

# Robert Nozick's Entitlement Theory of Justice, Libertarian Rights and the Minimal State: A Critical Evaluation

Salahuddin A\*

Sreerampur, South Surma, Sylhet - 3100, Bangladesh

## Abstract

Robert Nozick in his famous book *Anarchy, State and Utopia* (1974) responded to, in part, John Rawls' distribution theory as articulated in the latter's celebrated book *A Theory of Justice* (1971) with the former's entitlement theory. Nozick calls Rawls' distribution theory a patterned theory. To Nozick, no distribution is just and there should not be redistribution at all. Redistribution infringes individual's rights which, according to Nozick, trumps all other considerations and subject matters. In Nozick's view, individual rights are all that matters and that there is nothing such as a society or community or collective well-being. In line with this course arguments, Nozick falls just short of supporting anarchy but the all-encompassing individualism that he propagates only allows for the existence of the minimal state which he regards as the only legitimate form of state which does not violate individual's rights. Nozick's theories blatantly reject the idea of any more extensive form of state such as those propagated by Rawls which calls for distributive justice i.e. through taxing individuals and redistributing them. This article will shed light particularly on entitlement theory of justice, libertarian rights, individualism and the minimal state and evaluate them from a critical perspective.

**Keywords:** Justice; Rights; Anarchy; Individualism

## Introduction

The American political philosopher Robert Nozick, a libertarian liberal, best known for his first book *Anarchy State and Utopia* published in 1974 [1]. Nozick is an advocate for eighteenth century individualism and nineteenth century capitalism. He is not an anarchist but being influenced by the individualist-anarchist Murray Rothbard, proposes a form of radical individualism within a state structure. To Nozick, "the minimal state is the most extensive state justified" and if the state were to seek wider role than the narrow function of providing protection against force, theft, fraud and enforcement of contracts then it is violating individuals rights.

Central to Nozick's work is individuals' rights which are evident from his audacious statement on the preface to his book that "individuals have rights and there are things no person or group may do to them (without violating their rights)". Nozick, in particular, is critical of John Rawls, arguably the most important political philosopher of the twentieth century whose book, *A Theory of Justice* [2], generated more discussion and commentary than any other book of political and social theory published since World War II. Central to Nozick's criticism of Rawls' theory targets the end-result oriented methods, but the theory of redistribution, in particular. Nozick absolutely rejects the idea of redistribution and maintains that it contradicts the idea of self-ownership. He further stresses that redistribution makes others "a part-owner of you giving] them a property right in you". As an alternative to Rawls' theory, Nozick suggests his entitlement theory. One of the main problem with Nozick's arguments is the "abstractness of the individualism they presuppose" and individualism, according to Lukes, is a "distorting lens that satisfies the intellect while simplifying the world". Nozick attempts to isolate people with individualism which is contrary to the fact that "people are constituted by the societies into which they are socialised and live". This article will explore Nozick's theory of justice, justice in holdings, individual rights and the minimal state as to whether these concepts can stand as universal theory taking into account the surrounding academic literature.

## Rawls' Theory: "Justice as Fairness"

As Nozick's *Anarchy State and Utopia* [1], in part, is a response to

Rawls' *A Theory of Justice* [2], it is imperative to consider Rawls' theory first before moving on to Nozick's. Central to Rawls' *A Theory of Justice* was the idea of "justice as fairness" which sets out substantively a version of democratic social justice. Rawls argues in favour of a more extensive state where the government is obliged to provide citizens with access to the needs that are basic to human life and also to look after the welfare of those who are least well off. This includes state provided welfare education and health services funded through taxation. By "justice as fairness" Rawls means, the set of principles that would be selected by persons in the "original position" from behind a "veil of ignorance" to the basic structure of society [3]. "According to Rawls, two principles of justice would be selected in the original position:"

- a) "Individual citizens are entitled to an equal right to the" "most extensive scheme of basic liberties compatible with a similar scheme of liberties for others;" and
- b) "Social and economic inequalities are to be arranged so they are both:
  - i. Reasonably expected to be to everyone's advantage; and
  - ii. Attached to positions and offices open to all".

