

A CRITIQUE OF ROBERT NOZICK'S ENTITLEMENT THEORY

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A Thesis Submitted to the Faculty of

Department of Philosophy

Dorothy F. Schmidt College of Arts & Letters

In Partial Fulfillment of the Requirements for the Degree of

Bachelor of Arts with Honors.

Florida Atlantic University

Boca Raton, Fl

May 2018

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This thesis was prepared under the direction of the candidate's thesis advisor, Dr. Clevis Headley, Department of Philosophy, and has been approved by the members of his supervisory committee. It was submitted to the faculty of the Philosophy Department and was accepted in partial fulfillment of the requirements for the Honors distinction.

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ABSTRACT

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Title: A Critique of Robert Nozick's Entitlement Theory
Institution: Florida Atlantic University
Thesis Advisor: Dr. Clevis Headley
Degree: Bachelor of Arts with Honors
Year: 2018

Robert Nozick's entitlement theory is seen as the preeminent theory of libertarian distributive justice. It is my intention, however, to demonstrate the various flaws inherent within his theory as follows: (1) I will examine his whole entitlement theory, as well as the accompanying addendums which he uses to amplify the theory; and (2) offer a multifaceted critique of the entitlement theory and its addendums. The focus of my critique is that Nozick constructs a theory upon premises which are never clearly explained and remain vague. They are, therefore, unfit for the construction of a plausible theory of distributive justice.

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INTRODUCTION

Liberalism is the predominant paradigm within English-speaking social and political philosophy. The paradigm of liberalism that has become prevalent is grounded in the works of John Rawls and this paradigm has been critiqued and reformulated by other thinkers. However, many scholars often forget or ignore the works of Robert Nozick. The issue with the scholars' forgetfulness and ignorance is that rarely does forgetting about something, or all together ignoring it, makes that something go away or disappear. The libertarians have not gone away, though they have shifted the discourse by assimilating themselves into various seemingly centrist or neo-liberal factions. The danger of ignoring these libertarians is that their ideas often go unchallenged. If they are challenged, the challenge is presented indirectly, such that it only assaults the peripheral elements of their beliefs. The ultimate result is that the core ideology of libertarianism remains relatively intact. While I am not by any means implying that the libertarian social and political philosophy of Nozick, or other less well-known libertarian, is inherently problematic, I do hold that libertarian theory is flawed.

The goal of this thesis is twofold. My first goal is to provide an in-depth examination of Robert Nozick's libertarian theory, particularly his entitlement theory, for it is the fundamental core of not only his distributive justice theory, but also his libertarian theory at large. The in-depth examination of Nozick's theory of justice will directly follow his writings in Chapter Seven of his *Anarchy, State and Utopia*. The

second goal is to provide a critique of the entitlement theory to make sure that its flaws are clear and undeniable.

CHAPTER ONE

Robert Nozick's Entitlement Theory

The best way to understand and expose Robert Nozick's libertarian entitlement theory is to look at the way in which he starts Chapter Seven of *Anarchy, State and Utopia*, the chapter in which he delineates his theory of justice. The term "distributive justice" is, for the large part, seen as a label for justice in property, social goods, and welfare distribution. Nozick states that "the term 'distributive justice' is not a neutral one. Hearing the term 'distribution,' most people presume that some thing or mechanism uses some principle or criterion to give out a supply of things."¹ One would be right to question who "most people" are who presume that the term "distributive justice" presupposes a central distribution mechanism or apparatus. Nozick never explains who these "people" are, though he does attempt to back up his claim by stating that redistribution is always inherent within the term "distribution," and that if we allow for such definition, we must conclude that "we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no *central* distribution."² My interpretation of what Nozick is attempting to claim is that to use the term "distributive justice" implies that we are like children arguing about the shares of pie bestowed upon us by some sort of all-powerful distributor, of which there is no kind. Not only is there not an all-powerful distributor, there are no bestowed shares either, because "what each person gets, he gets from others

¹ Robert Nozick, *Anarchy, State and Utopia*, 2nd ed. (New York, NY: Basic Books, 2013), 149

² *Ibid.*

who give to him in exchange for something, or as a gift.”³ It appears to me that for Nozick, any given outcome of property within society is neither generated by an all-powerful authority, nor is the property in question bestowed in a vacuum. Rather, the property distribution that exists is a complex function of exchanges, trades, and gifts. Nozick offers a witty and clever metaphor, stating that “there is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry.”⁴ In his metaphor, it seems that Nozick is comparing the organic emergence of love among people to his idea that property holdings emerge organically among people. It appears that for Nozick, love is metaphorically similar to property, which perhaps illuminates why libertarians seem to “love” property so much. Nozick does acknowledge that some individuals who use the term “distribution” to refer to justice in property ownership patterns “do not imply a previous distributing appropriately judged by some criterion.”⁵ He does maintain that “despite the title of this chapter [“Distributive Justice”], it would be best to use a terminology that clearly is neutral.”⁶ Nozick may be a challenging philosopher, but by no means is he an iconoclast. In determining a more fitting name for his justice theory, he argues that “we shall speak of people’s holdings; a principle of justice in holdings describes (part of) what justice tells us (requires) about holdings.”⁷ It appears that for Nozick, the label “Distributive Justice,” in reference to justice in property ownership patterns, ought to be replaced by “Justice in Holdings.” We can conclude that the topic, and the reason for Nozick’s

³ Ibid.

⁴ Ibid, 150

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

entitlement theory, is his attempt to formulate an adequate theory of justice in holdings, and definitely not a theory of distributive justice.

Now that Nozick's intention to formulate a theory of justice in holdings is clear, we can examine his actual theory. He states that, "the subject of justice in holdings consists of three major topics," indicating a tripartite, namely: (1) topic of original acquisition of holdings, (2) the topic of transfers of holdings, and (3) the topic of rectification of injustice in holdings.⁸ Though the theory is a tripartite, it soon shall be clear that the core of the theory rests within the second topic. In providing a description of the first topic of justice, Nozick states the following:

The first is the *original acquisition of holdings*, the appropriation of unheld things. This includes the issue of how unheld things may come to be held, the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on. We shall refer to the complicated truth about the topic, which we shall not formulate here, as the principle of justice in acquisition.⁹

The purpose of the principle of original acquisition or, in other words, the principle of justice in acquisition, is to explain how things in the world become property. The notion of property carries with it the presupposition that in order for a thing to be property it must be owned, either by an individual, a group, or in common with others communally. But how does something that is unowned become owned? How can something that is unowned suddenly become private and exclusive? There is often exclusion and ownership inherent within property and that must be explained, which Nozick claims the

⁸ Ibid, 150, 152.

