

Robert Nozick's Anarchy, State, and Utopia

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## Review Symposium

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### ROBERT NOZICK'S ANARCHY, STATE, AND UTOPIA\*

JAMES S. COLEMAN

Robert Nozick is a natural rights theorist, beginning his book with the sentences, "Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do." The book, then, is an attempt to answer this question, beginning with a set of rational, self-interested persons possessing individual rights in the "state of nature," and potentially engaged in a Hobbesian war of all against all.

Nozick answers the question in three parts, corresponding to the three parts of his book. In Part 1, he asks how anything resembling a state can come into being by voluntary assent of rational individuals, rather than to continue in anarchy. Thus the first part is an argument against the anarchists, and Nozick arrives, by careful steps, at a "dominant protective association" in a given territory, which has the essential character of the state, a monopoly over the use of coercion or violence. This is his minimal state, and Part 1 shows how it must arise, through rational voluntary choice. In Part 2, Nozick shows how nothing beyond such a minimal state can arise, without violating individual rights. In particular, he shows how any form of redistribution in which the state chooses to engage does in fact violate the rights of those it takes from. And in Part 3, he shows how such a minimal state can be combined with communities, possibly coercive and non-minimal, to constitute a utopian ideal.

Of these three parts, Nozick's strongest aim is clearly not to defeat the anarchists by showing that a state will arise without violating individual rights, nor to convince the reader that his utopia is the proper ideal, but to show that a non-minimal state does violate individual rights, and therefore is

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\* Robert Nozick: *Anarchy, State, and Utopia*, Basic Books (New York) and Basil Blackwell (Oxford), 1974.

unjust. Because of this, I will restrict my comments to this part of Nozick's book (Part 2). This not only appears to be where Nozick's own greatest interest lies, but it is also where his book confronts most sharply recent tradition in the social sciences.

The central and longest portion of Part 2 consists of a direct confrontation with the ideas of his colleague, John Rawls. Rawls' theory of justice<sup>1</sup> is a theory of distributive justice, and Nozick begins the confrontation with Rawls by a discussion of theories of distributive justice in general, and an exposition of his own theory.

As he points out immediately, the very statement of the problem of justice in the distribution of individuals' holdings as "distributive justice" biases the issue. The terminology suggests a central agency distributing collectively-held resources to individuals. Nozick argues that a proper theory of justice in holdings is a theory of entitlements, consisting of three parts (p. 151):

1. Justice in acquisition of holdings: "A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding."
2. Justice in transfer of holdings: "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. Rectification of injustice: "No one is entitled to a holding except by (repeated) applications of 1. and 2." If someone has a holding obtained directly or at some earlier point in a way other than 1. or 2., then a rectification of the injustice is necessary to attempt to re-create the situation which would have occurred under just acquisition and transfer.

Nozick leaves unstated just what are just acquisition and just transfer, or even what are good candidates for justice in acquisition and transfer. But even left without specific content, the principles sharply contrast to most theories of distributive justice. For these principles see justice as inhering in the process by which holdings were obtained, and is content with whatever distribution results from that process. In contrast, most theories of distributive justice, including Rawls' as well as the utilitarians', ignore the process by which holdings were obtained, and attend only to the end distribution. Nozick calls these "end-result" theories, in contrast to "historical" theories (what I have termed process above), of which his entitlement principles constitute an example (along with Locke's theory of property).

Nozick points out that any end-result conception of distributive justice, if embodied in law, gives each citizen an enforceable claim to some portion of the total social product, regardless of who currently holds that product or how they came to hold it. This, as he argues, is equivalent to appropriating the actions of other persons, and through this right, equivalent to acquiring “part-ownership” of other citizens. Thus Nozick presents a dismal picture of the position of a citizen in the modern (redistributive) state, as a partial slave to a many-headed master, the state.

Although Rawls’ theory of distributive justice does not specify a particular distribution of holdings, it does, as Nozick shows, entail appropriation by the state of the product of the best-off for the benefit of the least well-off. There is no incentive, according to Nozick, for the well-off to participate in a Rawls-just society.

Rawls would then argue that this is of no import, because rational persons, from the “original position” in which they are ignorant of whether they are to be well or badly off in the future, would choose a set of institutions that attended only to their welfare when they were worst off. They would, in game-theoretic terms, choose according to a minimax principle. In this way, Rawls would argue that there is no violation of rights at all in a Rawls-just society, since in the original position, each person freely chose to be governed by that set of institutions, i.e., chose to have a portion of his self appropriated if he were well-off in return for the claim on a portion of others if he were worst-off.

To counter this argument, Nozick must attack directly the notion of the social contract from the original position of ignorance, and he does so (p. 198 *et seq.*). But here he is less successful, and his lack of success here is the key to the major deficiency in Nozick—a deficiency which, as we will see, is great indeed.

Both Rawls and Nozick assume that rational persons behind a veil of ignorance will choose how the social product (or individual products, socially appropriated) is to be divided up. (For Nozick, see pp. 198 *et seq.*, especially footnote on p. 199. For Rawls, see *Theory of Justice*, p. 12.) But why should that be? Is there not a prior question, which when decided, will itself dictate for these rational persons what distributions of holdings will result? The prior question, of course, is the fundamental question of the social contract: what rights will they agree to give up to the collectivity (and what mechanisms of representation, etc., will they use to help insure that those rights are used in some correspondence to the aggregation of their individual wills), and what

rights do they reserve to themselves as individuals? Now some contract theorists, like Rousseau, have specified that all rights are to be held collectively, none individually, and it is this that makes Rousseau in effect the father of the modern totalitarian state.<sup>2</sup> But others, like Locke, are very careful about the rights to be held collectively.