Rawls' proposition of justice as fairness represented from the social contract theory which he defends as the most reasonable and preferable notion of justice. His main theme is distributive justice: a concern with how goods and freedoms should be shared in society. To Rawls a distribution is just "if everyone is entitled to the holding they possess under the distribution". He suggests that it is sometimes justified to treat

\*Corresponding author: Salahuddin A, Sreerampur, South Surma, Sylhet - 3100, Bangladesh, Tel: +880 1744524135; E-mail: [asifsalahuddin@live.com](mailto:asifsalahuddin@live.com)

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people unequally where unequal treatment results in improvements for everyone. Therefore, it would appear from the above that Rawls is concerned with the benefit and welfare of the society as a whole and in line with achieving this aim taxation is a legitimate means for the government [4].

### Minimal state: The only justifiable state

To begin with, Nozick seeks to justify the minimal state against the individualist anarchist. He opposes the arguments for a more extensive state and their idea of distributive justice [5]. To Nozick, the only justifiable state is the minimum state which does not violate individual's rights as its functions are limited to protection of individuals against force, theft, fraud and enforcement of contracts. He sets out two requirements for a state: (i) an appropriate monopoly of force in a given territory; and (ii) the provision of protection by the state within its geographical boundaries.

In the minimal state when disputes arise and enforcement of law is required, Nozick hypothetically argues, that people might form "mutual protection associations" in order to defend themselves and to exercise their right to rectification [6]. Under such an arrangement, all members of the association are "on call" to defend and enforce the rights of other members meaning that everyone is always "on call" and any member may call upon any other member or members for protection. This begs the question if everyone in real world would be ready to be "on call". One does not have to be a cynic to dispute with this notion but a mere depiction of human nature in any context would serve to disagree with this imaginary Good Samaritan role which is rather unscrupulous of human nature and behavior. Nozick contends, initially there may be several protective associations within the same geographical area. When clients from different agencies enter into dispute and the agencies cannot agree on how to resolve the matter, they too will enter into conflict. The result of such conflict will be that over time a natural monopoly will occur. Eventually there will be only one protective association within a geographical area: the "dominant protective association" [7]. The evolution process of the "dominant protective association" invites criticism such as Nozick is calling for conflict rather than providing a pragmatic solution. The theory also fails detail whether this dominant protective association would be private or public entities and whether it would be charging people any fee or if it is free of cost. Ironically, Nozick does not consider how the state comes about. He opines, self-interest in his state of nature will ultimately give rise to the state. A critical mind would stop short of acceding to this claim as to how self-interest could give rise to a state, if at all. Even if one were to defer to this involuntarily for the sake of an argument, would it not lead to chaos and conflict similar to the events from which the dominant protective association evolve albeit a much greater magnitude of chaos and conflict would ensue prior to the evolution of the state which Nozick indicated.

### The entitlement theory

Having disregarded the theory of distributive justice, Nozick, influenced by Locke, puts forward his "entitlement theory" of justice. According to Nozick:

"If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings. (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding. (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding. (3) No one is entitled to a holding except by (repeated) applications of 1 and 2".

To put it simply a person's holdings are just if acquired through (1) just original acquisition or (2) just transfer or (3) through rectification of injustices in the two senses.

**Justice in acquisition:** "Justice in acquisition" maintains that a person who acquires a holding justly is entitled to that holding, i.e. how things that were previously not owned by anyone can be acquired by an individual [8].

According to Nozick, the initial act of appropriation confers unlimited rights of use and disposition. When asked how the bearers obtain their property, Nozick answers, it is a historical process. He struggles to define in specifying precisely which of several initial methods of initial acquisition is to be preferred. His inclination to Locke's labour theory of property acquisition is evident. According to Locke, a limit had to be placed upon the amount of resource that could be extracted from the nature by anyone, "enough and good" had to be left for others to secure. Nozick attempts to reformulate this limit in terms of a certain welfare baseline. He, however, fails to mention where this baseline needs to be fixed. The starting point that Locke made was that the earth is a common property whereas Nozick attempts to explain how what is unowned can become private property. One may strongly argue that this acquisition principle is not fitting in this modern technological world; and it seems to justify earlier injustices or at least apply to highly disputable methods [9].