⁹ Ibid, 150

principal of original acquisition will do. First, it must be understood that for Nozick, there exist things in the world that are originally neither owned by one individual, nor by a community. Only if we accept the implicit axiom of original non-ownership can we allow Nozick to further define the means by which these unowned things in the world become owned, or, in other words, property. Nozick explicitly states that he will not formulate and explain the principle of justice in acquisition within the entitlement theory, which should, without a doubt arouse, suspicion as to the validity of the principle. However, he amplifies the principle of justice in acquisition with the Lockean Proviso.

Now that the purpose of the topic of original acquisition or, as Nozick calls it, the principle of justice in acquisition, is made clear, I am going to provide an explication of his second topic. Regarding the second topic of justice in holdings, Nozick states the following:

The second topic concerns the *transfer of holdings* from one person to another. By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society. The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer.¹⁰

The topic of transfer of holdings, or the principle of justice in transfer, can be understood as Nozick's attempt to provide an account of the way in which property may be transferred among people, presumably to justify the free market. He tells us that this topic deals with the mechanisms in which transfers are made, offered and requested, the

¹⁰ Ibid.

intricacies of gift giving and fraud, and how societal norms may factor into the equation. Though it may not be evident now, due to the fact that Nozick avoids directly explaining it until later, the topic of justice in transfer is central to his theory of justice.

After my examination of Nozick's discussion of original acquisition of holdings and the of transfer of holdings, the careful reader will see that two of three topics have now been made clear, and there is surely an expectation of a third topic. However, Nozick adds another section within his entitlement theory in order to reinforce the validity of the first two principles of justice in holdings. In attempting to do so, he states the following:

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to that holding.
3. No one is entitled to a holding except by (repeated) application of one and two.

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.¹¹

It appears that if Nozick could indeed establish that the world was entirely just, the entitlement theory would only consist of the first two premises. In the first premise, he states that assuming a person initially acquires property in a just way, the property

¹¹ Ibid, 151

belongs to the said person. It is unfortunate that he in no way alludes as to what is just initial acquisition. Based on the second premise, a transfer of property is just if it is in accordance with the principle of justice in transfers, a principle he has yet to delineate or explain. The third and final premise concludes the theory, arguing that justice in property is derived through entitlement, which itself can only be validly deduced from premise one or two. It becomes clear that for Nozick, justice, in the context of property, is derived not through the way in which it is distributed but, rather, through the preservation of entitlement to property. The theory is radical in that the only thing that matters in evaluating whether a distribution of property is just is merely whether someone has an entitlement to said property, and, in order to confirm the validity of an entitlement, all that one must do is check to establish whether or not the said entitlement arose in conformity with Nozick's principle of justice in acquisition or his principle of justice in transfer. He further attempts to strengthen his entitlement theory by introducing an analogy between justice in holdings and logic. He states that "a distribution is just if it arises from another just distribution by legitimate means... Whatever arises from a just situation by just steps is itself just."¹² In other words, Nozick appeals to the metaphor of logical validity to reinforce his entitlement conception of justice. He states the following:

As correct rules of inference are truth-preserving, and any conclusion deduced via repeated application of such rules from only true premises is itself true, so the means of transition from one situation to another specified by the principle of justice in transfer are justice-preserving, and any situation actually arising from repeated transition in accordance with the principle from a just situation is itself just.¹³

¹² Ibid.

¹³ Ibid.

Nozick seems to be arguing that, as long as property is acquired and repeatedly transferred in accordance with the principles of justice, then any pattern of distribution resulting from the transfer is just regardless of the consequences of the said distribution. After all, since logical conclusions are valid for as long they necessarily follow from true premises, then it must be that distributions are just, for as long as the distribution is arrived by just means—in this case, through the principles of justice.

Recall that in his addendum to the entitlement theory, Nozick stated that the first two principles of justice would suffice for an adequate account of justice in holdings if the world were just. However, the world, without a doubt, is riddled with past injustices. Concerning the problem of history, Nozick states that “justice in holdings is historical; it depends upon what actually has happened.”¹⁴ In fact, some scholars argue that the rise of private property was always through violence, conquest, and force. In other words, most property hitherto was acquired originally through means that violated the principle of justice in acquisition. Moreover, any repeated transfers that occurred hitherto are illegitimate as well, for they were not justly acquired in the first place. Nozick knows this of course, and while addressing the issue of historical injustices, he states that, “the existence of past injustices (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings.”¹⁵ As with the previous principles, the principle of rectification must address certain, critical questions. He raises some of these questions, asking the following questions with regard to the principle of rectification of justice in holdings:

¹⁴ Ibid, 152

¹⁵ Ibid.

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 obligation do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done?... 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 descendants?... How far back must one go in wiping clean the historical slate of injustice?¹⁶

These questions, without a doubt, are paramount in constructing a framework for how the principle of rectification of past injustice ought to work. Nozick queries whether past injustices have had an impact on current holdings. He further questions the notion of obligations, and if there are any. There are also questions of transference of obligations and, moreover, the question of how far back to go. Nozick considers these questions fundamental to constructing a proper theory of rectification. After a brief inquiry into the scope of the principle of rectification, Nozick states that he does “not know of a thorough or theoretically sophisticated treatment of such issue.”¹⁷ Nozick does speculate on the possibility of such principle or theory. He states:

Idealizing greatly...This principle uses historical information about previous situations and injustices done in them (as defined by the first two principles of justice and rights against interference), and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holdings in the society. The principle of rectification presumably will make use of its best estimate of subjunctive information about what would have occurred...if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized.¹⁸

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid, 152-3

It is interesting to note that Nozick does not speak of the other two principles of justice in holdings in such technical language or careful details. However, what he said can be summarized as follows: the principle of rectification ought to examine historical injustices and then adjudicate the difference between the current holdings as they are now vis-à-vis holdings as they would have been had the injustice not occurred. The reason that Nozick uses careful language when discussing the rectification principle can never be known. Of course, it is possible to argue that he did not want to include any specific information about how such a principle would work, and how far back it could be applied. Moreover, one ought to note that he reduces the question of past injustices down to bare holdings or, in another word, property. Questions of lost lives and livelihoods, diminished quality of life, and even borderline genocide are ignored. This development seems to confirm a shared notion about libertarians: for them, the only legitimate questions concern property and only property.