Now once a set of rational persons behind a veil of ignorance has made such a social contract, such a constitutional choice, they are precluded by that decision itself from making further choices of the sort that both Rawls and Nozick assume will be made in a social contract, that is, choices about how the “social product” is to be divided up. If, in the set of rights reserved for individual use, there is full entitlement to the product of one’s labor (Nozick’s justice in acquisition) and full entitlement to the holdings one receives from the voluntary actions of others (as in a gift or exchange), then Nozick’s entitlement theory follows directly. Only if full rights to all resources are given up in the original position (as explicitly in Rousseau and implicitly in Rawls) is it possible to proceed as Rawls does, or as any theorist of distributive justice does who specifies a particular end-result distribution. So Nozick is right that Rawls’ difference principle would not result from rational persons behind a veil of ignorance—but he is quite wrong that no principle of distributive justice that specified the process, of how those holdings came to be (such as his entitlement theory) could be chosen. Indeed, it is *only* such principles that could be chosen, because rational persons in the original position would specify an allocation of their rights between individual and collective use—and this allocation would determine what individuals were entitled to do *qua* individuals, and what the central collective was entitled to do to modify the results of those individual actions. We may in fact press Nozick a little more directly, and ask just how he would expect his entitlement principles to arise in a society. Even though we begin with individual rights, the entitlement principles would have to be jointly enacted, or socially agreed to be legitimate; and how does that legitimacy come about? Through something like a contract among rational persons behind a veil of ignorance. That is, because the entitlement principles *in use* in a society involve not only certain individual rights, but also the social legitimation or acknowledgment of those rights, they can arise only from something like a social contract in which all persons decide which of their individual rights are to be given up to the collective and which are to be held individually.

But if that is so, then why cannot those rational persons make a somewhat different allocation than that of full entitlement to the product of one’s labor? Why should I not, for example, agree to provide some insurance in case I am through some misfortune destitute, via a small tax when I am not

destitute? Many ancient societies had some such arrangement. In Judaic law, for example, the widows and strangers were entitled to the grain left at the edge of the field during the harvest. Would it not be rational for a person in the original position to agree that a certain small portion of the individual products to which each is entitled be taken away from him, be subject to collective rights, and be reserved for use of the destitute (i.e., for himself when he might be destitute, since by hypothesis, he is not acting out of concern for others, but only his own self-interest)? The amount to be thus set aside, that is, the amount to be collectively held, or the amount of incursion that he would allow into his individual entitlement, would depend on how variable he felt his entitlement might be in good times and bad.

But the amount is not of concern in our assessment of Nozick, for once we have established the principle, once we have let the camel's nose under the tent, then Nozick's full entitlement theory no longer holds a special place. It is merely the (unlikely) case in which rational persons behind a veil of ignorance agree to hold all their rights individually, and not to give over any of those rights to the collective for insurance against time of need. This does not necessarily mean that rational persons would so empower the state (defined as the monopolist over means of coercion). They might well decide to so empower a different agency (e.g., an insurance agency, whether one with progressive (Social Security or unemployment insurance) or non-progressive (private insurance or Blue Cross) rates, rather than the state. But then again they might choose to allocate this right to the state. And if they do so, then the state is no longer Nozick's minimal state, and may take on some of the redistributive character of the welfare state, or indeed, even become a full-fledged welfare state.

What would be Nozick's response to this? I believe it would go back to the idea of the veil of ignorance. Nozick's most fundamental disagreement is with this idea. The idea of the veil of ignorance is an ingenious device for translating interpersonal comparisons of utility, and attendant interpersonal conflicts of interest, into intrapersonal comparisons of utility, and attendant intrapersonal balancing of interests among different situations in which each may find himself. If persons were not behind a veil of ignorance as to their future positions in the society, then those who knew they would have control of the state apparatus would favor more power for the state, while the disenfranchised would favor less; the rich would favor full entitlement to the fruits of one's labor, while the poor would favor a tax upon the rich. Thus without the veil of ignorance, rational self-interested persons would be embroiled in an unresolvable conflict. But with the veil of ignorance, ideally each person sees himself as potentially in all of these possible positions, and

makes the decision taking into account each of the different standpoints. Thus although we begin with selfish persons, we arrive at a contract by unanimous consent which is equitable for all, whatever position they might find themselves in. For the theorists of distributive justice like Rawls the veil of ignorance is a device for weighing the utility of goods to me when I am well off against their utility when I am badly off. For a correct form of social contract, such as I have outlined above, in which rights are allocated to the collectivity or reserved to oneself, it is a device for weighing the utility to be expected from having a combined and powerful set of rights used in my behalf (or possibly against me) vs. the utility to be expected from having only my individual rights, but certainly directed as I will.

Nozick argues, however, that if persons are to be regarded as beginning with a set of natural rights, then theoretical consistency does not permit arbitrarily depriving them of those rights by a veil of ignorance when they make a constitutional choice. Thus, according to Nozick, if a social contract were to be made, it could only be made by a set of persons (differentially) naturally endowed, and each could anticipate, because of his endowments, just what position in society he would find himself in.

If this were the case, however, we could not arrive at a basis for constitutional choice, at least not easily, for interpersonal conflict of interest would remain interpersonal conflict of interest. Nozick would argue that because of these conflicts of interest, not all persons would voluntarily give up rights that could lead to redistribution, and a greater-than-minimal state could not arise without violating natural rights. This view, I think, is mistaken. To consider the simplest case, if there were two classes in a society, and one (the better-endowed) sees itself best off by a small tax-and-benefit for unemployment, while the other (the less well-endowed) sees itself best off by a large tax-and-benefit, they may still agree on some tax-and-benefit preferable to both than none at all.

I believe, then, that Nozick is not correct in his argument that a greater-than-minimal state cannot arise without violating natural rights of individuals. But I believe also that he has uncovered the central defects in current theories of distributive justice, most especially that of Rawls. And in so doing, he has brought modern political philosophy a long step forward.

