paycheck to paycheck.

But this can be turned into a reply to the objection we are discussing. It is very unlikely, the utilitarian will say, that a society where almost all of the goods are in the hands of just a few will be the one with the most overall happiness. That is because transferring some of those goods from the rich to those who are much less well off will increase the happiness of the latter more than it will decrease the happiness of the former.

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But, arguably, the objection can be revived in a different form. It seems possible that a society might maximize happiness by taking away the political rights of a small minority group and forcing them into slavery. Yes, they will be much less happy. But we can imagine that this change would greatly increase the happiness of the others. Maybe the others greatly dislike the minority group, and would get extra happiness from them being enslaved.

Many would be (strongly) inclined to say that this is not a just society. But it is seems to be a consequence of the utilitarian theory of justice that it would be.

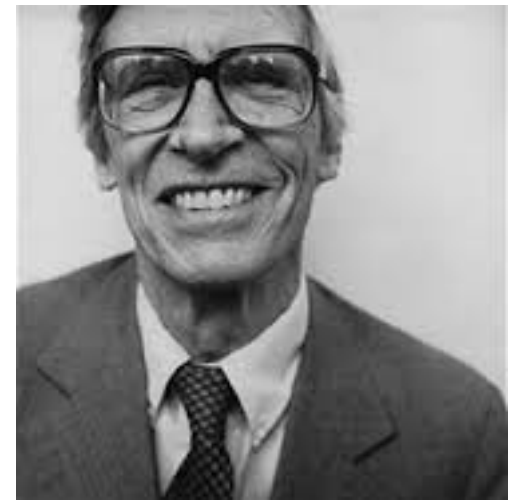
Many take the moral of this kind of case to be that what matters for justice is not just the **total** happiness in a society — it also matters how goods, and happiness, are distributed across members of that society.



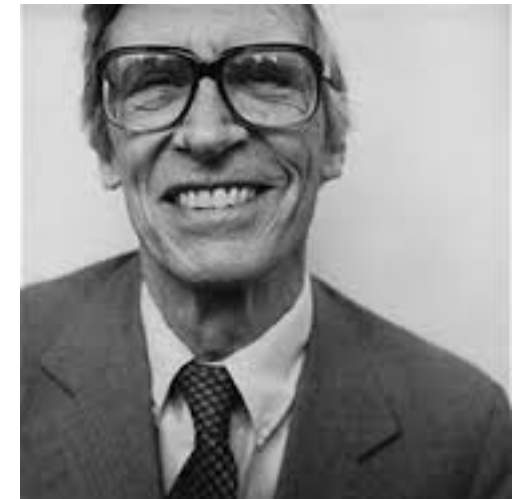
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The philosopher John Rawls put the point this way:

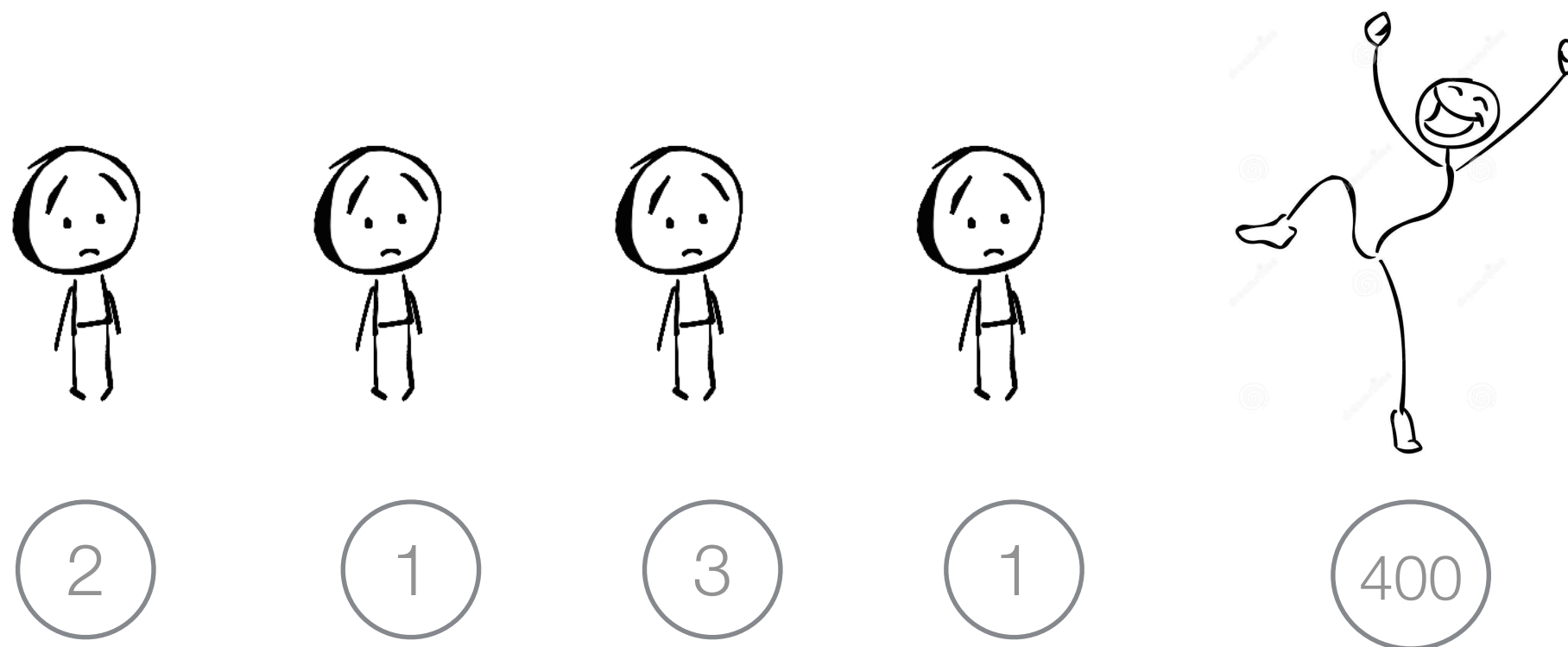
“[Utilitarianism] is the consequence of extending to society the principle of choice for one man, and then, to make this extension work, conflating all persons into one ... Utilitarianism does not take seriously the distinction between persons.”



