
ORIGINAL ARTICLE

The Entitlement Theory of Justice in Nozick's Anarchy, State and Utopia

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Abstract: Nozick's entitlement theory of justice has its major attempts to defend the institution of private property and to criticize the redistributive measures on the part of government. Nozick frowns at Rawls' approach and the approach of welfare economics, which focused on evaluating only current time-slices of a distribution with no concern about the procedural aspects of justice. His notion of distributive justice has its anchorage on the account of what and how a given person is entitled to in virtue of what he has acquired and earned. While Rawls, whose position seems incompatible with that of Nozick holds a notion of justice on the account of the equality of the claims of each person in respect of basic needs and of the means to meet such needs. Nozick's theory is a reaction against Rawls' notion of distributive justice which he terms patterned, and of which he feels if upheld would consistently interfere with individual's rights. This paper therefore argues that contrary to what Robert Nozick seems to suggest we do not see his theory as all satisfying nor any alternative, rather we are convinced that the inherent merits of his theory would suitably complement other patterned theories of distributive justice. This paper employed the expository method as well as critical analysis and prescriptive methods.

Keywords: *Ihe Mkpuchi Anya*, Ontology, Human Nature.

INTRODUCTION

The problem of distributive justice arises when one is required to distribute some social and economic benefits or burden to two or more people or group, among whom one is expected to decide how to distribute (Udoudom and Basse, 111). For Ogunmodede, it governs the distribution of right and benefits that are owned the individual citizens by the states. (Ogunmodede, 404). For Nozick this problem is base on how the total product of joint social cooperation is to be divided up, (Nozick, 186) possibly to reflect what Pojman says about as "a constant and perpetual will to give everyman his due. (Pojman, 1997). It is this determining factor and formula of what is due for every person that distinguishes Nozick's theory from Rawls and others like Aristotle, Karl Marx and David Hume.

Our central focus in this paper would be to examine closely and critically the core elements of Nozick's entitlement theory, its shortcomings (if any) and challenges for us here in Nigeria. And contrary to neither what Nozick seems to suggest, we do neither see his theory as all-satisfying nor any alternative, rather are we convinced that the inherent merits of his theory would suitably complement other patterned theories of distributive justice.

JUSTICE IN HOLDING

There are divergent views by different socio-political and economic philosophers on what constitutes a just holding. In his view, Hebert Spencer believes, that everyone has the freedom to put the earth to use to satisfy his wants, but provided that others are not restricted to do same. (Rosen, 1999). The only exception is with landed property which according to him if people acquire freely, would be left in the hands of few land owners, who would make it difficult for some non-land owners to use. (196).

Similarly, Locke argues that a man necessarily and legitimately becomes the owner of whatsoever he removes out of the state that nature provided and that he makes his property provided that he hath mixed his labour with it, and joined to it something that is his own". (190). And for Hegel a person has as his substantive end the right of putting his will into any and everything and thereby making it his". (194)

Nozick's entitlement theory of justice shows that a correct theory of justice requires three parts which to him covers the subject of justice in holding. It is as follows:

- a. A person who acquires a holding in accordance with the principles of justice in acquisition is entitled to that holding. This is the theory of original acquisition which is concerned with how unowned things come to be legitimately owned in the first place.
- b. A person who acquires a holding in accordance with the principle of justice in transfer is entitled to that holding. This is the theory of transfer which describes the conditions under which ownership of something is legitimately passed from one party to another.
- c. No one is entitled to a holding except by a respected application of 'a' and 'b'. (Nozick 151). In other words, a distribution is just if it passes the just test procedure or process otherwise it would require rectification.

A problem with this theory of acquisition is to ascertain how the first 'transferee' acquired in holding, obviously from a transferer. But how did this first transferer acquire what he transferred? To bridge this gap, Nozick follows John Locke who he interpreted, that, if a thing is not already held by someone else, it may justly be appropriated, but provided that it does not leave others worse. (Raphael, 1990). This he refers to as Lockean Proviso, which when violated with an appropriation must attract a compensation and without which the acquisition will be an illegitimate one. (Nozick 178). It is therefore this legitimately acquired holding that could be transferred to someone else and thereby conferring on the new "transferee" the entitlement right.