Concluding the first section of the chapter on distributive justice, Nozick summarizes his theory and states that “the general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustices.”¹⁹ Simply put, there is justice in holdings if and only if all property holdings are found to be in accordance with the principles of justice, namely, the principle of justice in acquisition and the principle of justice in transfers. Any careful reader would be confused at this point, particularly about the fact that Nozick asks us to accept a theory of justice based on principles that he never clearly explains, or provide clear guidance for their implementation. Nozick knows that there are tensions, and attempts to alleviate the

¹⁹ Ibid, 153

said tensions by stating that in order to complete the theory, one “would have to specify the details of each of the three principles of justice in holdings.”²⁰ It is my view, however, that the specification of the three principles of justice in holdings are not just necessary for completing the theory but, rather, are paramount to the fundamental primacy of the theory itself. Nozick argues that the house, or, in this case his theory of justice in holdings, is almost complete, and all it needs are the foundation, support beams, and the walls. It has a roof, or, in other words, the conclusion that one ought to do with one’s property as one sees fit for as long as there is entitlement to the said property; however, Nozick’s house has no strong foundation upon which to build his conclusion. It is a roof resting on baseless pillars and nothing else. Though Nozick, in reference to the incompleteness of the entitlement theory, states that, “I shall not attempt this task here,” in which “this task” means the explication of the three principles of justice in holdings, he does in fact go on to argue further in favor of his theory. While these addendums to his theory of justice in holdings are not core components of the entitlement theory, nor are they explicit attempts to further explain the empty principles of justice that he covets, they can, nevertheless, be plausibly integrated into and intertwined into his entitlement theory. This point follows because these addendums are intended to serve as examples of the theory at work.

²⁰ Ibid.

CHAPTER TWO

Addendums to the Entitlement Theory

After delineating the structural components of his entitlement theory, while at the same time refusing to offer substantive details about exactly how the said structural components would operate, Nozick adds five sections in hopes of clarifying some of the ideas that form the foundation of the principles of justice in holdings. The five sections that Nozick incorporates are as follows: (1) Historical Principle and End-Result Principles; (2) Patterning; (3) How Liberty Upsets Patterns; (4) Locke's Theory of Acquisition; and (5) The Proviso. For purposes of this thesis, I will condense these sections as follows: Historicity and Patterning, Liberty and Transfers, and the Lockean Proviso. Though Nozick does not explicitly state that these sections, or addendums as I shall refer to them here, are explicit amplifications of his entitlement theory, their content, as I shall show, serves to clarify the principles of the entitlement theory, namely, the first and the second principles.²¹

2. 1: Historicity and Patterning

Immediately after delineating the principles of justice in holdings that comprise his entitlement theory, Nozick offers the reader further information regarding how the

²¹ It should be noted that Locke's Theory of Acquisition and the Proviso are exceptions, as Nozick does state that they amplify the first principle of justice in holdings.

entitlement theory relates to history and distribution patterns that are inherent within any theory of distributive justice. He says that “the entitlement theory of justice in distribution is *historical*; whether a distribution is just depends on how it came about.”²² The historical nature of the entitlement theory is evident in that whether a holding is just is evaluated on the basis of whether property was originally acquired justly, namely, in accordance with the principle of justice in acquisition, and whether any proceeding transfers were just, meaning in accordance with the principle of justice in transfers. Nozick offers a comparison here. He states that “in contrast [to his entitlement theory], *current time-slice principles* of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by *structural* principle(s) of just distribution.”²³ The time-slice theory evaluates justice in holdings based on structural principles that dictate whether a distribution is just, and the historical theory evaluates justice in holdings based on the justice of transfers and acquisitions, not on the end results. Nozick further clarifies the distinction. He states that “according to a current time-slice principle, all that needs to be looked at, in judging the justice of a distribution, is who ends up with what; in comparing any two distributions one need look only at the matrix presenting the distributions.”²⁴ Often, a current time-slice principle is used to argue against wealth inequality and wealth disparity on the basis of a value judgement concerning how wealth should be distributed among the members of a population. If a given distribution conforms to the pattern established by the principle, then the distribution is just. A historical theory, namely the entitlement theory, does not concern itself with the way in which property is distributed; it does not care who owns what,

²² Ibid.

²³ Ibid.

²⁴ Ibid, 154

insofar as the result is arrived at in accordance with the justice preserving principles: the principle of justice in acquisition and the principle of justice in transfers. Accordingly, wealth disparity, no matter how significant or large, is irrelevant within the entitlement theory. As a means of supporting the importance of historical tracking to a distributive justice theory, and his intent to discretely denigrate current time-slice principles, Nozick asks us to consider imprisonment:

If some persons are in prison for murder or war crimes, we do not say that to assess the justice of the distribution in the society we must look only at what this person has, and that person has, and that person has, ... at the current time. We think it relevant to ask whether someone did something so that he *deserved* to be punished, deserved to have a lower share. Most will agree to the relevance of further information with regard to punishments and penalties.²⁵

In other words, when looking at the number of people in prison and examining their property possessions or rights or status, which presumably is lower than that of a free individuals, we must not forget that these people did something to end up in prison, and, therefore, their status and property possessions ought not to make up the whole of our deliberation regarding the justice of their status or possessions. In other words, prisoners have less because, as a consequence of their actions, they deserve less. Hence, the fact that they have less ought not be the sole factor in determining justice. A historically sensitive theory should take into account the reason why the people in question are in prison, and use this reason to account for why they have lesser property holdings in comparison to those who are free. However, a current time-slice principle would merely use a principle to adjudicate the justice of the distribution in accordance with the said

²⁵ Ibid.

principle, with no regard for the way in which the distribution was reached. According to Nozick, the principles of justice that operate in accordance with a current time-slice principle of justice are to be referred to as end-result or end-state principles. He further states that unlike end-result principles, the “*historical principles* of justice hold that past circumstances or actions of people can create differential entitlements or differential deserts to things.”²⁶ Consequentially, these differentials are completely justified, no matter the disparity.

The terms “pattern” and “patterns” have come up repeatedly within the preceding discussion, and rightfully so, because Nozick uses these terms as a means for further clarifying the entitlement theory. In reference to the entitlement theory’s principles of justice, he states that “to better understand their precise character, we shall distinguish them from another subclass of historical principles.”²⁷ After introducing an example of a property distribution principle being based on individual moral merit, where an individual’s holdings correlate to the same individual’s moral merit, whatever that may mean, Nozick states the following:

Let us call a principle of distribution patterned if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimension. And let us say a distribution is patterned if it accords with some patterned principle.²⁸

What Nozick seems to mean when he uses the term “patterned distribution” is a distribution that accords with a principle that is based on a natural dimension, be it moral

²⁶ Ibid, 155.