To see what Rawls has in mind here, let's think about an example.



Suppose that we have a group of five people, whose happiness is indicated by the numbers beside them.



Now imagine that I have the chance to bring about one of two states of affairs.

Situation A



0

0

0

0

942

Situation B



100

100

100

100

500

Which one, according to the utilitarian, does justice require?

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We can even imagine a **utility monster**, who simply gets more pleasure out of everything than anyone else does. When faced with a choice between giving some good to the utility monster or giving that good to someone else, what does utilitarianism say to do?



We seem to be at an impasse. The egalitarian starts with the plausible idea that a just society would be one with an equal distribution of goods. But when we look at how this might work, we find that it seems to rule out as unjust certain activities (like using one's resources wisely to save up goods for oneself and one's children) which do not seem to be unjust.

We then turned to utilitarianism, which ignores considerations of equality and instead just focuses on the total happiness in a society. But then we saw a plausible argument that utilitarianism goes wrong in ignoring the way in which happiness is distributed — which seems to push us back in the direction of egalitarianism.

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One answer to this question is provided by the American philosopher John Rawls, who presented a framework for thinking about distributive justice. That framework begins with a kind of thought experiment.

Imagine that you were behind what Rawls called the **veil of ignorance**.

You are imagining a number of possible societies, where goods are distributed in a variety of ways. But you do not know which person in those societies you will be. You do not know whether your parents will be rich or poor. You do not know whether you will be born with a disease or not. You do not know whether you will be intelligent and good at various jobs, or not. You do not know whether you will be a man or a woman; you don't know whether you will be a member of a racial or religious minority or not. Rawls called this the **original position**.

Rawls then asked: if you were in this original position, what kind of society would you choose to be placed into (not knowing which person in that society you would be)?

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Our answer to this question, Rawls thought, will tell us what the just society would be. The just society is the one that we would choose if we did not know where in this society we would be.

This approach to thinking about justice is called **contractualism**. The idea is that the fairest society is the one we would choose if we eliminated knowledge of our position, thereby eliminating our self-interest in choosing a society which benefits our group over another group.

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Rawls' answer to this question has two main parts. First, Rawls thought, we would pick a society in which everyone was guaranteed certain basic rights and liberties. These would include freedom of thought, freedom of speech, freedom of association, the right to vote, and the the right to hold political office. No one would choose to live in a society in which they were denied these freedoms; and if you are in the original position (and hence don't know where in the society you will end up) you will therefore choose a society in which everyone has these rights. This is Rawls' **first principle of justice**.

What would we choose about the distribution of goods? Would we, as the egalitarian thinks, choose a society in which these were all distributed equally?

Rawls thought not. After all, it is plausible that some societies which permit some inequality will be such that even their worst off members are better off than people in a society in which goods are distributed equally.



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So now imagine two societies. In society A, everyone is equally well off. In society B, there is some inequality, but even the people with the least goods in society B are better off than everyone in society A. If you were in the original position, which kind of society would you choose? Rawls thought: you would choose B.

This, Rawls thought, rules out egalitarianism. But this does not answer the question of when and for what reasons inequality should be allowed to exist. To answer this question, we again return to the original position.

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Rawls had two main thoughts about inequality. The first is that, if there is to be inequality, all must be given an equal chance to be one of the people who is better off.

