

# ROBERT NOZICK'S ENTITLEMENT THEORY OF JUSTICE: A CRITIQUE

Osita Gregory Nnajifor\*

&

Chinedu Stephen Ifeakor\*

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## **Abstract**

The burden of this paper is to critique Robert Nozick's entitlement theory of justice which was drafted as an argument against traditional distribution theories. Nozick's theory of justice claims that whether a distribution is just or not depend entirely on how it came about. By contrast, justice according to equality, need, desert or Rawl's Difference principle depends entirely on the "pattern" of distribution. He objected to these patterned distribution due to their deficiencies. To this he propounded the entitlement theory which is primarily concerned with respecting people's rights, especially, their rights to property and their rights to self-ownership. Entitlement theory of justice involves three ideas; justice in acquisition, justice in transfer, and rectification of injustice. Most political philosophers rejected Nozick's entitlement perspective, for its shaky foundation and lack of practical relevance. This paper therefore attempts to inquire into Nozick's theory to highlight some of the perceived strengths, defects, inconsistencies and hidden fallacies and to offer some remedial solutions where necessary. We then conclude that through affirmative action and his rectification criteria that his philosophy is still relevant in our contemporary world.

## **Introduction**

Robert Nozick is a Harvard professor with wide-ranging interest and one of the most influential political philosophers, along with John Rawls, on the Anglo- American tradition (Fesser , 2003). His first and most celebrated book, "Anarchy State and Utopia" produced a revival of the discipline of social and political philosophy in the analytic school. There has in the years been no sustained and completely argued challenge to the prevailing conception of social justice and the role of the state than with the

arrival of Nozick's work. In the light of his entitlement theory of justice, Nozick was critical of John Rawl's difference principle. As for Rawl, his difference principle captures – the idea of a fair distribution of the benefits and burdens of social co-operation. Nozick challenges the view that the difference principle represent fair terms of social co-operation on three grounds. First of all, the idea that talents are somehow common property, diminishes the “*dignity and self-respect of autonomous being*” because it “*attributes everything noteworthy about the person to certain sorts of “external factor.”*” Secondly, Nozick challenges the Rawlsian assumption that a person's endowments are arbitrary from a moral point of view, because we can be entitled to something without us deserving to have it. Thus a person may be entitled to his talents without deserving them. Thirdly, using the better-off to benefit the worst-off is to violate the Kantian injunction never to use people as means but always as ends. This led him to propound a theory of distributive and private property in attempt to describe “justice in holding” (Nozick, 1974:150) or what can be said about and done with the property people own when viewed from a principle of justice. There are three aspects to this, which are:

- (a) a principle of justice in acquisition- which is an initial acquisition of holding. It is an account of how people first came to own property, what types of things can be held and so forth.
- (b) A principle of justice in transfer- which is how one person can acquire holdings from another, including voluntary exchange and gifts.
- (c) A principle of rectification of injustice- which is how to deal with holdings that are unjustly acquired or transferred, whether and how much victims can be compensated, how to deal with long past transgressions or injustices done by a government, and so on.

Nozick believes that if the world were wholly just, only the first two principles would be needed, as “the following inductive

definition would exhaustively cover the subject of justice in holdings.

- A) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- B) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else is entitled to the holding.
- C) No one is entitled to a holding except by (repeated) application of 1 and 2 (Nozick 1974:151)

Unfortunately, not everyone follows these rules, “some people steal from others or defraud them, or enslave them, seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges”. (ibid:152). Thus the third principle of rectification is needed.

Self ownership is the cornerstone of Nozick’s work. It is from this source that the right of the individual and the minimal state originate.

From the above exposition, the strengths and the weaknesses of Nozick’s entitlement theory are apparent. This paper therefore attempts to inquire into Nozick’s theory to highlight some of these perceived strengths, defects, inconsistencies and hidden fallacies and to offer some remedial solutions where necessary. Then know how consistent and relevant his philosophy is to our contemporary world.