## NOTES

1. John Rawls, *A Theory of Justice* (Cambridge, Mass., 1971).
2. J. L. Talman, *The Origins of Totalitarian Democracy* (London, 1952).

BORIS FRANKEL

It is no accident that a growing number of works have suddenly appeared all dealing with the phenomenon of the contemporary State. The accumulated deficiencies of the *welfare-warfare* state, bureaucratic tyranny and moral bankruptcy all clearly reveal themselves precisely at a point in time when the role of the state must definitely increase in order to maintain disintegrating capitalist and bureaucratic orders, thus providing the last bastion against social revolution. Robert Nozick's valiant attempt to defend bourgeois individualism may (hopefully) be the last of a long tradition originating in the 17th century. While it is clear that Nozick is an ideological spokesman for that section of the American population who would dearly love to reduce or dismantle the welfare state, this is not the book's novelty. Despite the author's proclamation that his book is not a "political tract" (p.xii), it is Nozick's very polemic with Marxism which delineates his own concept of justice. The importance of Nozick's book is that it clearly establishes the parameters of bourgeois political philosophy beyond which social disintegration will set in if certain principles are made ambiguous. These epistemological and moral foundations of *Anarchy, State, and Utopia* are worth elucidating in that they are very sensitive to the danger of bourgeois society collapsing—a sensitivity which John Rawls (*A Theory of Justice*) does not reveal.

Nozick is faithful to the tradition of bourgeois philosophy in his acceptance of the primacy of the state-of-nature as an invaluable explanatory tool and foundation point. Insofar as state-of-nature theory has been closely linked with social contract philosophy, most non-marxian theory has justified the State as a phenomenon developing out of the needs of a hypothetical civil society and its opposite—an equally abstract and hypothetical state-of-nature condition. This hypothetical state-of-nature was nearly always conceived of in a manner which neatly fitted in with the particular philosopher's disposition towards an *actual*, specifically historical civil society. Hence we have seen the state-of-nature conceptualized on the one hand as a realm of innocence, purity, nobility and freedom which civil society contaminates, enslaves, perverts, etc., and on the other hand, the natural condition is posited as that

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hell where violent instincts, irrationality, and intolerance prevail once the “sensible” codes of civil society are challenged. Thus, an abstract civil society has a constant ahistorical and mechanical relationship to the state-of-nature; according to this mechanical construction, society is nearly always threatened by a relapse into the “natural pit,” or alternatively conceived as a successful harnessing of the human condition in a manner similar to the domination of plants and animals. Marx, in fact, begins the *Grundrisse* with some pertinent criticisms of state-of-nature theory, especially the “unimaginative conceits of the eighteenth century Robinsonades.” As he put it, “Smith and Ricardo still stand with both feet on the shoulders of the eighteenth-century prophets, in whose imaginations this eighteenth-century individual—the product on the one side of the dissolution of the feudal forms of society, on the other side of the new forces of production developed since the sixteenth century—appears as an ideal, whose existence they project into the past. Not as a historic result but as history’s point of departure. As the Natural Individual appropriate to their notion of human nature, not arising historically, but posited by nature. This illusion has been common to each new epoch to this day.”<sup>1</sup> It is clear that Nozick also stands on the shoulders of the “eighteenth century prophets” and begins with the “Natural Individual” who has *not* arisen *historically* but has been posited philosophically in an *a priori* way.

But while Nozick shares Locke’s and Smith’s ahistorical individualism (as well as Smith’s “invisible hand” theory), the difference is, that, like John Rawls, he also derives his position from an epistemological foundation first formulated by Kant. It was Kant who championed the idea that “all moral concepts have their seat and origin entirely *a priori* in reason. This is just as much the case in the most ordinary reason as in reason which is speculative to the highest degree. It is obvious that they can be abstracted from no empirical and hence merely contingent cognitions. In the purity of their origin lies their worthiness to serve as supreme practical principles, and to the extent that something empirical is added to them, just this much is subtracted from their genuine influence and from the unqualified worth of actions.”<sup>2</sup> Following Kant, John Rawls characterizes this *a priori* original position as a hypothetical situation where “no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets or abilities, his intelligence, strength, and the like . . . the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.”<sup>3</sup> Hence the empirical is supposedly eliminated (even the historically specific philosopher who is framing the new moral code), and a *tabula rasa* becomes operative. It is precisely this hypothetical starting point which differentiates bourgeois

philosophy from historical materialism, although both share the goal of rational, moral autonomy.

Having accepted the abstract validity of the state-of-nature, Nozick's whole exercise to justify the "minimal state" develops with a certain logical fluidity and structure. As a corollary to the hypothetical, rational and moral "Natural Individual," bourgeois theory generally has to construct a pretext for instituting the social contract. This pretext rests upon the eternal presence of fear, danger and coercion, which in turn require protection, compensation, and concentration of coercive power in a protective association—the State. As private property is generally conceived to be inseparable from an individual's natural rights, bourgeois theory has had to consider the question of a greater or lesser distribution of private wealth by implicitly acknowledging the function of the absolutist and constitutional state in the historical development and preservation of capitalist societies. This acknowledgment enters the supposedly pure contemplation of ethics via the conventional discussion of compensation, risk and protection. In Nozick's case, there is basically the acceptance of Weber's concept of the State as resting on a monopoly of force in a given territory. Hence the State is conceived *abstractly* as being concerned with punishment, deterrence, and protection. The paradox is, that while individuals within the state-of-nature may be *a priori* conceived as having negative or positive qualities, the State is nearly always conceived in a one-dimensional manner as being concerned solely with power. It is interesting to note that even though Rawls and Nozick (like most bourgeois philosophers) begin with the original position of a "veil of ignorance," individuals are conceived in terms of having bad intentions towards one another. While I reject any ontology based on human goodness or weakness, it is extremely important to realize why it is no accident that the "original contract makers" are *not* seen by Nozick as being basically good, co-operative and loving people. This is because he and Rawls base their expectations and regulations for a "just" society on the *empirical* experience of human beings practising violence, egoism and hate within class societies. Far from excluding the empirical in their *a priori* hypotheses, Nozick and company formulate the duties and obligations of "rational" men only in terms of the historical sacredness of property and egoism as cultural values. Rawls openly accepts the principle of inequality of wealth and authority even though he wants compensation for the least advantaged. Nozick's critique of Rawls is only made possible by an open commitment to the man "whose pleasures or desires involve material things and who must work for extra money" (p. 170).

