

3. The Need for Basic Rights: A Critique of Nozick's Entitlement Theory

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Abstract:

Although the Libertarian Party has gained traction as the third biggest political party in the United States, the philosophical grounding of the party, which is exemplified by Robert Nozick's entitlement theory, is inherently flawed. Libertarianism's emphasis on a free market leads to gross inequalities since it has no regard for sacred rights other than one's right to freedom from interference from the government beyond what is essential for societal functioning. I argue that Nozick's entitlement theory leads to indirect injustice and is therefore an unfitting philosophical theory, which means that the Libertarian Party's platform is flawed.

Keywords:

Nozick's Entitlement Theory; Libertarianism; entitlement theory

Although it is barely over 35 years old, the Libertarian Party in the United States has become a force to be reckoned with.¹ The number of registered Libertarian voters increases yearly, and the Libertarian Party is already by far the third largest political party in the country. As more and more people become disillusioned with the government, it seems that the popularity of the Libertarian Party will only grow since its primary aim is to minimize the role of the government in our lives. The basic premise of libertarianism is that only a free market—an economy unimpeded by the government—allows citizens of a country to be treated as equals. Libertarians urge that we should all be able to pursue our self-interests without being impeded by the government. The only justifiable government, from this perspective, is “a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on” (Nozick 1974, ix). While many arguments for libertarianism may seem compelling, I will argue that basing a state solely on the functions of a free market has the potential of leading to gross inequalities. In order to achieve this task, I will focus on Robert Nozick’s version of libertarianism as espoused in *Anarchy, State, and Utopia* since it is commonly regarded as the most influential philosophical defense of libertarianism.

The Entitlement Theory

The core of Nozick’s libertarianism is his entitlement theory, which specifies how people’s holdings, i.e. possessions such as land, stocks, resources, etc., can be acquired and transferred justly. The entitlement theory consists of two principles that determine how a free market is to function in a just manner (the principle of justice in acquisition and the principle of justice in transfer) and one rectificatory principle (the principle of rectification) that remedies any injustices that arise from situations in which the first two principles were not abided by.

We begin with the principle of justice in acquisition, which states that people are entitled to holdings that are originally acquired in a just way. Nozick does not spell out exactly what this entails, but one can surmise that any uninhabited property and unclaimed resources that one may happen to stumble upon are fair game to appropriate as one’s own.²

¹ The Libertarian party was officially founded on December 11, 1971.

² Nozick (1974) claims that “the legitimate first ‘moves’ are specified by the principle of justice in acquisition” and he qualifies this by saying that “you may find an unheld thing now and appropriate it” (151). Environmentalists may argue that this is already a misguided starting point. For Nozick’s first

As long as the intended item of acquisition does not have an owner, a person can take it as one's own. Moreover, anything that a person creates oneself out of the resources justly acquired is legitimately one's own property. For instance, if I happen to come upon an unclaimed patch of forest, I can both claim the forest as my own and also gain profit from the lumber that I create out of the wood from the trees.

Nozick qualifies his first principle by appealing to Locke's proviso that there be "enough and as good left in common for others," which is "meant to ensure that the situation of others is not worsened" by one's original acquisition (1974, 175). For instance, a person may not hoard all of the drinkable water in a region to oneself even if that person was the one who found the supply of water. Rather, since hoarding the water supply would result in the worsening of the situation of others in the region, a person must make this resource available to others. This does not mean that the person has to *give away any claim to this resource*; rather, the initial acquirer merely has to set up a system in which others are able to *have access* to the water by making it available for purchase or trade. This is clear by Nozick's assertion that "though [others] can no longer *appropriate*, there may remain some for [them] to *use* as before" (1974, 176). This seems to imply that the initial acquirer may not charge a price for the water that is too expensive for others to afford, but it also seems to imply that he or she may charge as much as he or she wants as long as the others are willing to pay the price. In other words, there is no problem with creating a monopoly on a product as long as others have the ability to purchase it.