It follows that a justifiable answer to the question why are you entitled to use that seashell as you wish? Will either be "I picked it up on the seashore, where it belonged to no one and where were plenty left for everyone else (a just act of original acquisition) or someone else picked it up at the seashore and freely sold or gave it to someone who freely sold or gave to me (a series of just acts of transfer). (Alasdair, 247-248).

There are still major issues here begging for attention, first we cannot talk about appropriating anything that is unowned when almost nothing is unowned. (Varian 236). Second we wish to also ask if it really the case that any appropriation of an unowned property which does not leave anybody worse off could simply be regarded as just on that basis. There could be an instance where the individual's life does not worsen because, he does not lose anything that he has, but whose life is not improved because he is not able to appropriate what he could have appropriated because someone else was had appropriated the same unowned

property which could have improved his life. This same person, who is unable to appropriate, could further be denied any benefit from the things appropriated, especially when nothing is transferred to him by any means, since a particular individual reserves the right to transfer to whoever, whatever pleases him. It therefore goes to show that a legitimately acquired holding, could be transferred unjustly, and in fact be used to perpetrate injustice. It does not therefore follow that a transfer is just, since acquisition is just.

Nozick is not unaware of these very facts, that "not all situations are generated in accordance with the two principles of justice in holding". (Nozick, 152). This situation could arise in cases of stealing, seizure of holdings or when others are forcibly excluded from competing in exchanges. (Nozick, 152). This would constitute unjust and illegitimate holdings and any transfer made would also be regarded so. To this he has the rectification principle which says that 'a past injustice is rectified, if its victims are raised to a level of well-being at least as high as they would have been at had the injustice never occurred" (Kavka, 377). It is his expectation that the perpetrators of injustice be obliged by the state or court to ensure that holdings are restored to the rightful owners which was unjustly taken from them. (Raphael 151).

But when we consider the historical fact that most property right held today can trace their lineage back to forceful (presumably illegitimate) appropriation, one wonders at the workability of Nozick's theory. Are we for instance expected to trace back the ownership of American land to the Indians and try to rectify the wrongful appropriation of it? (Varian 236). In acknowledging this inherent problem with the rectification principle, Nozick asks "How far back must one go in wiping clean the historical state of injustice"? There is a familiar and classical example with Nigeria where corruption has become an entrenched means of acquisition, appropriation and transfer of holdings. (Oyeshile, 22) A country where it has been estimated that over a hundred billion dollars has been stolen and hidden in foreign banks by various Nigerian rulers, their families and acolytes. (Aluko, 2000).

Let us imagine for the sake of emphasis a practical scenario in Nigeria where the President is in possession of billions of dollars appropriated unjustly from the late Head of State's loot, who had stolen from the country's treasury, a treasury overflowing with treasures unjustly earned by the country through or by the exploitation, dehumanization, animalization, pauperization, impoverishment and sometimes killing of the people, as we had in Odi. (Ujoma, 202). We need to further acknowledge the historical possibility, as we mentioned earlier, that these people currently occupying these oil rich regions of Nigeria might have settled there through an unjust process as it is with the case of America. To what extent can we rectify, how and where we begin to rectify this chronic and endemic generational injustice. There would definitely be a major problem of tracing these injustices; and where they could be traceable, this might continue ad infinitum.

The situation becomes more complicated, questioning the essence of rectification principle, where for instance of perpetrators of slavery in America and their victims have benefited substantially through this unjust and inhumane treatment of humans. "For if slavery had never existed in America, the family trees of black families would have been different (than what they actually are) over many generations, and the existing individuals who are descendants of slaves would never have existed at all". (Kavka, 278). In other words, they have suffered 'no harm' as a result of slavery, and are not owed any compensation or restitution according to the rectification principle.

While this may seem to assault the moral sense of justice of Africans, we must evaluate dispassionately and agree that the descendants of these slaves are comparatively better off in all ramifications, though slavery was unjust. The living white people who benefited from the injustices of slavery are not required to share these benefits with the heirs of the victims. (278). It would therefore imply that not every injustice perpetrated leaves people worse-off and if by this injustice, the people or victims are benefited, they would be no need for any form of rectification. Some have argued that this kind of conclusion brings to question seriously, the credibility of Nozick's theory of justice, in fact have asked for its total jettisoning. One is also left to wonder how to ascertain what this slaves and then-descendants would have been if never enslaved, and if rectification would have been very practicable, it becomes a problem to know how and where to reposition them back to.