²⁷ Ibid, 155-6

²⁸ Ibid, 156.

merit or I.Q. As an example, a given society with a distribution pattern operating according to I.Q. or moral merit will exhibit a pattern where those with a higher I.Q. or greater moral merit will have more holdings, and those with a lower I.Q. and lesser moral merit will have less holdings. Nozick states that “almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal products, or how hard he tires, or the weighted sum of the foregoing, and so on,” all in contrast to his entitlement theory, which is not patterned.²⁹ Nozick does admit that in a society that operates in accordance to the entitlement theory, it is inevitable that:

heavy strands of patterns will run through it; significant portions of the variance in holdings will be accounted for by pattern-variables. If most people most of the time choose to transfer some of their entitlements to others only in exchange for something from them, then a large part of what many people hold will vary with what they held that others wanted.³⁰

The difference Nozick is trying to articulate is that patterns will emerge within a society that incorporates the entitlement theory; however, there will not be a principle according to which the distributive patterns could be justified. In other words, there will be patterns within an entitlement theory society, though the society would not be deliberately patterned according to some principle or principles. For example, if a minority of people comes into possession of some resource in accordance to the principles of justice inscribed in the entitlement theory, and the demand for the resource suddenly greatly increases, a pattern will emerge. A pattern where the majority of people will trade their holdings with the minority possessing the highly demanded resource, resulting in the

²⁹ Ibid, 156-7.

³⁰ Ibid, 157.

minority accumulating a disproportionate amount or number of holdings due to their possession of the much demanded resource. In mathematical terms, we can posit that the minority comprises ten percent of the population, and due to the fact that the resources they own are in greater demand, they would be able to exchange the said resource for the holdings of the other ninety percent. The result could be the ten percent holding thirty percent of all holdings within a society, and the ninety percent holdings merely seventy percent of all holdings within the given society. This clearly is a pattern; however, the society is not operating according to a principle that enforces a pattern; rather, the pattern emerges organically as a consequence of the entitlement theory. As a further fortification of the difference between patterned theories of distributive justice, and mere patterns of distribution emergent in non-patterned theories of distributive justice, Nozick brings up the ideas of Friedrich Hayek. Hayek observes that within a free society permitting free exchange, one will easily find pattern-strands based on how beneficial or useful one is to society.³¹ After all, if a person has a resource which is desired by many people, then that individual, assuming she is willing and society is permitting, may choose to exchange that resource for holdings of the desiring people. The difference here is between a society that operates according to a patterned principle, and a free society where patterns merely emerge organically and not in accordance with an imposed or enforced principles. Moreover, Nozick argues that people generally prefer their society to be just in that there is meaning and reason behind the way in which property ends up being distributed.³² A theory of justice in holdings that operates in an non-historical and patterned distributive fashion would distribute holdings in an ultimately arbitrary way, something that society

³¹ Ibid, 158

³² Ibid, 158-9.

would not find acceptable, claims Nozick.³³ Clarifying what he means by meaningful patterns, he states that “we feel more comfortable upholding the justice of an entitlement system if most of the transfers under it are done for reasons... It means only that there is a purpose or point to someone’s transferring a holding to one person rather than to another.”³⁴ Ultimately, people will support a society where transfers are done meaningfully, or in other words, are done for meaningful reasons, rather than on the basis of overarching principles. Nozick states that “the system of entitlements is defensible when constituted by the individual aims of individual transactions. No overarching aim is needed, no distributional pattern is required.”³⁵ It seems that, for Nozick, what ultimately matters is that the patterns that emerge within society are not driven by some kind of principle or principles, but rather by individual and meaningful exchanges, meaningful in that they are intelligible and not random. Concerning patterning, Nozick offers a concise maxim: “*from each as they choose, to each as they are chosen.*”³⁶ In other words, only patterns that are acceptable within a society are the ones that emerge organically based on individual choices.

The two addendums that Nozick adds following his explication of the entitlement theory, namely the addendum concerning historicity and the addendum concerning patterning, bear significance on the entitlement theory itself. His rejection of current time-slice principles and his concurrent embracement of historicity serve to amplify the reader’s conception of the entitlement theory as rooted in history. Property is originally acquired in accordance to the principle of justice in acquisition and thereafter sequentially

³³ Ibid, 159.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid, 160.

transferred and exchanged in accordance with the principle of justice in transfer. The actual proportions of holdings that are present at any moment of time are irrelevant in making a value judgement regarding the justice of the proportion and distribution of the said holdings. Rather, the only thing that matters is the way in which these proportions and distributions were arrived at. Moreover, unlike other theories of justice in holdings that operate on patterning principles such as “property ought to be distributed based on need,” the entitlement theory is not a patterned theory. It may, and likely will, exhibit strands of patterns, usually based on one’s benefit to others, however these strands will be organic rather than superimposed. In other words, the entitlement theory exhibits patterns, though it itself is not a patterned theory of justice.

2. 2: Liberty and Transfers

In an attempt to amplify his principle of justice in transfer, while at the same time denigrating patterned principles, Nozick offers the reader a narrative intending to undermine patterning principles. The narrative is often called the Wilt Chamberlain example, as it is based on the famous basketball player Wilt Chamberlain. Nozick begins by asking the reader to imagine a society with distributions patterned after the reader’s favorite theory of justice, be it a pattern that distributes property or shares of property equally or according to some dimension.³⁷ He continues by inviting the reader to assume that Wilt Chamberlain, whose team contract states that he earns twenty-five cents from the price of every ticket sold, is very popular among the society’s public, and that the

³⁷ Ibid, 160

demand to see him is great.³⁸ People are, of course, excited to see Chamberlain play, and “cheerfully attend his team’s games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain’s name on it... it is worth the total admission price to them.”³⁹ So far, the narrative is that the people demand to see Chamberlain, he voluntarily complies, and the people voluntarily pay extra to see him. It ends up being the case that “in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has.”⁴⁰ The end result is that Chamberlain, a single individual, ends up accumulating more wealth than the rest of the population. The series of exchanges that led up to this result are all voluntary. Thus far, everything appears to be just. Nozick offers a series of comments regarding the transfer of property characteristic of the Chamberlain’s example:

Is he entitled to this income? Is this new distribution D_2 , unjust? If so, why? There is *no* question about whether each of the people was entitled to the control over the resources they held in D_1 ; because that was the distribution (your favorite) that (for the purpose of argument) we assumed was acceptable. Each of the persons *chose* to give twenty-five cents of their money to Chamberlain... If D_1 was a just distribution, and people voluntarily moved from it to D_2 , transferring parts of their shares they were given under D_1 ... isn’t D_2 also just?⁴¹

This example, along with Nozick’s commentary, seems to illustrate the very core of the entitlement theory, and in particular, the principal of justice in transfers. In asking the