**Justice in transfer:** According to "justice in transfer," a person who acquires a holding justly in transfer from another who is entitled to that holding is entitled to that holding, i.e. how ownership and possession of property can subsequently be transferred from one person to another, provided that the transfer is just and the individual is entitled to the holding (purchase, gift and so on) [10]. Nozick, most evidently, has failed to give an exact definition of what he actually meant by the term "justice" in "justice in transfer". Is one to take the general meaning of justice or is it that a special meaning applies as far as it concerns "justice in transfer". There may be instances of transfer where one party believes it was a just transfer whereas the other party in the transfer feels it was unjust on them and that they would not have conceded to the transfer had they not been the weaker of the two parties given the increasing influence of the dominant party to keep everyone quiet. Nozick falls far too short to provide a solution for such an instance [11].

**Justice in rectification:** Justice in rectification involves past injustices arising from failure to fairly apply the first two principles properly that can be put right, i.e. failure to apply principle (a) or (b) can be rectified using this principle [12].

Even the briefest survey of human history reveals that the current distribution of property is as much the consequence of theft and conquest as it is the product of libertarian entitlement. Nozick explains, historical entitlement is subject to the principle of rectification which attempts to use historical information to reproduce "what would have occurred... if injustice had not taken place". While many injustices can be traced, many others are buried and forgotten and hence the principle has very limited application unless it is assumed that the least well off are most likely to have been the victims of historical injustice. Nonetheless, an attempt to rectify past injustices can affect 'innocent' owners and undermine the certainty of legal title, suggesting that claims for rectification might be barred beyond a stipulated period of time. A commentator argues that the rectification principle is almost ridiculous hit in Nozick's own theory-it could lead to dictatorship and to very end-result determined societies. It may, therefore, be submitted that with its

temporary application, the rectification principle lacks the criteria to be a universal one [13].

Nozick's theory on justice in holdings attracts numerous questions such as whether the term justice here is meant only in the legal sense or if it includes other forms of justice i.e. social justice, economic justice among others. This begs yet another question whether the meaning of justice remains unchanged throughout the entitlement theory and its three sub-divisions or whether the meaning of justice is specific to every sub-heads of the entitlement theory. It would appear from the above that Nozick may have attempted to redefine "redistribution" and replace it with "entitlement theory," unfortunately it has given rise to a lot of vexed questions without adequate answers.

## Rights as Trumps

Nozick, in general, contends that people are born with fundamental individual rights. These individual rights are paramount and that there is no need for a system to achieve moral equilibrium. He rejects all end-result theories, i.e. distributive theories such as Rawls theory of justice. Nozick rather adopts the 18<sup>th</sup> century philosopher Immanuel Kant's principle of "individual inviolability" that cannot be violated as a means to achieve particular ends, meaning the significance of each person's possessions of self-ownership is that people should not be used as resources or a means of achieving some end and this is exactly what Rawls proposes to do, Nozick criticizes [14]. It is wrong to treat people as if they are merely of instrumental worth or to sacrifice one person for another. He claims that the rights of others determine constrains on our actions.

According to Nozick, the "classical liberal" view is that the right of people to control their bodies and actions is a property right, the right of self-ownership. He further argues for his entitlement theory where it is permissible for people to have and hold property on however an unequal basis provided it was acquired legitimately in the first place. Thus, if someone acquired a holding justly, any interference with his holdings i.e. via imposition of tax, would violate his rights. Nozick claims, a redistributive system invades that right making others "a part owner of you giving them a property right in you". Thus, a redistributive system institutes partial 'ownership by others of people and their actions and labour'. Consequently, he argues that taxation of labour income is "on a par with forced labour [15]".

## Is imposition of taxation tantamount to forced labour?

Abramson points out, Nozick's claim demonstrates its weakness as he notes that some persons find "absurd" the claim that "taxation from earnings of labour is on a par with forced labour...taking the earnings of n hours is like taking n hours from the person; it is like forcing the person to work n hours for another's purpose [15]". He further emphasises on the point that labour considerations are not forced by the need to earn so that one can pay tax rather one earns and pay whatever tax turns out to be due. Labour precedes taxation, one labours and pays tax and not the vice versa. Thus, Nozick's claim that taxation is on par with forced labour is dismissed. To Elliot, Nozick's admission is revealing and in line with that he claims that Nozick himself is aware that his assertion is unconvincing and that "Nozick signals that he is not prepared to unyieldingly support his theory that taxation from earnings of labour is on a par with forced labour".