HISTORICAL AND CURRENT TIME-SLICE PRINCIPLE OF DISTRIBUTIVE JUSTICE

The entitlement theory of justice is historical, which implies that a just distribution depends on how it came about, the past circumstances or actions of people determine the justifications of their holdings. It does not recognize or allow for a central body saddled with the responsibility to control resources and decide how they are to be doled out, rather, each person gets from others who give to him in exchange for something or as gift (153).

The current time-slice principles, also known as end-result or end-state principle is unhistorical and patterned. The principle holds that the justice of a distribution is determined by how things are distributed, (Brown Less, 1985) who ends up with what in terms of moral worth, needs, intelligence, or any other yardstick. (Nozick, 149). Nozick explains a patterned principle of distributive justice as one which

Specifies that a distribution is to vary along with some natural dimensions, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions... it is patterned if it accords with some patterned principle. For example principle of distribution according to merit or principle of distribution to usefulness to society, distribution according to 1. Q. (Nozick, 156).

Aristotle similarly holds that a process of give and take according to the right proportion must be done by diagonal conjunction and distribution tailored to recognize the inherent inequalities in humanity. David Hume believes in the impossibility and impracticability of perfect equality, and for him "distributive justice is contingent upon economic conditions and needs of man" (Ogunmodede, 403). Karl Marx would allow unequal rights rather than equal right to help level up the inherent inequalities in the society, based on the diverse responsibilities of people. To this extent, the process would be patterned in such a way that what would be received from each person would be according to his abilities and according to needs, each person would be given. (Rosen & Wolff Eds. 232).

Rawls in his two principles of justice holds that social and economic inequalities be arranged in such a way that they are to the greatest benefit of the least advantaged members of the society (Erin K. 2003). For Rawls, the distribution of wealth and income may not be equal but must be to everyone's advantage, especially the worse-off allowing inequalities. What would therefore constitute injustice is "inequalities that are not to the benefit of all". (Rosen,

242).

Nozick regards these theories as patterned and unhistorical, because they do not consider the past actions creating different entitlements to evaluate a distribution. Rather, requires only distributional matrices like I.Q. score and needs. (Nozick, 156). Nozick feels uncomfortable with such principles of distributive justice, claiming that it does not recognize the individual's right to choose to do, to make and what others choose to do him or give. (Brown L. 212). In expressing this view, Nozick holds that.

Patterned distributional principles do not give people what entitlement principles do ... for they do not give the right to choose what to do with what one has, they do not give the right to pursue an end involving entitlement of another's position. (Nozick, 167).

What Nozick has set out to do here is to give an unpatterned theory that would grant the individual the freedom and recognition of his right to give and receive as he wishes. Thus the maxim "from each as they choose, to each as they are chosen". (167).

While we have shown clearly how this exercise of freedom constitutes the theory's own undoing, it is still crucial to seek to know if the patterned and unhistorical principles of distributive justice do in any way deny the individual the right to choose to do whatever pleases him with his holding, it seem not. Rather we feel strongly that patterned distributive principles of justice are instrumental, useful and necessary for distribution, at a general level, which would involve the sharing of common wealth, natural cakes, and burdens which every members of a particular society is entitled to. This explains the adoption of sharing formula by the Nigerian government; thirteen percent derivation formula for the oil producing states to ensure equity and fairness. (167).

The entitlement theory of justice has as its main concern to defend the institution of private property as its main concern and focus, the personal acquisition and transfer of holdings, inter personally. For instances, while the Federal Government would adopt a particular formula or yardstick to award scholarships or bursary award to students, the students who reserve the right to choose to do whatever pleases them with their share, do not need to adopt any formula in transferring their holdings to another person. Nozick's illustration with wilt chamberlain, with which he tries to upset pattern, becomes very instructive at this point. The individuals who were excited about seeming him play," gave their twenty-five cents each from their personal possession (which they may have acquired by appropriating an unowned property or from a transferred holding, or from their share of the national cake distributed to them as citizens) thereby making chamberlain entitled to this income. No one, not even the other players would cry for injustice, this is because the spectators gave and operated under Nozick's theory.