Both Nozick and Rawls accept unequal wealth and authority as being inherent in the original position. As the philosopher of the capitalist welfare state,

Rawls can only justify the bourgeois order by coming dangerously close to sanctioning social revolution via a distribution of wealth. However, private property and the market system are not rejected; Rawls maintains a loophole against revolution via the principle that “the loss of freedom for some is not made right by a greater welfare enjoyed by others.”<sup>4</sup> Nozick also endorses the idea that there “is no justified sacrifice of some of us for others” (p. 33), but warns that Rawls’ notion of “distributive justice” would entail the introduction of socialism as a “punishment for our sins” (p. 231). And to prevent this disaster, Nozick would rather compromise his own theory and sanction a more extensive State in the short run (in order to rectify past injustices), than see a permanent extensive state instituted under socialism, (p. 231). (It is worth adding that Nozick’s conception of socialism appears to be rather limited in that it is based on the existing state bureaucratic models in Eastern Europe and Scandinavia.)

Insofar as both Nozick and Rawls base their theories of justice on the legitimacy of unequal wealth, Nozick’s argument makes telling points against Rawls’ “softer” defense of bourgeois society. Whereas Rawls is embarrassed and disillusioned with capitalism’s perpetration of economic, racial and political injustice, Nozick is hard headed and unembarrassed, the defender of bourgeois egoism *par excellence*. Although more repugnant, Nozick’s defense of the “minimal state” is logical and well structured if one accepts that selfishness, competitiveness and commodification are the highest human values which should be preserved (p. 241). Nozick can only preserve his egoistical individual by rejecting the infringing function which a Rawlsian or a socialist state necessitates, given a commitment to “distributive justice.” But in sharing basic values concerning the market, Nozick’s critique of Rawls is made easier in that he only has to follow a commitment to private property to its logical conclusion in order to see the danger implicit in Rawls’ theory. With Marx it is different.

In a few pages Nozick bravely tries to convince us that Marx’s theory of exploitation “is the exploitation of people’s lack of understanding of economics.” (p. 262). Perhaps Nozick shouldn’t over extend his powers of comprehension. His attempt to show that the competitive market underlies Marx’s theory of what constitutes socially necessary labor (p. 260), is clear evidence of Nozick’s inability to comprehend the difference between use value and exchange value. The quote which Nozick cites from Marx actually illustrates the relationship between surplus value and the market’s ability to absorb this surplus. What Nozick fails to grasp, is, that what constitutes socially necessary labor is not in itself founded upon the exchange mechanism of the competitive forces of supply and demand. Just as many pre-capitalist societies

determined the value of labor by non-market forces, e.g. slavery or communal work, so too, can a socialist society set criteria of *use value* which are free of commodity exchange relationships. The interesting aspect of Nozick's failure to grasp Marx's distinction between use value and exchange value is the very pronounced fetishism of commodity life which is championed right through the pages of *Anarchy, State, and Utopia*. It is best summed up in Nozick's own inverted answer to Marx's famous statement on needs. Bourgeois egoism is now eulogised under the banner of "From each as they choose, to each as they are chosen" (p. 160).

It is refreshing to find a theorist so candid. Nozick is opposed to general social co-operation (p. 193), advocates lower wages or higher prices for "meaningful work" (pp. 248–249), defends competitiveness and the rat-race ethic of achievement (pp. 241–243), and neatly expresses those values which Marx tried to show (in his condemnation of exchange value relations) by openly proclaiming that people "care simply about what they actually get" for their labor or co-operation, and nothing more (pp. 235–236). This instrumental and self-indulgent ethic underlies most of Nozick's discussion. For example, liberty is discussed in terms of violation of copyright and patent laws and contracts (p. 141), genetic engineering is endorsed via a genetic supermarket (p. 315), medical practice is no longer valued in terms of health care, but rather in terms of whether the doctor wishes to give service (presumably dictated by the monetary value attached to service) (pp. 234–235), and of course, even death can be measured in monetary terms (p. 77). Even where Nozick can not directly compensate or estimate all injuries, fears and anxieties in exchange values of the money market, his next best solution is to cast doubt on the market value of a suffering person, if that person should develop a "tolerance for certain acts, showing few symptoms of fear and stress" (p. 70). If Nozick ever lost his job as a philosopher, he would make a marvelous insurance salesman persuading people to learn to love and "tolerate" the neuroses of urban crisis.

Finally, Nozick's well publicized example of the Wilt Chamberlains who would accumulate disproportionate wealth through selling their talents (p. 161), clearly reveals the parameters of commodity fetishism. Nozick never considers the fact that a socialist society would institute a cultural revolution and not simply distribute material resources quantitatively. Why should sportsmen be paid money to play, why are death, birth, fear, health, or other fundamental aspects of human life to be measured only in market terms! Nozick simply projects the dominant commodity values onto all societies. It is no surprise to learn at the end of the book that Nozick wants to persuade us that the Market *is* Utopia. Choose your community—utopia as consumption—utopia as the market.