## Rawls' versus Nozick's distribution theories

In criticism of Rawls, Nozick argues that Rawls in his theory, "justice as fairness," invokes a group in his original position instead

of individuals. Nozick disregards Rawls' theory as he thinks the latter's theory favours the lower spectrum of the society and causes inequality in terms of the average gains made by different people as less endowed gain more than the talented [16]. He states that Rawls' original position only lets one to consider the results of distribution but not how it came about. Rawls' theories of redistribution or "patterned" theories as Nozick calls it, he believes, it involves interference with individual liberties. On the contrary, Nozick proposes distribution according to intellect and as such the more the intelligent the more he gets. Any group or individuals that control resources and allocate shares interfere with the recipient's lives.

As regards Nozick's strongest of oppositions against redistribution, many philosophers and academics are very critical of him. The very person who Nozick is influenced by, Locke, suggests that taxes should be levied in "proportion" to the property protected by the state. According to Adam Smith, "the subjects of every state ought to contribute towards the support of the government... in proportion to the revenue which they subjectively enjoy under protection of the state". Epstein, a libertarian, endorses the idea of broad-based or comprehensive income tax on the basis that "everything of value protected by government is subject to taxation". In consequence, it appears that libertarian principles can be relied upon to support all major taxes. Then why not Nozick's?

However, Stein argues that Nozick disregards any consideration of social utility in Anarchy State and Utopia [1]. Stein contends Nozick's redistribution as immensely burdensome, not providing very great benefits and that he would object to redistribution even if it relieved enormous suffering among the poor and imposed only the most negligible of burdens on the rich. He further criticises Nozick pointing at his admission in the preface to Anarchy State and Utopia that he "does not present a precise theory of the moral basis of the individual rights," and that Nozick does not tell the origin of these stringent rights on which he relies upon [1]. Since Nozick is willing to find hidden elements in opposing theories, he cannot, in principle complain when others do the same to his theory and so Nozick's failure to mention the origin of these stringent rights may open the door to an argument that the appeal of those rights is ultimately not based on considerations of aggregate well-being.

It is important to recognise that taxes may be collected both to redistribute economic resources and to finance public goods and services; this is a dual role that public finance theory has long recognised by distinguishing between the "distribution function" and the "allocation function" of the public sector. Nozick, therefore, is mistaken to have made redistribution the only basis to refute taxation [17]. Christian criticises Nozick for he does not consider "alternative systems of property rights...that would make certain persons better off than under a system of full private ownership". Nozick is so opposed to redistribution that a commentator questions whether Nozick is prepared to see people starve to death and obviously so as it appears, if the only alternative is redistribution. An argument can be put forth in the sense that Nozick reaches universal conclusions from individual motivations without fully considering possible universal implications and that he too easily reaches the point of arguing for absolute rights for freedom of action and from coercion, yet with minimum safeguards for the community.

## Enforcement staff in the minimal state

The reaction of other philosophers and academics on Nozick's ideas may well be considered now. Christie [18] argues that the members of the enforcement staff in Nozick's minimal state who must assume



some obligations which might be considered to slave labour, who are fee to submit to the increased obligations required for the functioning of an efficient enforcement staff. He further argues, what if not enough people volunteer to join the enforcement staff? Should the state resort to some form of compulsory service? If this is done, would not the very legitimacy of the minimal state be threatened? Christie states that it would be completely undermined [18]. What is more, Patterson maintains that unless everyone pays for the protection provided by the state, those who pay are being forced to subsidise the protection received by others. If such payments are required from people who can afford to, would it not be considered a "patterned distribution" referred by Nozick (as above)? This is not the minimal state that Nozick envisaged for, did he?

### **Nozick's individual rights: Do they stand?**

Elliot finds Nozick's notion of individual rights arbitrary. His conception of individual is that of a being conduced off from others, with the area from the individual to the perimeter of the cordon representing inviolable individual rights. He refutes the notion of inviolable individual rights as being vulnerable to challenges posing extenuary circumstances justifying other individuals disposing of the objects in a specified way regardless of the owner's lack of consent. Furthermore, it would appear from Nozick's assertion that individual rights are derived from property rights but not vice versa. One could strongly argue that Nozick's rights are founded on property rights overlooking other fundamental rights such as privacy, freedom of expression, freedom of speech and among others [8]. The same objection can be made to Nozick's theory as that Bernard William has made of utilitarianism that it treats human beings as ciphers-as conduits through which actions are taken without moral content. According to Hart, the only moral wrong in Nozick's world is the violation of rights Hart opines that the results of Nozick's theory would in fact be similar to those of utilitarianism where few enjoy happiness and the majority very little.