Imagine, for example, a society in which only men get to be better off. Rawls thought that in the original position you would not choose such a society, since you would not know whether you will be a man or a woman, and hence won't know whether you will be in the group that gets the chance to improve its lot in life.

So, Rawls thought, we would choose a society in which inequality results from doing things which everyone has the opportunity to do. So we would choose a society where everyone has a kind of **equality of opportunity**.

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How much inequality could exist in the society we would choose in the original position?

Even if you know that you will have equal opportunity in this society, you don't know in the original position whether you will be one of the people who has the talents to take advantage of this opportunity. So, Rawls thought, you would be especially concerned that the people who are worst off in this society have as many goods as possible.

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So, Rawls thought, you would choose a society in which inequalities must be to the greatest benefit to the people in the society who are worst off.

Rawls called his theory **justice as fairness**. It can be stated in outline form like this:

### **Justice as Fairness**

- (1) Every person has basic rights and liberties.
- (2) Any inequalities must (a) come from positions to which everyone has equal opportunity and (b) be to the greatest benefit to the worst off members of society.



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These are Rawls' **two principles of justice**.

What happens if the two principles come into conflict?

Rawls thought that in conflicts of this kind, principle (1) takes priority over principle (2). This is again justified by what we would choose, if we were in the original position.

What happens if (2a) comes into conflict with (2b)? This might happen if we could help the worst off by removing equality of opportunity.

Rawls thought, for similar reasons, that in such cases (2a) must take priority over (2b).

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This theory diverges from both egalitarianism and utilitarianism. It diverges from egalitarianism by licensing some inequality. It diverges from utilitarianism two ways: by guaranteeing basic rights and equality of opportunity, and by limiting the inequalities that can arise to those which help the worst off members of society.

Let's look at some more concrete examples to illustrate the differences here.

Imagine that you have an idea for a company, and the company is wildly successful, making you very well off. But imagine that the company produces goods which benefit all, and provides good jobs which benefit people who would otherwise be worse off. This is ruled out by egalitarianism, but not by Justice as Fairness.

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Imagine that instead you create a company which makes you and some others very well off, bringing you and them enormous happiness. But it does not benefit society in any appreciable way, and makes some of the worst off people in society even more worse off. (Maybe your company pollutes the area in which they live.) This could, in principle, be perfectly fine on a utilitarian theory of justice, but is ruled out by Justice as Fairness.

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Rawls' theory has a number of concrete implications for how the just society should be organized. To list just some examples:

Everyone must have access to an education good enough for them to have access to the best jobs (since otherwise (2a) would be violated).

Everyone must have the right to vote and hold office (since otherwise (1) would be violated).

The rights of minority groups cannot be infringed, even if doing so would lead to higher average well-being in the society.

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More controversially, Justice as Fairness would seem to license reasonably strong principles governing the redistribution of wealth.

For example, suppose that you start a company which brings benefit to many, including good paying jobs which make many people better off. Suppose that the company makes you \$1 million. Is your possession of this money of the greatest benefit to the worst off members of society?

Plausibly, keeping some of the money would be. First, you might use some of the money to help the business grow, bringing more benefits to others. Second, the ability to keep some of the money would provide an incentive for others to start businesses, which would bring further benefits.



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But Justice as Fairness would seem to rule out the kind of acquisition of wealth that we find in modern capitalist societies. Jeff Bezos, for example, is worth about \$200 billion. If, say,  $3/4$  of that wealth were redistributed to give each of the 35 million Americans who live in poverty a check for \$4000, would that remove the incentive for others to start profitable companies? That seems doubtful. Would it prevent Bezos from using his money to start other enterprises? Again, that might seem doubtful.

Of course, modern capitalist societies do engage in wealth redistribution with, for example, income tax. But Justice as Fairness would seem to license much more wealth redistribution than we find in most modern capitalist societies.

Other controversial consequences of Justice as Fairness involve, not wealth redistribution, but equality of opportunity.

For example, a plausible case can be made that attending an elite university substantially improves one's access to jobs which will enable one to acquire more goods, as well as one's access to political offices of various kinds.

But a plausible case can also be made that attendance of elite universities is not equally available to all in our society.

That would suggest that our educational system conflicts with part (2a) of Justice as Fairness.

These are controversial consequences of Justice as Fairness, but need not be seen as objections to it. Let's turn now to an important objection to Rawls' theory, which will help introduce our fourth and last theory of justice.

In fact, this argument can be seen as an objection to all three of the theories we have discussed so far. The argument, which has come to be called the Wilt Chamberlain argument, is due to Robert Nozick.

Suppose that at some time  $t_1$  the distribution of goods in a society is just (according to whichever theory of justice you favor). Now suppose that, at  $t_1$ , 100,000 people decide that they are willing to pay \$25 to see Wilt Chamberlain play basketball.