Nozick's philosophy of "right-wing anarchism" is a strange amalgam of some of the worst features of the "counter-culture" (e.g. do your own thing and other escapist and egoistical, disinterested "tolerance") as well as Wall Street ethics. While his theory is "ahistorical" in its acceptance of the state-of-nature original position, behind the "veil of ignorance" is the actual historical logic of ruthless, manipulative business practice. Nozick's abstract analysis of socialism in one factory, or "socialism in one suburb" existing alongside all other moral communities of every belief and life style, is a public relations handout for academics seeking refuge from their tarnished "community of scholars" which, in earlier days, was also conceived as a harmonious utopia.

But while Nozick's egoism is no foundation for a harmonious society, the idea of a "minimum state" is a worthy object for all socialists. Nozick justifies the minimal state by showing that the rights possessed by the State are already possessed by each individual in the state-of-nature; and since the State has no special rights, there is no infringement of individual rights and hence no need to explain how a minimal state would arise (p. 118). The problem is that actual material conditions make the emergence of a minimal state much more difficult than *a priori* constructed models. Marx also called for the withering away of the state (following the smashing of the capitalist state) and the creation of a social situation where the "state" has no special rights other than those possessed by individuals. But Marx *began* from the actual historical experience of class societies rather than from the *inverted* ideological position of a state-of-nature. This is why he pointed to bourgeois constitutions as being a form of political emancipation from feudalism, i.e. the abolition of privileged estates and guilds witnesses man's reduction to a egoistic independent individual on the one hand, and to an abstract moral citizen on the other hand. Thus "*actual* man is recognized only in the form of *egoistic* individual, authentic man, only in the form of *abstract citizen*."<sup>5</sup> Nozick subscribes to this division extremely well. In contrast, Marx wanted to abolish the egoistic bourgeois state and see people bring about a situation where individual beings recognize and organize their own powers as social powers so that social force is no longer separated from people as "political power." This means an end to *professional* politicians and bureaucrats—it means an end to the present form of a special interests, deterrent, secretive and repressive state—it means an end to one party or two party tyranny—it is a program for a genuine "minimum" state.

Finally, historical materialism is based on a universal *a priori* ethic. But this theory of justice is constructed empirically from the existing historical practices of injustice. It rests on the assumption that rational argument is often futile in class societies, that not all people would willingly and passively

surrender their unequal wealth and privilege if most other people rationally agreed to such a distribution. It rests on the assumption that revolutionaries must have as full a cognition of the objective and subjectively accumulated obstacles which prevent a major revolution in social and personal practice. This in turn necessitates a realization that coercion will be necessary in order to win emancipation, and that the early socialist societies will not be free of infringements upon egoistical individuals. It presupposes a cultural revolution as well as a material revolution, in other words, a transformation of consciousness. But this transformation presupposes the ability to overcome the distorted communication perpetrated by both external socio-economic forces as well as internal psycho-cognitive experiences. Although the Kantian goal of treating no other person as a means can only be approximated by the elimination of distorted communication (and this is one of Habermas' contributions in trying to establish a universal communicative ethic based on the historical experience of the human species), even this historical materialist ethic is a luxury which is severely circumscribed by the critical and urgent nature of events. The Vietnamese, Chilean and Portuguese revolutions (like all revolutions) are life and death struggles. The participants rarely have the knowledge or the time to contemplate the complexity and universality of the urgent actions they engage in. This is the real arena where the "social contract" is made and not the neat and tidy *a priori* models constructed by philosophers. But then philosophers have always had a deep desire to make everybody else philosophers, if not kings.

## NOTES

1. K. Marx, *Grundrisse* (London, 1973), p. 83.
2. I. Kant, *Foundations of the Metaphysics of Morals* (Chicago, 1949), p. 71.
3. J. Rawls, *A Theory of Justice* (Cambridge, 1971), p. 12.
4. *Ibid*, p. 586.
5. See "On the Jewish Question" in Easton and Guddat, eds., *Writings of the Young Marx on Philosophy and Society* (New York, 1967), pp. 240–241.

DEREK L. PHILLIPS

We are demanding \$500,000,000 from the Christian white churches and the Jewish synagogues. This total comes to 15 dollars per nigger . . . Fifteen dollars for every black brother and sister in the United States is only a beginning of the reparations due us as people who have been exploited and degraded, brutalized, killed and persecuted.<sup>1</sup>

With these ringing words, James Foreman interrupted the Sunday morning service at Riverside Church in New York City. This “Black Manifesto,” adopted by the National Black Economic Development Conference prior to Foreman’s action in May 1969, was given widespread attention in the national and international press. While commentators held differing views as to the appropriateness of Foreman’s tactics and the reasonableness of the financial demands, almost no one had anything to say about “reparations” as a concept of *social justice*.<sup>2</sup> Similarly today when some nation states demand reparations for previous injuries (i.e., exploitation) and advance these demands in the name of rectification for earlier injuries; the question of *why* some sort of rectification (reparation, restitution, compensation) is owed in the name of social justice is either totally ignored or else is redefined as a demand for “equality.” Of course there has been an increasing demand in recent years for a whole host of equalities—political, economic, and social—both within and between various countries around the globe. But support for or opposition to the achievement of greater equalities (in income, medical care, housing, etc.) raises a different, and narrower, set of questions than arise from a concern with distributive justice.<sup>3</sup> One of the great merits of Robert Nozick’s *Anarchy, State, and Utopia* is his recognition of the need for the rational *justification* of a moral code, and his advancement of a theory of justice which includes rectification as a central component.