³⁸ Ibid, 161

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

reader to imagine a society within which all shares are distributed in such way as to satisfy whatever pattern the reader may see fit, Nozick establishes a neutral original position. Furthermore, assuming the original position to be fair, and that people are entitled to that which they own, it follows that they can legitimately do as they please with that which they own. The people choose to watch Wilt Chamberlain play basketball, and voluntarily give him an extra twenty-five cents, just as he voluntarily chooses to perform. The exchange between Chamberlain and his fans is voluntary. Furthermore, since the fans are entitled to their holdings just as Chamberlain is entitled to his body and his talents, it follows that the exchange in question must be just, even if at the end of the exchange, Chamberlain has considerably greater wealth than anyone else within this given society. Nozick attempts to trap the reader, because the only objection one can make within his own paradigm would be to call into question, as well as infringe upon, the right of the people to do as they please with their holdings. That would, of course, trample the very notion of individual liberty. The Wilt Chamberlain example seems to illustrate that the principle of transfers within the entitlement theory allows anyone who is entitled to his/her own property to transfer his/her property to whomever he/she sees fit, regardless of whether the other person is entitled to receive the said transfer, including any benefit that may arise from the said transfer. Moreover, the example seems to be an attempt to denigrate distributive justice theories that take as their chief principle a certain pattern of property distribution. So, Nozick presents the following dilemma: If the original distribution of property is deemed just, and if the people choose to do with their property as they please, and transfer the said property as they please to whomever they please, then the resulting distribution would *seemingly* also have to be just. After all, how

can one deny the liberty of individuals to do with their possessions as they see fit? Nozick reiterates his argument by stating that “the general point illustrated by the Wilt Chamberlain example... is that no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people’s lives.”⁴² Here, of course, we see Nozick insert the term “end-state principle,” though in the beginning of the example he asks the reader to merely imagine a distributional pattern being present within a society, without any guidance about how one may transfer property or receive the said property. Regardless, Nozick believes that any theory of justice other than his historical entitlement theory will trample on the liberty of an individual to do with his/her property as he/she sees fit. He concludes as follows:

Any distributional pattern with any egalitarian component is overturnable by the voluntary actions of individual persons over time; as is every patterned condition with sufficient content so as actually to have been proposed as presenting the central core of distributive justice.⁴³

Here we see an attempted two-fold assault on not only any patterned or end-state principles of distributive justice, but also on any theory of justice that includes an egalitarian component. The essence of the argumentative assault is that individuals will invariably and voluntarily undermine the patterned distributive principles of justice through. Exercise of their liberty.

2. 3: The Lockean Proviso

⁴² Ibid, 163

⁴³ Ibid, 164

Robert Nozick's Lockean Proviso functions as a supplemental principle to render any justifiable account of just initial acquisition consistent with the entitlement theory of justice. Nozick inserts John Locke into his discussion of justice. He states that Locke's formulation of the proviso regarding original acquisition stipulated that an appropriation is only appropriate if "there be 'enough and as good left in common for others.'" Nozick adds that Locke's stipulation "is meant to ensure that the situation of others is not worsened."⁴⁴ The notion of someone's situation being worsened is somewhat vague. What does it really mean to be worse off? Nozick considers it necessary to qualify what it really means for an individual to be worse off. He states that "someone may be made worse off by another's appropriation in two ways: first, by losing the opportunity to improve his situation by a particular appropriation or any one; and second, by no longer being able to use freely (without appropriation) what he previously could."⁴⁵ I am going to present an example that illustrates the two ways in which an individual may be made worse off as Nozick argues. Imagine, a plot of fertile land and two individuals: Individual "A" and individual "B." Individual "A" appropriates the plot of land, and ends up leaving individual "B" worse off in the following two ways: the first way being the case that individual "B" can no longer *appropriate* that plot of land or a part of that land, since it already belongs to individual "A," thus leaving individual "B" unable to improve his or her condition as a consequence of the appropriation. The second way leaves individual "B" worse off because he or she may no longer *use* the plot of land as if it were unowned, since individual "A" has already appropriated it, and it became his or her property. Nozick asserts that in order to make the Lockean Proviso effective, the second way in

⁴⁴ Ibid, 175

⁴⁵ Ibid, 176

which someone is made worse off must be disregarded, stating that though someone may no longer have the chance to make an appropriation, there “may remain some for him to *use* as before.”⁴⁶ Accordingly, someone is not worse off merely because they can no longer appropriate; rather, they are made worse off when they cannot appropriate, and there is none left for them to use. In other words, an appropriation only makes someone else worse off if they can no longer use, or gain access to, that which was appropriated. Nozick provides the following formulation of the Lockean Proviso: “a process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.”⁴⁷ To rephrase, the Lockean Proviso asserts that initial acquisition is justifiable for as long as the situation of others is not worsened in the sense that they can no longer use that which was appropriated. Others who find themselves no longer able to appropriate are not worse off, contingent on the condition that there is enough left for them to use. Nozick provides an example of where the Lockean Proviso limits an individual’s right to appropriate. He states that “a person may not appropriate the only water hole in a desert and charge what he will” nor can “the total supply... be permissibly appropriated by one person at the beginning.”⁴⁸ For as long as whatever is being appropriated can be *used* by others within reason, that is for a reasonable price or perhaps through a commons, the appropriation is just insofar as it makes no one worse off compared to the prior condition.

Robert Nozick’s Lockean Proviso is a normative conception of what just initial acquisition ought to be. It asserts that any initial appropriation is just if, and only if,

⁴⁶ Ibid.

⁴⁷ Ibid, 178

⁴⁸ Ibid, 180

others are not made worse off in the sense that they may no longer use, though not own, within reason, whatever is being appropriated. The Lockean Proviso fits within Nozick's entitlement theory as it supposedly satisfies the first principle, the principle of just initial acquisition. The entitlement theory is organized in such a way that if the principle of just initial acquisition is weak, then the second principle or the principle of just transfers is similarly undermined. The Lockean Proviso is meant to be a supplemental justification and a normative explanation of what just initial acquisition ought to be. Therefore, if the Proviso is weak, then the first principle is weak and the entitlement theory is compromised as a theory of just distribution. It is precisely this argument that I will present in the following chapter.

CHAPTER THREE

The Critique of Nozick's Entitlement Theory

Now that I have delineated and interpreted Robert Nozick's entitlement theory, and have made clear the underlying principles that constitute it, I am going to offer a critique. First, I will argue that the three principles of justice that comprise the entitlement theory are vague. In other words, the way in which they operate remains undefined by Nozick. Second, I will establish that the addendums that Nozick attempts to offer in order to amplify the principles of justice in acquisition and transfer are logically inconsistent and flawed; and, finally, I will argue that although Nozick claims that the entitlement theory is historic rather than patterned, it is my contention that it is ahistorical, precisely because it ignores past injustices. While he does offer the principle of rectification as a means of addressing historical issues, it, too, suffers from the vagueness that afflicts the other principles of justice.