The second principle Nozick espouses in his entitlement theory has to do with the ways in which people can relocate their holdings to others and barter in a fair manner. Nozick (1974) states, "the principle of justice in transfer...includes principles governing how a person may divest himself of a holding, passing it into an unheld state" (150-151). As long as the initial acquisition of the holding is just, a person has the right to transfer this holding to another person in exchange for another justly acquired holding. For instance, if I come across a plot of land that is good for farming and I do not wish to use it, I can find a farmer to sell the land to for a price equally agreed upon. Another possibility in line with this principle is that a person may give one's holding to another as a gift. For instance, if I

principle already invites us to treat the earth as our property that is ours to acquire. While I am wholeheartedly in favor of such an objection, we will focus on the injustices that arise from the application of these principles with regard to human beings—rather than the environment—for the purposes of this paper.

have fairly acquired a vehicle and wish to give it to my daughter, this is perfectly acceptable. Or, if I wish to donate a sum of money to a charity, this is my prerogative.

Nozick claims that these two principles provide the framework for a just society in regard to holdings. In other words, if a person acquires a holding in accordance with either of the two principles, that person is entitled to that holding. In an ideal society, every acquisition of holdings would be done in accordance with the principles of justice in acquisition and transfer. However, Nozick realizes that people will not always abide by these principles. Whether people steal from others, enslave them, or do anything that disallows them to partake in the free exchange as set up by the market, injustices are bound to occur. Therefore, Nozick implements a mechanism to remedy unjust behavior. This is what he calls the principle of rectification of injustice in holdings. If it is the case that there is a situation in which the principles of acquisition and transfer are violated, the principle of rectification restores holdings to their rightful owners. Nozick (1974) says, "This principle uses historical information about previous situations and injustices done in them..., and information about the actual course of events that flowed from these injustices, until the present, and it yields a description...of holdings of the society" (152). Once this is done, it is determined what would have occurred if these injustices did not take place and the government steps in and implements the proper situation in regard to the holdings.³ For instance, if it discovered that a certain family owned a plot of land that was taken unjustly from them in the past, the victimized family is not only reinstated as the rightful owner of the plot of land, they are also compensated with the wealth they would have earned if they had not been victimized.

It is important to stress that Nozick's rectificatory principle is only relevant when situations arise that have not resulted from the correct application of the principles of acquisition and transfer of holdings. In other words, Nozick thinks that governmental intervention is only necessary when *direct* injustice occurs, i.e., injustice that occurs as a result of activities that are not in accordance with the first two principles. Nozick (1974) clearly states that "whatever arises from a just situation by just steps is itself just" (151). It

³ Of course, one can easily object that this is simply unrealistic. For instance, one could ask: How could we possibly determine what would have occurred if African Americans were not enslaved? What are the proper amounts of reparations that they deserve for their unjust treatment? How could anyone really figure this out? These are real difficulties; however, Nozick clearly shows that he is not blind to them in stating explicitly that he is "idealizing greatly." For the purposes of this paper, let us grant that the principle of rectification can somehow be realized in practice.

is this aspect of Nozick's theory that I aim to question. I will adapt an example espoused by Henry Shue in his book, *Basic Rights*, to demonstrate that simply allowing the free market to run its course in accordance with the principles of acquisition and transfer may lead to situations that involve indirect injustices, i.e. situations that seem unjust, regardless of the fact that they have resulted from the application of the principles of acquisition and transfer.⁴