Nozick’s book is divided into three parts. The first is an argument against the anarchists, where, through a long and complex series of steps, he shows how a minimal state—a “dominant protective association”—will arise by way of rational voluntary choices on the part of individual actors. The second part is devoted to showing how nothing more extensive than a minimal state can be

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morally justified, i.e., can be achieved without violating individual rights. The concluding section (“Utopia”) discusses the various ways in which particular communities, within the framework of utopia, can be combined with a minimum state to realize a number of arrangements for living together. Needless to say, it is not possible to deal adequately with Nozick’s interesting and complex analyses in these few pages. Therefore, I will focus my discussion on Part II of Nozick’s book. It is here that Nozick puts forth his own theory of distributive justice (the “entitlement theory”) and most directly confronts problems of interest to social scientists and policy-makers.

All theories of justice have as a central concern the allotment of something to people: goods, opportunities, rewards, and so on. And in the case of distributive justice, it is the *comparative* allotment that is at issue. For the most part, theories of distributive justice rest on treating people according to their (a) desert or merit, (b) needs or abilities, or both (“From each according to his ability, to each according to his needs”), or (c) human worth and well-being. A partial exception is Rawls’ theory (which I will not discuss here) which incorporates and goes beyond all earlier theories of justice.<sup>4</sup> Let me merely mention Rawls’ general conception of justice, and then move on to consider Nozick’s objections. According to Rawls: “All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.”<sup>5</sup> Injustice, says Rawls, involves inequalities which are not to the benefit of all. Consequently, redistributions to achieve equality may be required.

Nozick argues that Rawls’ theory of justice violates people’s rights and, therefore, cannot be morally justified. Like other theories of justice, Rawls’ argument ignores the issue of people’s *entitlements*: whatever is to be distributed (equally or not) comes already tied to people. Most theories of distributive justice, Nozick says, focus only on the end distribution of holdings. They ignore the processes by which holdings were obtained. Further, most theories of justice are *patterned*. That is, they specify that “a distribution is to vary along some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions.” (p. 156) Distributions according to need, merit, work, and so on are all patterned. Functional theories of stratification are similarly patterned: incomes and status are distributed according to (a) the social importance of various positions, and (b) the amount of training and education required to get people to fill them. Nozick asserts that: “To think that the task of a theory of distributive justice is to fill in the blank in ‘each according to his \_\_\_’ is to be predisposed to search for a pattern; and the separate treatment of ‘from each according to



his ...' treats production and distribution as two separate and independent issues." (pp. 159–160)

Nozick points out that a weakness of end-state and patterned principles of distributive justice is that they can only be achieved and maintained by a continuous interference with people's lives. He presents a number of examples concerning the relationship between liberty and patterned distributions. The best known is the well-publicized example of Wilt Chamberlain, which goes like this. Let us suppose that incomes in the United States are distributed according to your own favorite distributive principle, and call this distribution of incomes  $D_1$ . Imagine that our favorite distributive principle is one of equal income for everyone. Imagine, further, that there is a very gifted basketball player—Wilt Chamberlain—who many people want to see perform. In order to get him to perform here (in my or your home-town), a contract is signed with the local team and an agreement is reached where, in each home game, twenty-five cents from the price of each ticket goes to Chamberlain. Many people attend the games, knowing full well that he will get twenty-five cents from each ticket sold (maybe there are even extra twenty-five cent tickets printed with Chamberlain's name on them so that everyone is aware that he gets the extra money above what they otherwise would pay). They enjoy seeing him play, and consider it well worth the extra price of admission. Because so many people attend the games, Chamberlain gets \$250,000 at the end of the season—a figure far above the equal income which everyone else gets.

Everyone who attended the games voluntarily chose (i.e., exercised his or her freedom) to give twenty-five cents extra of his or her money to Chamberlain in exchange for seeing him play basketball. Nozick asks: "If  $D_1$  was a just distribution, and people voluntarily moved from it to  $D_2$ , transferring parts of their share they were given under  $D_1$  (what was it for it not to do something with?), isn't  $D_2$  also just?" (p. 171) The lesson to be learned from this example, Nozick states, is that "To maintain a pattern one must either continuously interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason choose to transfer to them." (p. 163) Unless people are restrained by the state (or some other agency) so that they cannot *voluntarily* transfer certain resources or holdings, an egalitarian distribution pattern will be altered or overturned. In other words, we can only achieve and maintain economic equality (or maintain any other patterned system) by destroying people's freedom to do as they like with their resources.

For this reason, Nozick rejects the patterned and end-state principles contained in other theories of distributive justice. Instead, he stresses the importance of *historical* principles; whether a distribution is just or not depends on how it came about. Nozick's "entitlement theory" is concerned with the subject of justice in holdings, which consists of three major topics.<sup>6</sup> First, is the question of the *original acquisition of holdings*. How may unheld things come to be held, what are the processes involved in acquisition? The second topic is concerned with the *transfer of holdings* from one person to another. By what mechanisms may people transfer their holdings, and by what processes may someone acquire holdings from another person? These two principles, then, are concerned with the principles of justice in acquisition and transfer. The third topic in Nozick's entitlement theory is raised by the existence of past injustices (i.e., violations of the first two principles), and concerns the *rectification* of injustices in holdings. Here Nozick raises a number of crucial questions (p. 152):

If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had compensation been paid properly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendents?

As Nozick observes, nowhere is there a fully adequate attempt to come to grips with such important questions. The demands of Blacks and American Indians, as we know, are often formulated in terms of an explicit emphasis on rectification. Similarly, the claims of some nation states for reparations for previous injuries (exploitation) are frequently advanced in terms of rectification for earlier injustices. If holdings were acquired or transferred in an unjust manner—either within or between societies—then the descendents of those whom the injustices were done often feel that they should be compensated for such injustices. But how far back should we go? And who should do the compensating: individual states, "Western society," the descendents of those who committed the original injustices? Nozick's analysis begins to indicate just how difficult questions about rectification can be.