3.1: The Critique of Nozick's Principle of Acquisition

My critique of Robert Nozick's principle of justice in acquisition, as well as the accompanying Lockean Proviso, will be consolidated into one section, seeing that he does not say much concerning the principle itself, but relies on the Proviso to reinforce the importance of the principle. I will also incorporate and integrate Will Kymlicka's critique of Nozick within my own critique. Finally, I will argue that it would plausibly be

enough to stop there, considering the entire entitlement theory rests on the principle of justice in acquisition. Clearly, if the principle of justice in acquisition is weak or inadequate, then, as Nozick's contends, we should consider as false anything that follows from a false principle.

The topic of original acquisition, or, in other words, the principle of justice in acquisition, is presented to explain questions that deal with how things in the world become owned or private property. In order for something to be property it must be owned, either by an individual, group, or in common with others, communally. But how does something that is unowned become owned? How can something that is unowned suddenly become private and exclusive? The notion of property connotes exclusivity. Nozick claims that the principle of original acquisition will explain how something that is unowned becomes private property. The topic of original acquisition is never expanded upon directly by Nozick; rather, it is sublimated into the principle of justice in acquisition and that, too, remains vague. Nozick proposes questions with which this principle should answer. However, the answers to these questions are nowhere to be found within that section. I argue that Nozick asks us to take the principle at face value, such that he can move on to the principle of justice in transfers, a topic far more important to him. The principle of justice in acquisition is fundamental to his entitlement theory, after all, how can one freely transfer one's property to anyone else or receive property from anyone else, if there is no original account of the way in which the said property became property? If I steal a diamond from a museum and sell it to a jeweler, clearly, that would be considered theft. I did not acquire the diamond justly, and, therefore, have no right to own or even transfer that diamond to anyone else. In Nozick's terminology, I am not

entitled to that diamond and thus I cannot do with it as I see fit. The principle of justice in acquisition, in context of the entitlement theory, is vague and undefined. In other words, Nozick needs to present a more substantive and historical involved account of just how the mechanism of original acquisition assumes its normative status. The principle, therefore, cannot serve as a justification of what just acquisition ought to be, seeing that the principle contains no framework or guidelines.

Nozick offers the Lockean Proviso as an amplification of the principle of justice in acquisition. The importance of the Lockean Proviso to the principle of justice in acquisition and the entitlement theory is significant to say the least. It offers a theory of what just initial acquisition ought to be, thus, ostensibly, securing the validity of the principle of justice in transfers and the entitlement theory at large.

Will Kymlicka has written extensively on the matter, and thus I will incorporate his critique within my own critical analysis. Not only does he provide an insightful review and summary of Robert Nozick's Lockean Proviso, as well as identify its rightful context within Nozick's entitlement theory, he also provides an astute critique of it. He summarizes Nozick's Lockean Proviso in the following way:

1. People own themselves.
2. The world is initially unowned.
3. You can acquire absolute rights over a disproportionate share of the world, if you do not worsen the conditions of others.
4. It is relatively easy to acquire absolute rights over a disproportionate share of the world.
5. Therefore, once people have appropriated private property, a free market in capital and labour is morally required.⁴⁹

⁴⁹ Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2nd ed. (Oxford: Oxford University Press, 2002), p.116

Kymlicka's summary of Nozick's Lockean Proviso takes into account some of the assumptions that Nozick makes prior to and after explaining the Proviso itself.⁵⁰ Kymlicka's formulation can be interpreted in the following way: since people own themselves and find themselves in a world that originally is not owned by anyone, and considering that it is easy to acquire absolute property rights, people are therefore justified in acquiring as much property or holdings as they like, for as long as the conditions of others are not worsened. The preceding considerations, in turn, will morally require a free market in capital and labor once all private property is appropriated. Indeed, this much follows under the assumption that we acknowledge and respect the absolute property rights of individuals.

Kymlicka concentrates his critique on Nozick's "account of what it is to worsen the conditions of others." Indeed, Kymlicka further states that "his [Nozick] account has two relevant features: (1) it defines 'worse off' in terms of material welfare; (2) it defines pre-appropriation common usage as the standard of comparison."⁵¹ One of the main issues with Nozick's Lockean Proviso, as Kymlicka argues, concerns an appropriate explication of what it means to be worse off and the standard of comparison that Nozick uses to determine whether someone is really worse off. I will separate Kymlicka's critique into two main concerns: (1) Kymlicka's critique of Nozick's use of material welfare as a means of defining whether someone is made worse off by an act of appropriation; and (2) Kymlicka's focus on Nozick's use of non-privatized common use

⁵⁰ For example, Kymlicka states in the first premise that people own themselves, and while Nozick does not explicitly state that when he proposes the Lockean Proviso, the notion of self-ownership is deeply entrenched in his libertarian framework. See page 334 of *Anarchy, State and Utopia* where Nozick makes an argument that a minimalist state that he proposes would respect the fundamental right for self-ownership.

⁵¹ Kymlicka, *Political Philosophy*, p.116

mode of property as a standard when comparing an individual's wellbeing to a state where property is privatized.

As stated above, Will Kymlicka orients his first critique of the Lockean Proviso around Nozick's usage of material welfare as a means of measuring whether someone is made worse off after an act of appropriation has occurred. Kymlicka argues that throughout *Anarchy, State and Utopia*, Nozick emphasizes the notion of self-ownership as being vital to self-determination and self-realization. On the basis of this observation, Kymlicka maintains that "one would expect Nozick's account of what it is for an act of appropriation to worsen the condition of others similarly to emphasize people's ability to act on their conception of themselves, and to object to any appropriation that puts someone in an unnecessary and undesirable position of subordination and dependence on the will of others."⁵² In other words, considering that Nozick argues that a utopian state would allow us "to choose our life and to realize our ends and our conceptions of ourselves," why does he rely exclusively on material welfare as a means of adjudicating whether someone is made worse given the requirements and constraints of his Lockean Proviso?⁵³ Kymlicka conceives of a hypothetical scenario where individual "A" appropriates a disproportionate share of the land, a share so large that individual "B" has no choice but to work for individual "A." Kymlicka states that individual "B" will have "no say over how his labour will be expended. He must accept Amy's [or individual "A's"] conditions of employment, since he will die otherwise... Before appropriation, he may have had a conception of himself as a shepherd living in harmony with nature. Now

⁵² Ibid.