We also wish to state further that the justification of chamberlain's entitlement "new distribution D2," though may not be in question, but when we apply Nozick's theory strictly, its justification would depend on who gave or transferred what. The assumption by Nozick that all who gave to chamberlain acquired their money legitimately is very unlikely. Chamberlain

would therefore not be entitled to the monies given to him by armed-robbers, drug barons, dupes, etc. and even the stadium authority (private or government) would lose their entitlement rights of such money.

While it seems bizarre and absurd, to say that one who has worked for a criminal (known or unknown), is not entitled to his income, a strict application of this theory would definitely have a way to checkmate criminality and injustice, prevent people from receiving, accepting and even soliciting for cash gifts, gifts and other forms of assistance from people in the society know to have ill-gotten wealth. Besides, we are also convinced that an outright criminalization of such holdings would be effective rectification and deterrence.

However, it is clear that Nozick's attempt to upset patterned distributive justice seems defeated. This is because his theory has a structural pattern which according to him must be followed and observed for any conferment of entitlement right on anybody. What he has succeeded in showing as we shall see in the next session of this paper, is how the outcome of some distributive principles of justice could be obstructed.

NOZICK AND SOCIALISM

Nozick's postulations question the possibility of achieving egalitarianism; through the adoption of a patterned distributional principle. People as he observes, seek to work overtime in a society where it is assumed that their needs are satisfied because perhaps, they care more about things other than needs. Nozick therefore asks

On what basis could the inequalities that could eventuate be forbidden „„? No end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives... To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some person's resources that other for some reason choose to transfer to them...Any distributional pattern with egalitarian component is *overtunable by voluntary actions of individual persons over time* (Nozick, 167).

It is pellucid and we agree with Nozick that the Marxian concept of distributional principle of justice which has an egalitarian component would fail with people's voluntary actions to give and receive resources and holdings. But neither the Aristotelian theory of distributive justice which is relativistic nor the Rawlsian postulation which is teleological and utilitarian would suffer the same fate.

Nozick has been criticized for not having provision for equality and the underprivileged in his entitlement conception of justice. There is a central assumption that the individual's right is inviolable. So to him as Brown explains "... what the state can properly do is not to ease the burden of the economically and socially disadvantaged, but to protect all individuals from such tilings as killing or physical harm, destruction or seizure of property or deprivation of personal liberty". (Brown Lee, 212-213).

We do not regard Nozick's position as faulty, that there is bound to be inequalities as a result of individual's freedom and ability to acquire holdings, without in fringing on the right of others. Everyone deserves his due reward for his labour; to each according to their ability.

Though it has been argued in some quarters that we are not equally endowed, and that empirical research has show that people do not have equal opportunity in the competition of resources. (Brown Lee, 212-213). Les Brown therefore feels that "... our assumption on justice, founded on the formal notion of justice as fairness in the treatment of persons are not shared by Nozick." (Brown Lee, 212-213).

The question that we must pose back to brown is, "what is fair about depriving others their possession through taxation and other means, for the sake of those that have not probably made any or same effort as their so called privileged counterparts"? Would it not rather be considered more as fairness, if efforts are made to ensure that everyone is given equal opportunity? Or how would you explain or phantom an explanation of the phenomenon in some parts of the Northern Nigeria where some of our brother have failed to take advantage of the quota system of the Federal Government in education even when some of them are paid salaries as medical students?

CONCLUSION

Given this equal opportunity, and eschewing unnecessary sentiment and sympathy which makes people unproductive, a system of taxation could be adopted based on the principle of "the less you earn, the more you pay". The idea is that this would at long run make more richer-men than poorer men.

In this spirit of equality the Igbos would say "egbe bere ugo bere, nke si ibe ya ebela, nku kwa ya" (let the hawk perch, let the eagle perch, anyone that refuses the other from perching, let the wings be broken). In this same vein, Ujomu has observed that the presence and operation of some core social values such as trust, justice, honesty, and love among different interests and segments of the society, would ensure that Nigeria achieves sustainable development, sanity, peace and prosperity. (Ujomu, 205).

A responsive and responsible governance which would manage our resources to rational ends. (Okoye, 2003) would further help build and reclaim the already eroded trust of the people on the government A recognition of their right and opportunities to have the joy of life, which includes materials and non-material possessions. No nation would survive with her citizenry walking under the label of "Odi ndu onwu ka mma" (the walking dead).

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