Indirect Injustice

Suppose that my great-great-grandfather was an American settler who came upon a large plot of unclaimed land in (what is now known as) Montana. The land is great for farming, so he decides to cultivate the land and spend his life as a farmer. His children and their children follow in his footsteps and, as the years go by, more and more people settle in the area around the farm. A staple in the diets of the people in this region is potatoes, and my grandfather's farm accounts for one third of the potatoes marketed in the small village. His family works hard to get by, and in some years, they struggle to gain a profit due to circumstances beyond their control (the weather, sickness in the family, etc.). One day a wealthy entrepreneur from the East coast comes to the family farm and offers my grandfather a contract that guarantees him a yearly salary that is substantially more than he had ever dreamed of making if he were to continue to farm potatoes. In order to meet the terms of the offer, all he has to do is change the crop that he harvests and grow sunflowers on his farm instead of potatoes. There is a high demand for sunflowers on the East coast, and the entrepreneur is confident that his plan to infiltrate this market will be profitable. Above and beyond guaranteeing my grandfather an impressive salary, the entrepreneur offers him stock in his company. My grandfather talks it over with his family and decides to accept the offer. He will still be able to do what he loves because he will continue to be farming and he no longer has to worry about the risks involved with farming because his salary is guaranteed each year. Unlike his previous situation, he knows that his family will be taken care of regardless of the unforeseen circumstances (e.g., inclement weather) that may or may not occur that could hurt his crop. Moreover, he has the opportunity to earn even more money if the market is successful.

⁴ Cf. Shue 1980, 41-42. Shue's example aims to establish that "many people's lack of the substance of their subsistence rights... is a deprivation caused by standard kinds of threats that could be controlled by some combination of the mere restraint of second parties" (41). Since his aim is different than my own, I need to change the content of it slightly. However, the form of the example is completely attributable to him.

Let us also suppose that his decision to accept the offer turned out to be immensely beneficial for his family. The sunflower market does better than expected and he becomes extremely wealthy. When he dies, he hands the farm down to his children, and eventually I inherit the farm and the family fortune. At the time I inherit the farm, I realize that the citizens around me are much less well-off than I am. In fact, I realize that the majority of citizens who live in my region are not only quite poor, but that some of them have children who are malnourished. It turns out that when my grandfather decided to switch from potatoes to sunflowers, the price of potatoes became extremely high due to the decreased supply in the region. While some people could feed their families by farming potatoes on their own land, many others either did not have the land required to do so or had land that was not suitable for growing potatoes. In turn, many families that used to be able to have a comfortable standard of living are now struggling to provide themselves with food on their tables

Let us examine this situation from a Nozickian perspective. Clearly, the principle of justice in acquisition of holdings is not violated in my great-great-grandfather's original acquisition of the land. No one had claimed the land (assuming that it was not inhabited by Native Americans) when he had come upon it, which means that it was fair game to be appropriated. Moreover, his acquisition of the land met the Lockean proviso to leave "enough and as good left in common for others," since there was much more claimable land in Montana for others to choose from at the time in which he acquired his plot.

In regard to this case, it is also clear that the principle of justice in transfer is upheld. The transferring of the farm from generation to generation was in the interest of each consecutive family member, and the decision by my grandfather to come into contract with the entrepreneur was entirely voluntary and therefore justified. In switching over from growing potatoes to growing sunflowers, my grandfather was simply trying to do what was best for his family. In other words, he was simply acting in his own self-interest. The fact that this decision led many other families in the region to be worse off was clearly not his fault.

Since the principles of acquisition and transfer are upheld in regard to this situation, Nozick would have to say that the situation that has come about is a just one since he claims that "whatever arises from a just situation by just steps is itself just" (1974, 151). And, since there was no conduct that diverged from the principles of justice in acquisition and transfer, the principle of rectification is irrelevant. It is not as though anyone can make my family

help out the other struggling families because I have done nothing wrong in my acquisition of wealth. There is no function in Nozick's framework that allows the government to step in and make sure the citizens in the region are guaranteed enough food to live on by taxing my earnings and giving money to the poor people in the village. Nozick (1974) makes it clear that "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others" (ix), which means that I (as in the farmer who gains the lucky inheritance) have no obligation whatsoever to aid my fellow citizens even if I have the means to do so. While Nozick may acknowledge that the situation that has arisen is unfortunate, he would not call it unjust.