Built into Nozick's entitlement theory is an emphasis on something akin to Locke's proviso that there be "enough and as good left in common for others," the intention being that the position of others at liberty to use a thing is not worsened. Thus the proviso would prohibit someone's appropriating the only water hole in the desert and charging what he will for its use.

Nor does the situation change if his water hole remains while all the others dry up. This is not to say that he has no right to his water supply, but that rights may sometimes be overridden. What is important for Nozick is that some people's appropriation of property does not result in a net loss in what remains for other persons to use, i.e., that there be a "counterbalance" (pp. 178–179) so that they are not worse off. If there is a "net loss," if people are on balance worse off because of an individual's appropriations, then their rights must be overridden to avoid some catastrophe. Given the kinds of examples that Nozick provides and his general discussion concerning the worsened position of some persons by the actions of others, it appears that the only "catastrophe" which allows property rights to be overridden is that resulting in the (immediate?) loss of life.

It is precisely this general line of reasoning, I believe, which is used to support almost all processes by which private property is acquired and maintained. So long as no one else is obviously and immediately in danger of losing his or her life (as with, in Nozick's examples (p. 180), someone's going without water, or a castaway from a shipwreck being refused a place on the only island in an area) and so long as it can be argued that no one on balance suffers a "net loss" by someone's else's appropriations, then the fact that some persons may acquire and control great quantities of property and others none is in no way unjust. One is not surprised, therefore, to find Nozick saying that he believes that "the free operation of a market system will not actually run afoul of the Lockean proviso." (p. 182)

Although Nozick's entitlement theory is a welcome alternative to various end-state theories, it has a serious weakness: it fails to address the question of what is an *originally just* holding. Since his first principle rests on the notion of just acquisition, one needs to know what that is. This is especially important because the whole problem of rectification rests on judgments about the original process of acquisition. If we are to take seriously a theory of justice in holdings which depends ultimately on the original acquisition of the things in question, then we obviously require an adequately developed (and defended) *theory of property*. In fact, one would think that a theory of property would have to be a major ingredient in any consideration of equality and distributive justice. After all, men and women occupy space that is (generally) owned by themselves or someone else. And everything they use to survive and maintain themselves comes from somewhere and someone (with such rare exceptions as the air we breathe, which still is affected by the actions of others). Land has to be improved and nature's resources transformed before it (or they) can be exchanged, given away or stolen. Some persons have to develop the wilderness, grow food, produce clothing, build

shelters, etc. before the problem of “who gets what” can even be raised in a serious fashion. Thus the question of how property rights in these objects arise and should be allocated seems unavoidable. While Nozick apparently wants the “natural” right to property obtaining in the state of nature (following Locke) to be maintained in civil society, he never faces the issue squarely. Locke’s principle of original acquisition is briefly discussed, but never pursued. Nozick acknowledges that to arrive at a specific theory, we would “have to specify the details of each of the three principles of justice in holdings.” (p. 153) And, he adds, “I shall not attempt that task here.” (p. 153)

Nevertheless, one important consequence of Nozick’s book is the recognition that whatever is to be distributed (whether on the basis of need, merit, work, or whatever) comes already attached to other people. A commitment to any kind of patterned distribution in order to achieve equality, therefore, appears to endanger another strongly prized value: liberty. Of course, all societal restraints (laws, norms) serve to restrict somebody’s liberty. But in the case of various liberties which conflict with one another, they are (although not always explicitly) ranked hierarchically. We are generally willing, for example, to restrict someone’s freedom to kill another human being because people’s freedom to enjoy and pursue life (generally) ranks higher than the freedom to kill. Thus we recognize that certain liberties or freedoms may be in conflict with one another, and that we must sometimes choose one at the expense of another.

Perhaps the same necessity for a hierarchical ranking exists with regard to liberty and equality. There are several “basic” liberties which we cherish that may come into conflict with attempts to meet people’s “equal needs” for this or that. What we have, then, is not a simple conflict between equality and liberty, but a potentially large number of conflicts among a great variety of equalities and freedoms.

We might want to argue, as David Spitz does, that men have an equal right to life. “Given this equal right to life,” Spitz says, “it follows that all men are equally entitled to whatever is necessary to sustain and protect life. At a minimum, this means that no man can legitimately be denied adequate food, clothing, housing, medical care, etc. Beyond that minimum, decent and rational men may disagree as to what is required.”<sup>7</sup> I would say that “decent and rational men” would (and do) disagree not only beyond that minimum but also as to what the minimum is or should be. But what Spitz is saying, of course, is that men have certain needs in common. His assumption, which is widely shared by egalitarians, is that for some people to be deprived of

necessities is not only a failure to meet their equal needs but is, at the same time, a greater deprivation of freedom than for other persons to be deprived of their liberty to achieve (what we regard as) an overabundance. Hume noted long ago that “Whenever we depart from equality we rob the poor of more satisfaction than we add to the rich.”<sup>8</sup> We must assure, Hume argued, that liberty for some is not slavery for others.

From Nozick’s viewpoint, the goods and services required for meeting the “needs” listed by Spitz—adequate food, housing, clothing, medical care—are not just there to be distributed as manna from heaven: they are already attached to people, and these people (may) be entitled to them. Now some persons may see this as implying that there are, therefore, *no* reasons (other than overriding) for interfering with people’s holding. Such a conclusion would seem to favor a conservative outlook and the *status quo*. After all, many conservatives regard the present division of wealth and power as corresponding to some “natural” principles at work in human society. For them, questions about the justice of such distributions are often nothing more than the anguished outcries of envious people who themselves don’t have enough of the spoils.<sup>9</sup> This is most certainly not Nozick’s position.