⁵³ Nozick, *Anarchy, State and Utopia*, p.334

he must abandon these pursuits.”⁵⁴ The fundamental issue that Kymlicka has with Nozick’s exclusive use of material welfare as a measure of evaluating whether or not someone is made worse off after appropriation has occurred is that it does not take into account anything but material welfare, which, plausibly, contradicts the foundational principles that Nozick claims a utopian state, employing the Lockean Proviso, would uphold, namely, individual freedom. Kymlicka’s critique gains further credibility, considering that Nozick claims that the problem of evaluating whether or not someone is made worse off is exclusively an economical issue, stating that “it would be desirable to have an estimate of the general economic importance of original appropriation,” and that if someone’s appropriation violates the Lockean Proviso he “still may appropriate provided he compensates the others so that their situation is not thereby worsened.”⁵⁵ Nozick never provides an argument as to why material welfare ought to be the primary measure of evaluation when it comes to the Lockean Proviso. However, he does argue that principles of self-ownership and self-determination are of the highest value. Is it plausible that he falsely equates material welfare as a necessary and sufficient condition for self-determination and the realization of one’s own self-conception? The major problem with such an assumption, in the context of the Lockean Proviso, is that it would be negligent to conflate the two, as demonstrated by Kymlicka’s aforementioned hypothetical. A distinction should be made between material welfare and loss of freedom. One can be made worst off not only in terms of material welfare, but due to suffering irreparable harm as a consequence of losing one’s freedom or having one’s freedom severely curtailed because of an appropriation.

⁵⁴ Kymlicka, *Political Philosophy*, p.116-7

⁵⁵ Nozick, *Anarchy, State and Utopia* p.177-8

The second critique that Kymlicka levies against the Lockean Proviso has to do with the fact that Nozick uses a state of commons, that is, a mode of property existence where all property is in a state of common use, as the base of comparison when evaluating whether or not someone was made worse off by appropriation. Kymlicka argues that the Lockean Proviso states “that an act of appropriation must not make others worse off than they were when the land was in common use.”⁵⁶ The crucial words here that we should pay close attention to are: “common use.” Kymlicka argues that Nozick presupposes that all property and objects in the world that can be appropriated are initially common property. By common property he means unowned and unheld things and objects. For, after all, how can someone appropriate that which is already held or owned? Nozick has to assume that, if something is in common use, then it is not owned by anyone. This is the case, because otherwise, according to his own Lockean Proviso, it cannot be appropriated. Again, this conclusion follows, since it would already be held in common, or subjected to collective ownership. It is plausible to assume that Nozick is aware of this problem, and, thus, shifts the burden of proof on to those who do not share his assumptions about justice. He argues that those “believing in collective property, for example those believing that a group of persons living in an area jointly own the territory, or its mineral resources, also must provide a theory of how such property rights arise; they must show why the persons living there have right to determine what is done with the land and the resources.”⁵⁷

While Nozick is correct when he argues that those arguing for collective ownership must provide a theory of property rights, he is not immune to this requirement

⁵⁶ Kymlicka, *Political Philosophy*, p.117

⁵⁷ Nozick, *Anarchy, State and Utopia*, p. 178

himself. He never provides an argument as to why, for example, land and what may come of that land, is not initially owned by anyone, even though the land is already inhabited. Kymlicka argues that although not explicitly stated, “Nozick is, in effect, accepting a first-come, first-served doctrine of appropriation,” and asking “why should we accept this as a fair procedure for appropriation, rather than, for example, a system which equalizes our chances for appropriation?”⁵⁸ Rightfully so, a system that deals with how property ought to be appropriated cannot rely on a system as arbitrary as that of a first-come, first-serve basis. Kymlicka proposes that “a more plausible test of legitimate appropriation would consider all the relevant alternatives, keeping in mind people’s interest in both material goods and autonomy,” arguing that if certain harms can be avoided, should they not be “relevant in determining whether someone is made worse off by initial appropriation?”⁵⁹ Though the reason as to why Nozick seems to advocate for a legitimized first-come, first-serve basis is unclear, what is clear, is that this system of appropriation is arbitrary and baseless.

Kymlicka’s critique is without a doubt an insightful one; however, there remains an issue with the Lockean Proviso that warrants critical examination. Nozick asserts several times that the entitlement theory is a superior theory of justice in holdings, particularly because of the fact that, unlike all other theories of distributive justice, the entitlement theory is a historical one.⁶⁰ The Lockean Proviso is an amplification of the principle of justice in acquisition, and, therefore, logically ought to be subject to historical considerations as well. It is, however, merely an attempt at a forward-looking normative theory of just initial acquisition and is not at all historically sensitive. If one

⁵⁸ Kymlicka, *Political Philosophy*, p.117

⁵⁹ *Ibid*, 118-9

⁶⁰ See footnotes 22-26.

were to apply the Lockean Proviso retroactively to most acquisitions within documented history, it would become evident that most, if not all, acquisitions made hitherto are to some extent illegitimate. One may of course argue that Nozick addresses this issue with the principle of rectification, a claim I will address later in this essay. We have thus far, with the aid of Will Kymlicka's critique established that the Lockean Proviso itself is not an adequate justification of just initial acquisition, and we may further conclude that it runs counter to the historical nature of the entitlement theory itself.

We have thus far established that the principle of justice in acquisition remains vague and undefined, and the Lockean Proviso, which is meant to amplify it, is an inadequate theory of just initial acquisition in the following ways: (1) it leads to an arbitrary and baseless system where property is distributed on a first-come, first serve basis; (2) the only measure for evaluating whether someone is made worse off is their material welfare, reducing wellbeing to an economic question; and (3) it is ahistorical and therefore incompatible with the stressed historicity of the entitlement theory at large. The fact that the principle of justice in acquisition and the accompanying Lockean Proviso are not an adequate account of just acquisition is, in fact, enough to dismiss the entitlement theory itself. Recall that the entitlement theory consists of three principles: (1) the principle of justice in acquisition, (2) the principle of justice in transfers, and (3) the principle of rectification. The principle of justice in acquisition carries primacy and acts as a foundation for the entitlement theory. In order to transfer something, one must first own it, and in order to rectify a past transfer or acquisition injustice, one must first define just acquisition or transfer. Clearly without an adequate theory of just initial acquisition, there cannot be any talk of transfers or rectifications.

3.2: A Critique of Nozick's Principle of Transfer

I shall consolidate Nozick's principle of justice in transfers with his Wilt Chamberlain example considering that his explication of the principle of justice in transfers is explanatorily thin. Furthermore, the Wilt Chamberlain example seems to serve as a demonstration of the principle of justice in transfers in action. Though he does not directly state that the Wilt Chamberlain example is demonstrative of the principle of justice in transfers, one can plausibly grasp the connection between the two, due to the nature of the example itself. My critique will examine the principle of justice in transfers as a freestanding principle within the context of the entitlement theory, and the issues within the Wilt Chamberlain example. I will conclude by stating that Nozick fails to give a proper account of justice in transfer, thus rendering the concordant principle of justice in transfer as an insufficient theory of what just transfers ought to be.