### **Exposition of the Entitlement Theory Justice in Acquisition**

According to this theory, a possession is justly held if it was acquired in a just fashion. But it says nothing about the process of initial appropriation, however. To this, Nozick appeals to the “Lockean proviso”, such that an individual can legitimately claim possession of the natural world. For according to Locke:

Whatsoever then he removes out of the state that nature have provided, and left in, he hath mixed his labor 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 of nature hath placed it in, it hath by this labor something annexed to it, that excludes the common right of other men: for this labor being the unquestionable property of the laborer, 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. (Locke, Ch.5, sec.27)

There are serious questions that can be asked concerning Nozick's theory of justice in initial acquisition. Like, "What is original acquisition"? asks Palmer (2005:358) Adam's and Eve's? He observes that most current holdings are historically traceable to items that were once the spoils of war or of other forms of removal by force or intimidation. He says:

My country was once the territory of the Miwork Indians. I don't know if the miworks wrested this land from anearlier prehistoric people, but I do know that the Miwoks did not simply bestow the land on the European settlers who are my ancestors. (ibid)

Equally the same generalization will be made that the first American colonialst had no legitimate claim to the land that they either through violence or conned whole population out with unquestionably unfair trades (such as the infamous beads-for Manhattan transfer) The same problem is also raised by American's history of slavery. It can be once again generalized that for over two hundred years, citizens of the United States as a whole benefited from the subjugation of the entire race. The labor being exercised (the slaves) was not that of those who benefitted (the slave owners), and thus no legitimate claims can be made to any of the fruits of that labor. And because they benefits of this ill-gotten labor were spread even to those who did not condone slavery, the legacy of slavery is

essentially one of blood money, staining the hands of all involved and so not justly acquired.

From here we can conclude that Nozick's just acquisitions seem untenable, especially in the way that he establishes that acquisition must be gained. The question is that in today's world, does anybody have just entitlement to her or his property derivable from original acquisition? Cohen (1995) noted that as long as historical injustices are unresolved, Nozick's entire position on right and minimal state is rendered nigh invalid. As noted, historical injustice violates property rights. If property rights are allowed to remain comprised, then there is no moral objection to further infringing property rights- for instance, through taxation. The minimal state would cease to be the most extensive state that can be justified, then a Rawlsian welfare state or Hobbesian Leviathan would be made morally justifiable.

Since the principle of justice in acquisition of property affirms very strong property rights. In Nozick's view every individual is entitled to sell or use their natural endowment willingly or as they might please. There is however a slight problem because he does not come up clearly on the foundation of the same property rights. The clearest issue is the fact that he does not base this to the right to life and there is no utilitarian foundation (Goldsmith; 2006). Critiques therefore argue that Nozick does not provide a persuasive foundation that explains much about private property.

Vargas (2010), observed that the most significant shortcoming of the entitlement theory is that it is a construction without any foundation ....as it is, it has very little, if any practical value. He also noted that instead of providing an original principle of justice in acquisition, Nozick refer his to Locke's theory of property. By doing so, he inherits all the weaknesses of the lockean theory of property. This is particularly important since if the principle of the theory in acquisition is flawed, the entire entitlement theory collapses, because this principle constitutes the foundation of all kinds of entitlement to holdings.

If we are to go by Nozick's theory of justice in acquisition, there is no parameter to measure original/initial acquisitions, the sources of what we presently use are unknown, so do we go about asking for the justification of our holdings. It could be embarrassing to go from person to person asking for the authenticity of our holding. Some of our holdings were inherited either from our fathers and grand fathers, so there is no way to know whether they were justly acquired or not. I suggest that conscience should dictate our acquisition of holdings because going by Nozick's model will result to chaos and anarchy in property acquisition.

### **Principles of Justice in Transfer**

Under justice in transfer, it states that whatever is justly held can be freely transferred. Again he used Locke's principle to justify this, for according to Locke:

Again, if he would give his nuts for a price of metal, pleased with its colour; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond , and keep those by him all his life he invade not the right of others , he might heap up as much these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possessions, but the perishing of anything uselessly in it. (Locke: Second treatise on Government, Sec. 46)

(The notion of 'free' in this case would seem to mean freedom from force, theft, fraud and so on). Philosophers were critical on Nozick's assumption that just situations result from just actions. A philosopher like Chia (2010), considers a case where an individual willingly sells himself or herself into slavery. Here, no justice in transfer was violated but in effect the free individual (an end) is subsumed as a means, and self ownership violated. Nozick's tale of the slave, where the slave has a plethora of rights and benefits but

not freedom is still amorally unacceptable position. This according to Chia shows that Nozick's model does not necessarily remain just in all cases.

Also, the concept of justice implies that there should be no prohibition between capitalist actions between two or more consenting adults. He noted that there are usually some community concerns in situations where say a husband commits adultery with someone's wife. As long as there was no force used, then there is nothing unjust in this situation in Nozick's view.

Nozick argues that before a holding could be justly transferred it has to be justly acquired. He builds on the theory of appropriation created by John Locke. This theory explains how a person could own property right for an unowned by the mere fact that he contributes his labour. Nozick, however changes this a little by stating that appropriation can never be justified if the condition of others are no longer at liberty to use the same property would be made worse by appropriation. For instance, a call centre company is bought by a mobile service company and the workers of the call centre company are sent packing, then this could not be considered a just acquisition. Chia (2010) observes that this is because the financial condition of the former workers who is no longer at liberty to benefit from the call centre will deteriorate. It can only be just if the employees are still retained to work in the same company although under different employer.