Even his very cursory discussion of what constitutes an originally just holding suggests that Nozick would be unlikely to view most current property holdings as just.<sup>10</sup> That is to say, these property holdings were not originally acquired in accordance with the “principle of justice in acquisition” and *therefore* whoever they were transferred to was not “entitled” to the holdings (Nozick’s second principle). From this it follows that the third principle, concerning the “rectification of injustices in holdings,” comes into play. If holdings were not acquired in a just manner, then those to whom they were transferred are not entitled to them either, and rectification is necessary.

As I noted earlier, Blacks and American Indians, among others, are presently claiming the right to such rectifications. If rectification is to take place, some people’s freedoms will obviously be interfered with; their freedom to hold on to (and extend) their property and do with it as they choose will, let us say, have to be abridged. But, says Nozick, if they (or their ancestors or others from whom they have acquired it) did not acquire that property in terms of the principles of acquisition and transfer, then they have *no right* to it. Therefore, interfering with their freedom to maintain that property is *not* an injustice. Of course, it does affect their freedom, but with the intention of rectifying past injustices. If rectification is seen as just and necessary, there is, however, no reason to believe that this will result in any sort of *equal* distribution of property and holdings. Let us say that Blacks, American

Indians, and other individuals (or is it “groups” that require and deserve rectification?) are to be given property and holdings in rectification for earlier injustices. These will obviously have to come from other persons who now (unjustly) hold them, and an entirely new distribution pattern will emerge. This new pattern will most certainly not be one of equality.

Nozick’s entitlement theory, far from representing a conservative outlook, may lead to a demand for a *radical redistribution* of property—unless it can be shown that all present holdings have been justly acquired (which, I venture to say, it cannot). This raises a number of crucial questions. How are we to judge the justice of people’s holdings? Once injustices in acquisition and transfer are discovered, how are rectifications to take place? What are the various candidates for rectification and redistribution: money, housing, medical care, or what? And who is to be responsible for such rectifications and redistributions? If it is to be the state which takes responsibility for rectifying past injustices, then this will require a more extensive state than we have at present. It might also be a kind of state that many of us would not like to live in. All of this is enormously complex and far-reaching in terms of the kind of society (or world) which might be necessary to rectify past injustices. Among other things, it points to the urgent need for a theory of rectification.

Now some persons will undoubtedly argue that a demand for rectification based on historical injustices is highly impractical and must necessarily open up a Pandora’s box. This may be so, but it depends partially on various interpretations of *legal* as well as *moral* (concerning justice and injustice) considerations. With regard to Black reparations, for example the correction of an ancient injustice is not the only issue. Injuries to Blacks were the result of a system of *legally* imposed segregation. Recent changes in the law have generally resulted in steps to eliminate possible injuries in the future rather than to provide pecuniary compensation for the past. But some would argue that it would not be inappropriate for the Congress of the United States and the various state legislatures to act to compensate those Blacks whose rights were legally infringed by official misconduct. A precedent already exists in the Indian Claims Commission created by the U.S. Congress in 1946 to redress some of the wrongs committed against Indians at an earlier time. According to Boris Bittker, in his excellent and provocative *The Case For Black Reparations*, “These included not merely claims under treaties that had been violated by the United States but also “claims which would result if the treaties, contracts, and agreements between the [Indian tribe] claimant and the United States were revised on the ground of fraud, duress, unconscionable considerations, mutual or unilateral mistake, whether law or fact, or any other ground cognizable by a court of equity’.”<sup>11</sup> There are also the prece-

dents set by various schemes to pay compensation to war victims. Perhaps the best known is the German restitution and reparations program which has paid out several billions of dollars to the victims of the Third Reich.<sup>12</sup> Of course, the payment of claims to American Indians and the award of reparations in Germany have involved enormous difficulties and complications. Nevertheless, precedents do exist for the rectification of injustices in the past.

It would be ironic indeed if Nozick's book, which has been greeted by great applause on the Right and, according to one reviewer, is being devoured by speechwriters in the Ford administration, should have the consequence of awakening us to a serious consideration of where (and why) earlier injustices have to be redressed. To return to a point made at the outset, the redress of injustices is a different matter than the redress of inequalities. Many inequalities are the direct result of injustices, but others are not. What we require if we are to deal seriously and intelligently with competing claims (from within American society and from around the globe) for redress and restitution is a solid justification, a firm grounding, a moral theory, to support our political philosophy. Whether we accept or reject Nozick's libertarian moral code and his entitlement theory, he has at least pointed us in the right direction.

## NOTES

1. "Manifesto" presented by James Foreman on May 5, 1969.
2. For an extended discussion of the Black Manifesto and reactions to it in the press, see Boris L. Bittker, *The Case For Black Reparations* (New York, 1973).
3. This is a point that seems to escape most of the neoconservatives. See, for example, Robert A. Nisbet, "The New Despotism," *Commentary* 59 (June, 1975), pp. 31-43; and "The American Commonwealth" issue of the *Public Interest* 41 (Fall, 1975).
4. John Rawls, *A Theory of Justice* (Cambridge, 1971).
5. *Ibid.*, p. 62.
6. "If the world were wholly just," Nozick states, "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."
 (Nozick, *op cit.*, p. 151.)
7. David Spitz, "A Grammar of Equality." In Lewis A. Coser and Irving Howe (eds.), *The New Conservatives* (New York, 1974), p. 147.
8. Quoted in E. F. Carritt, "Liberty and Equality." In Anthony Quinton (ed.), *Political Philosophy* (Oxford, 1967), p. 139.
9. See, for example, Irving Kristol, "About Equality," *Commentary* (November, 1972).
10. My own view is that a stringent application of almost any principle of justice in application would reveal that *no* current holdings could be pronounced fully just. This does not mean, however, that these injustices can or should be ignored or forgotten. Some cases for redress or compensation are obviously stronger than others.
11. Bittker, *op. cit.*, p. 22.
12. See, Nehemiah Robinson, *Ten Years of German Indemnification* (New York, 1964).