### **Entitlement view and the financial system in the minimal state**

Furthermore, Nozick asserts that "on an entitlement view (production and redistribution) are not two separate questions. Whoever makes something ... is entitled to it". Elliot rejects such assertion and in response asks "can it be that those who are incapable of producing anything because of physical infirmity, mental impairment or whatever they are entitled to nothing? He who cannot produce shall not live?" To Nozick, people own themselves fully. Stein sarcastically remarks, it therefore follows that people can sell themselves to slavery, possibly in exchange for food, and the state should enforce those contracts. Stein contends that Nozick fails to confront squarely the suffering that possibly could exist under his system, as result of starvation, slavery and horrific debt collection practices. Regarding loans, Nozick would accept agreements in which the creditor has the right to do inhuman things if the debtor does not or cannot pay. Perhaps in Nozick's illusory world, the Shakespearean Shylock's claim to take a pound of flesh from Antonio would be legitimate. One could imagine what sort of financial system would be employed should Nozick's financial system come into force. That would mean the rise of individualism and the fall of humanity to a bizarre, irrational and unprincipled financial and economic system that only favours the rich individuals, corporations and such other entities.

### **Call for libertarian rights: To what extent does it make sense?**

According to Nobel laureate Amartya Sen, Rawls does not support

unconditional property rights as a part of a libertarian entitlement but Nozick does. To Nozick, for a just society, individual liberties, including the rights of property ownership, free exchange, free transfer and free inheritance must be guaranteed and the institutions are needed for these rights are essential requirements, for the reasons of justice. Unfortunately, Nozick is ready to leave matters in the hands of these institutions rather than calling for any revision based on assessment of outcomes. Sen argues, "what if the collectivity of what are taken to be just institutions generate terrible results for the people in that society without actually violating their immediate concerns, such as the guarantee of libertarian rights". It can be shown that economic and political forces that generate even gigantic famines can work to yield that result without violating anyone's libertarian rights. Sen maintains Nozick's recognition of the problems that his system could lead to where he proceeded to make a possible exception to the case in which the system advocated by him, with complete priority of libertarian rights, would lead to what he called "catastrophic moral horror [19]". Nozick does, however, leave the question open: the question of whether these side constraints reflecting rights are absolute, or whether they may be violated in order to avoid "catastrophic moral horror" and if the latter, what the resulting structure might look like, which Nozick largely hopes to avoid. Nozick puts overreaching emphasis on the self-evident nature of the importance of liberty. Regrettably, "Nozick may not lean towards equality of utility (as James Meade does), or towards equality of holdings of primary goods (as John Rawls does), and yet Nozick does demand equality of libertarian rights-that no one person should have any more right to liberty than anyone else". Nozick's individual rights conception is a fallacy of an illusory individualistic world which is in a stark contrast with the real world we live in consisting of society, community and a greater being, the state. Although Nozick conceded to the notion of a minimal state later rather than opting to be inclined to anarchy, it gives rise to the question whether any action done by the minimal state against the individual would not be equivalent to encroaching the "inviolable individual rights" that Nozick himself advocates for? Sen aptly articulates, "inflexible insistence on exacting and highly demanding rules does not give the idea of justice its due".

### **Conclusion**

In conclusion, Nozick's obsession with his individual rights might bring him and some others egocentric pleasure at the expense of many, probably the community, which is non-existent in their world consisted only of "individuals". To Nozick, talking about the "collective good" of human beings is merely to obscure the fact that an individual is being used to benefit another. Nozick characterises rights to liberty in terms of giving the individual control over certain decisions, and each person may exercise his rights as he chooses. But there is no guarantee of any outcome - it is only a right to the choice of action. Evidently, Nozick's error lie in his false assumption of prioritising conditions of freedom for single individuals rather than considering the conditions of freedom for all individuals i.e. the community as a whole. It is baffling that Nozick fails to perceive the fact that if one is discussing the well-being of the society or the community as a whole, the goodness and positivity engulfs "all individuals" in that society or community. Such erroneous assumptions may have led him to oppose redistribution theories, especially of that of Rawls' theory which aims at welfare of the society as a whole without neglecting the poor and underprivileged. It is, therefore, submitted that such individualist-capitalist institutions are not preferred in a world which is already stricken with hunger, poverty, famine and destitution.

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