By time  $t_2$ , they have all paid Wilt this amount, so that he now has an extra \$2.5 million. According to any of the theories we have discussed, the distribution of wealth at  $t_2$  is now unjust. So it must (to maintain justice) be redistributed.

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After all, we stipulated that at  $t_1$  the situation was just. That means that, at  $t_1$ , all of the people were entitled to the money that they have.

But, if they are entitled to the money that they have, they are surely entitled to use it as they like. They decided to give the money to Wilt Chamberlain. Where is the injustice in that?

If it is unjust for them to decide to give the money to Wilt Chamberlain, then the money must not have been theirs to decide what to do with in the first place. But it was! After all, we stipulated that the situation at  $t_1$  was just.

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All of the theories we have discussed are what are called **patterned** theories of justice. They try to explain what justice is by (at least in part) describing the just pattern by which goods should be distributed.

The problem is that, no matter what pattern one describes, it looks like we can come up with an example like the above in which an apparently just transaction will move society from a situation which fits the pattern to one which does not.

But it might be hard to see how we could construct a theory of distributive justice which was not a patterned theory. What would that look like?

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On this kind of theory, we don't check whether a society is just by seeing whether it fits a particular pattern of distribution. Instead, we look at its history. A society is just if the distribution of goods in that society was derived from a series of just acquisitions of goods. Of course, the libertarian must explain what a just acquisition is.

Nozick recognized two kinds of just acquisitions. The first is an acquisition of a good from someone else who previously owned it. This kind of **transfer** of a good is just in case (roughly) the transfer doesn't involve any fraudulent misrepresentation of the good, and is done according to the terms of exchange agreed to by both parties.

But of course that can't be all that there is to the theory. Many goods which we own were, at some time, not owned. For example, I own a house on some land which was, at one time, unowned. How does one justly acquire a good which was not previously owned?



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Nozick adapts an idea which goes back to the 17th century English philosopher John Locke.

The idea is that we are all the owners of our selves and our talents, and hence the owners of our own labor. Sometimes, by using our labor, we can improve the value of some aspect of the (previously unowned) material world. If, in doing so, we improve the value of that thing, we have “mixed our labor with it” and for that reason it becomes ours. Let's call this an **appropriation**: it is a transfer of a good from unowned to owned.

We can then give the following theory of distributive justice:

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To see the difference between this sort of theory and something like Justice as Fairness or Egalitarianism, consider the practice of taxation for the purposes of redistribution of wealth.

This is easy to justify for the proponent of Justice as Fairness or Egalitarianism; it might just be a means to achieving the a distribution of goods which accords with Rawls' two principles or which makes things more equal. That is, it might make the distribution of good closer to the ideal pattern.

But libertarians don't believe that there is an ideal pattern. If I do not consent to the relevant redistributive taxation scheme, then the government taxing me and giving some of my goods to others is an unjust transfer. It is a kind of theft.

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Let's close by considering two questions for the libertarian.

When is an  
appropriation  
just?

Libertarianism as stated would seem to leave open the following possibility: someone builds a small raft and sets it afloat in an unowned portion of the Pacific Ocean. They thereby use their labor to improve (slightly) the value of the ocean, and claim ownership of all unowned portions of the Pacific Ocean for themselves.

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Or someone might install a powerful air purifier Notre Dame's campus, and declare ownership of all air circulating on campus. Could they justifiably require a fee from anyone breathing the air?

Examples like these suggest that there must be **some** constraints on appropriations of previously unowned things. But what should these constraints be? This question has proved difficult to answer.

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Here's the second question for the libertarian:

What is the  
remedy for an  
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Suppose that we live in a society in which the distribution of goods is based in part on unjust appropriations and transfers. This is of course our present situation; to pick two of the most obvious examples, the policy of Indian Removal and slavery both involved massive transfers of goods without consent, and so were (by the libertarian's lights) unjust.

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But how, according to the libertarian, should we fix the situation? We can't fix it by trying to realize the ideal distribution of goods — libertarians don't believe that there is such a thing.

Nozick recognized that his theory was incomplete in this way, and said that the libertarian should provide an extra principle — a **principle of rectification** — which would lay out the just way to handle a society in which goods have been distributed through unjust means.

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It is very natural to think that the answer to this question is that goods should be redistributed in a such a way as to compensate people, or descendants of people, whose goods have been unjustly taken.

Something like this principle seems very plausible when one considers recent local unjust transfers. If someone steals \$500 from me, it seems plausible that part of the way to remedy this injustice is to give me back the \$500 which was unjustly transferred from me to the thief.

But if this is plausible for recent local unjust transfers, it is not easy to see why it should not also be the way to remedy broader unjust transfers in the more distant past.

If you are attracted to libertarianism but this does not seem plausible to you, you should think about what sort of principle of rectification you think would be a plausible addition to the theory.