In the preface to his book, Nozick (1974) admits that some of his conclusions will appear to be "callous toward the needs and suffering of others" (ix). Surely this example proves that he was prophetic in this remark. Nevertheless, he urges that his system of justice is correct. In order to prove that he is mistaken in this view, let us consider the situation from the perspective of my fellow villagers and me in regard to the example above. In considering my situation, I may ask: How is it justified that I come into this world wealthy and many of the other members of my community are born poor? How is it justified that I have no trouble supporting my family and most of the other families struggle to eat? Why is it the case that I am entitled to the lofty position I am born into if I put forth no more effort than others? It seems as though there is no way to justify the fact that I enter into this world with a privileged status while others can hardly feed themselves. Perhaps Nozick could reply: "While it is true that *you* did nothing special to deserve your position in society, your ancestors put forth effort to earn their position in society, and they procured this privileged position for you." Even though my great-great-grandfather did not know me, he worked hard to ensure that those in his family lineage would be provided for. Therefore, my privileged position was earned by someone—even if I myself did not procure it. Although this seems initially plausible, is it not the case that many of the poor citizens' ancestors also worked hard to ensure the best possible existence for their descendants? The fact that I am wealthy does not have to do with my ancestors *outworking* the other members of society. Rather, my wealth is a matter of *luck*. It was mere chance that my great-great-grandfather came upon the plot of land that would later make his descendants rich. Moreover, my grandfather did not put forth extra effort to become rich. He was not overly ambitious in his acceptance of the contract from the entrepreneur—he merely followed common sense and it just happened to work out to his favor. Appealing to extraordinary effort in regard to this example does not justify my wealth.

Here, Nozick could reply: “Very well, but if you feel ashamed of the wealth that has come upon you, why don’t you bequeath some of it to the other members of the village?” After all, in his principle of justice in transfer, he clearly states that a person is able to donate his holdings to others if one so chooses. If people feel that they have acquired wealth that is undeserved, they should simply spread it out to those in need. It is simply unjust for anyone to *require* you to do so (e.g., the state through taxation). The problem with this argument is that I cannot personally account for all of the inequalities that have come about due to the free market system. Even if I can provide for the poor families in my community, there are millions of others in their shoes that I will not be able to help. While we may hope that other people who have become wealthy will distribute their wealth to others, we cannot rely upon this if it is not mandatory. Making it mandatory, of course, would require taxation, which Nozick does not think should be allocated for situations like this. Moreover, it seems wrong that a society can be set up in which the only means of helping those in need are the kindheartedness of wealthy citizens.

While Nozick can attempt to explain that the seemingly unjust situation is merely a result of unfortunate circumstances, we are still led to believe that there is something inherently wrong with the fact that I am able to start my life wealthy while others are left poor. This simply seems unfair. Unfortunately, there is no aspect of Nozick’s philosophy that can ensure that this situation does not arise—or that this situation will definitely be remedied if it does. Perhaps libertarians will divert from Nozick’s philosophy here and concede that such a situation merits governmental intervention, saying that they would be willing to implement a system of taxation to rectify dire circumstances that come up such as this. However, implementing a system to deal with these situations will only provide a temporary solution. Even if libertarians are willing to tweak their position slightly, as long it is the case that the basic premise of their framework is to push a free market that minimizes taxation in order for people to pursue their self-interests, we will be left with an unjust gap between the rich and the poor. For situations that fit the mold of the example are bound to arise, which will leave some to be born into families with unfair disadvantages.

An Appeal to Basic Rights

Although Nozick’s libertarianism does have some aspects that are intuitively plausible, my example has shown that his theory of justice can potentially lead to unfair circumstances for certain members of society who just happen to be unlucky. This, in and of itself, is unjust. Therefore, we may want to begin from a different starting point in order to

avoid the possibility of such injustice. Although one could argue otherwise, it seems as though Nozick bases his theory on the premise that individuals have rights of freedom *from* certain things. What I am urging is that we should base a political theory on the premise that individuals have rights *to* certain things. It is difficult to spell out exactly what these rights should be. In its most minimal form, the basic rights of individuals in a society should be a right to the essentials one needs to survive—access to food and drinkable water, shelter, etc.—as well as protection from force, access to some sort of health care, and equal treatment before the law. While people can argue as to what rights should be added to this list (or possibly even subtracted from it), the point is that we should begin our theory with basic rights that people deserve *no matter what* and only then go on to specify the rest of the details. In this way, we are not led into situations in which people are born without enough food to eat.

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