Another criticism leveled against justice in transfer was that it was not systematically delineated by Nozick. The accumulation of wealth is said to lead to acquisition of power that might express or manifest liberty. This implies that it is not socialism that actually restricts liberty, rather it is capitalism. Goldsmith (2006) states that critics add that capitalism would lead to exploitation of labour making acquisition of wealth even more unjust. For instance in the society, the rich normally have more to say than the poor. This means that it is because of their wealth that they gain the bargaining power to control the poor. A poor man will therefore work in a steel industry for a very little pay that could not even be equated to the

kind of work he does because he has no alternative. The rich man on the other hand would kick him out if he keeps complaining because there are still many more people looking for the same job. In other words, the rich man has nothing to lose. However, Nozick counters this by arguing that as long as the arrangement is voluntary and not forced, there is absolutely no injustice in that.

Nozick insists that whatever that is justly acquired can be justly transferred is not true in all cases. A situation where one justly acquired a certificate either as a lawyer, doctor or engineer, he is not justified to transfer it to another person. Equally for me, Nozick's justice in transfer seems to justify slavery to an extent. For example, a father can justifiably sell his son to slavery because he is a justifiable possession and can part with him.

### **Rectification of Injustice**

This third theory states that if the current distribution of holdings are the result of unjust acquisition, then a distribution which would have arisen had the transaction been just must be rectified. Nozick (1974:231) says "that although to introduce socialism as the punishment for our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them".

This according to Cohen (1995) if the current distribution of property holdings are as the result of unjust acquisitions, then a distribution which would have arisen had the transaction been just must be realised. The simplest way of putting this idea, is that if A unjustly acquire X from B, and then A may (if necessary) be compelled to restore X to B. The idea can be made more precise: to the extent that A has illegitimately worsened the situation of B, rectification is accomplished if A brings it about that B is no worse off, given the actions done with a view of rectification, than B would have been had the injustice not occurred in the first place.

Narveson remarked that this is a tall order, and not easily accomplished in a wide variety of cases. Indeed, in conspicuously important cases, it is impossible, for in those cases, B is dead and



nothing whatever can be done to make B in particular better off than he is now. And in numerous other cases as well, rectification would no doubt be very difficult. The fact, that rectification is often difficult or even impossible, is said by many writers, and evidently also thought by Nozick himself, to be a major problem for Nozick theory.

Another important pertinent question to ask is, how far back should we go when deciding to rectify these injustices? Cowen (2002) in an attempt to this question noted that the Hopis charge that their lands were stolen from them by the Navajo. If the United States government returns land to the Navajos, should it also return some Navajo property to the Hopi? Equally in the post- communist and transition economies, should it also return some Navajo property to the Hopi? Should it matter that the nobles virtually enslaved the Russian peasantry? Should it matter that the Ghenghis Khan sacked Baghdad in 1258?

He concurs with our earlier submission that everyone living today, if they go back far enough can find ancestors who were oppressed and victimised. Also subsequent corporate assets have been built on stolen lands or generated by investments on originally stolen land endowments. So the choice of time horizon for rectification becomes important to the extent we compound past losses at positive interest.

Judging by Nozick's rectification criteria, few current land titles would satisfy it because it is obviously impractical and almost certainly unjust to redistribute all the world's land. Ignorance of previous transgressions offers no escape here. We would not wish to overturn all current land titles, even if we knew exactly who had stolen what from whom.

Another criticism leveled against Nozick's rectification is on the account of resource constraints limiting the sum available for restitution. If oppression destroys economic value, the sum total of claims may exceed the resources available for rectification. In the former soviet Union, there is not nearly enough to give everyone "what they would have had", had Lenin instituted liberal

capitalist democracy, nor can ex-dictator of Haiti give back all the economic value they have destroyed, or even a sizeable fraction there-of.

According to some estimates, the total national wealth of Hungary was not greater than the value of the assets confiscated from Hungarian Jews during the second world war. (Pogany 1997;177).

In sports especially football, Newey (2009) opined that there has been a collateral damage from footballing injustices, such as England's defeat by west Germany in the 1970 tournament. The wessies winning strike always looked a bit suspect, with Gerald Muller's leg well up. Since rectification is the putting right of past wrong, would Thiery Henry's hand ball in France's world cup qualifier against Ireland offer a mass exercise in rectificatory justice, with many in the republic calling for the game to be replayed? The Irish know what they are talking about, having recently had to take the Lisbon Treaty referendum to a replay in order to get the right result. FIFA has spoils sportingly turned down the Irish FA's pleas. Newey contended that if rectification were to be carried out in football, why stop with Henry's handball? Why not rectify other injustices of footballing injustice like the Maradonna's "hand of God's goal" for Argentina against England in the 1986 world cup.

Critiques now argued that if the match should be replayed would some players who are tired and retired come out of retirement. Would they be replaced by cardboard cut-outs or by some of the surviving substitutes? Does this mean that those who watched those matches are to go back to the stadium and watch the match replayed, take autographs and redo the events of that day before justice is realized. This is the problem we are faced with Nozick's rectification of injustice, because we have to return the situation in "statusquo ante bellum."

How and where do we begin to rectify these injustices? What of those who we are in possession of their holdings but don't know their whereabouts again? how do we go about looking for them? What of those who have long died? Do we return the

properties to their children who were not there during the “taking”? Will it not result to an unjust acquisition from the children, which Nozick vehemently opposed?

However, Nozick’s model call for the rectification of these past transgressions of indigenous property rights is not outrightly untenable. This is currently achieved in some cases through fiscal compensation or affirmative action schemes.

Charles J. Ogletree in “the case for Affirmative Action” remarks that after centuries of bias, we stand by policies that redress past wrong (rectification of injustices)He made this assertion because of the help he got through affirmation policies. His dreams became reality as a result affirmative policies in Stanford education. To this he wrote:

My father, who grew up in Birmingham, Ala, and my mother, a native of little Rock, Ark, never finished high school. They grew in a segregated South that offered few opportunities and many obstacles for African Americans. I grew up in Merced, Calif, in an environment where many of my peers viewed merely staying alive and getting a job as a successful course in life. But, with a push from my parents, I was determined to be the first in my family to attend college. With help from high school counselors, I discovered Stanford. And thanks to an aggressive, minority out reach program by the admission office, I was given the opportunity of a first rate education. Without Affirmative action, I would never have applied to and certainly would not have attended Stanford.

Nozick’s rectification of injustice will be readily useful in Nigeria where corruption has eaten deep into the fabrics of the Nation’s marrow. Having explored all options to tackle corruption and non seems to yield any tangible result. I believe that the

rectification theory of Nozick will offer the most needed help. So that before one is cleared of any corruption charge especially embezzlement of the public coffer, he must have restituted all he had stolen both during and after he left office.

## **Conclusion**

We have seen that Nozick's theory is based on three key principles. Nozick put forward the claim that, in order to deserve something, a person must be entitled to it according to the principle of justice in acquisition, the principle of justice in transfer, or the principle of rectification. However, he does not tell us what these principles actually consist of. Consequently this lacks much of the value it could have had if it had been more complete. Instead of providing an original principle of justice in acquisition, Nozick refers us to Locke's theory of property. By doing so, he inherits all the weaknesses of the Lockean theory of property. This is particularly important since, if the principle of the theory in acquisition is flawed, the entire entitlement theory collapses, because this principle constitutes the foundation of all kinds of entitlement to holding. In turn, Nozick completely ignores the principle of justice in transfer. How can we know when it is just to transfer holdings from one person to another? The entitlement theory provides no answer to that question, other than suggesting that people are free to transmit their holdings to others if they wish to do so. The only principle sufficiently explained, the rectification principle, relies on the other two in order to acquire any meaning, so if the other two principles are void so is the rectification principle. How far shall we go to rectify these injustices? What parameter do we use to measure the quantity of what to rectify of what happened decades back. What of those that have benefited from those injustices? Do we term it an unjust acquisition? We have seen that Nozick's entitlement theory is not entirely problematic but useful in fiscal compensation and affirmative action.

Overall, the entitlement theory as it has been put forward by Robert Nozick feels incomplete, like a law which has a defined

structure but does not have actual legal disposition inside it to give it real meaning. These notwithstanding, Nozick's theory has delighted a number of people whose political posture is decidedly to the right. But most of the literature that his book has inspired has been critical. It as if political writers see Nozick's arguments as important enough to require as important enough to require a response.

**\*Osita Gregory Nnaji**for, *Department of Philosophy, Faculty of Arts, Nnamdi Azikiwe University Awka, Nigeria, Email: [gregossy@yahoo.co.uk](mailto:gregossy@yahoo.co.uk)*

**\*Chinedu Stephen Ifeakor**, *Department of Philosophy, Faculty of Arts, Nnamdi Azikiwe University, Nigeria.*

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