Nozick establishes the principle of justice in transfers in order to give an account of the way in which holdings or, in other words, property, can be transferred between individuals. Recall that Nozick posits several questions that the principle must aim to answer, among which are questions regarding the mechanics of transfers and the mechanics of acquisition from others.⁶¹ In other words, Nozick introduced the principle of justice in transfer in order to answer questions that concern property transfers between individuals, particularly the way in which an individual may transfer property to another, and the way in which a person may receive property from another. Nozick never actually provides the answer to these questions. He does not provide a convincing account of the way in which property should be transferred and received. His overarching claim is vague in that it goes as follows: the justice of a holding depends on the way in which it was

⁶¹ Nozick, *Anarchy, State and Utopia*, 150

acquired, whether by the principle of justice in acquisition or by the principle of justice in transfer, whatever they may be. In other words, he asks us to assume that despite whatever principles we agree to, in this case the principle of justice in transfer, they are just. Accordingly, any situation that may arise by way of so-called legitimate and just transfers, is just also. This highly abstract and formal assessment of the principle of justice in transfer leads to its vagueness.

The Wilt Chamberlain example, an attempt by Nozick to amplify the principle of justice in transfer, is not without its own problems. In the Wilt Chamberlain example, Nozick asks us to assume that in a given society “S” it is the case that holdings are distributed in accordance with a pattern or distribution that you deem just—“D₁” and it is also the case that Wilt Chamberlain, a famous and skilled basketball player, has a deal with his basketball team in which twenty-five cents from the total price of each ticket sold to a game in which he appears along with his team goes to him alone.⁶² We are further asked to assume that his skills are in great demand, and a lot go to his team’s game just to see him play, and therefore voluntarily transfer an extra twenty-five cents to him every time they attend, going as far as to explicitly put the twenty-five cents into a box with Chamberlain’s name on it.⁶³ After the season is over, a new distribution—“D₂” is actualized, a distribution that sees Wilt Chamberlain amassing a fortune of 250,000 dollars, a fortune larger than the average income, and in fact, significantly larger than any other fortune within given society “S.”⁶⁴ Nozick quickly claims that there is no issue with the new distribution “D₂” seeing that in “D₁” the distribution was just, and the only action that has occurred, the transference of twenty-five cents by a given number of fans, one

⁶² Ibid, 161

⁶³ Ibid.

⁶⁴ Ibid.

million to be precise, is completely voluntary and therefore too is just.⁶⁵ The implication in his defense of the new distribution “D₂” is that so long as someone holds entitlement over a holdings, in this case monetary holdings, he/she may do with their holdings as they please for as long as it is voluntary. Moreover, the person or persons receiving the said holdings are entitled to the said holdings because the transfer is voluntary. In other words, the principle of justice in transfer can be read in such way as to suggest that the only measure pertinent to the evaluation of justice as it concerns transfers of property and holdings ought to be whether or not: (1) the person transferring or receiving the property to or from another is entitled to that holding, and (2) whether the transfer or receipt of property is itself voluntary. There is of course no concern for Nozick as to whether or not the distribution “D₂” is itself unjust in accordance with the original principle that established “D₁.” The question is no longer about distributional patterns, but is now centered on the liberty of the individual to transfer or receive holdings as they see fit, as long as they are in accordance with the principle of justice in transfer. The fault with the Wilt Chamberlain example, and seemingly the principle of justice in transfer, lies in Nozick’s refusal to consider any measure of justice other than that of liberty of the individual to transfer or receive property as he/she sees fit.

Jean Hampton offers an argument in support of the claim that the narrow view of justice in transfers that Nozick presents leads to a society where wealth disparity itself acts as an infringement on liberty of the individual. Evoking G.A. Cohen, Hampton makes the following argument:

⁶⁵ Ibid.

Great wealth [in hands of few people] can be a weapon of considerable power in a society. First, it can give people superior access to political officeholders, enabling their views on issues to have greater influence; second, it can put them in a position where they can more readily secure the satisfaction of their interests; and third, it can allow them to control other people who do not have anything like their share of wealth.⁶⁶

The distribution “D₂” within the Wilt Chamberlain example results in him possessing great wealth. In fact, as Nozick stresses, more wealth than anyone else in the given society “S.” Within Nozick’s framework, this outcome is a nonissue, considering that it preserves liberty, a virtue which seems most important to Nozick. However, if we follow Hampton’s line of thought, it becomes evident that in distribution “D₂,” Chamberlain suddenly possesses power that is greatly disproportionate to that of the general population, all in virtue of his wealth. Most importantly, Chamberlain now holds direct power over others, for the variance in possessions is conceivable so great that many are desperate for even a small share of his wealth. It becomes clear that Nozick’s insistence on the liberty of the individual to transfer his property in any way one sees fit has now become contradictory: it threatens individual liberty. It appears that liberty is not mere liberty to give and receive property as one sees fit, but, rather, is a careful negotiation of the relationship between the patterns of distributions and power, as power is plausibly correlated to wealth. Seeing how the principle of justice in transfer remains without a clear framework of operation, and the only amplification available, the Wilt Chamberlain example serves as an inadequate illustration of just transfers in virtue of its dependence on a narrow definition of liberty. Additionally, in consideration of the correlation between wealth and power, one must in all good conscience dismiss Nozick’s principle of justice in transfer as an inadequate normative account of transfers.

⁶⁶ Jean Hampton, *Political Philosophy*, (Boulder, Colorado; Westview Press, 1997) p. 152

3. 3: A Critique of Nozick's Principle of Rectification and Historicity

The third principle of Nozick's entitlement theory, the principle of rectification of injustice in holdings, is deeply intertwined with his continual insistence on the historical thrust of the entitlement theory at large. This section of my critique will examine the principle of rectification as a viable theory of mending historical injustices, followed by an examination of whether the entitlement theory is indeed as historical as Nozick continually insists. It is my intention to argue that the principle of rectification fails in its intent to provide a viable theory of mending past historical injustices. Since my critique concerns Nozick's emphasis on the historicity of the entitlement theory, it is my argument that the entitlement theory is indeed blind to history in the larger context of property and rights. Seeing that the principle of rectification, the component alleged by Nozick to be most rooted in history, is weak and, moreover, the blindness to history of the entitlement theory at large, I will conclude by arguing that any notion of historical relevance within the entitlement theory is false.

The principle of rectification of injustice is the last principle to make an appearance within Nozick's delineation of the entitlement theory. As you will recall, in the section of this paper where I discussed his delineation of the principle of rectification, he states that the principle ought to address and rectify any past historical injustices that have occurred injustices, meaning violations of the first two principles of justice—the principle of justice in acquisition and the principle of justice in transfer.⁶⁷ In other words, for Nozick, the principle of justice in acquisition and the principle of justice in transfer are themselves just and justice preserving, and if historical considerations were of no importance, the two principles themselves would be sufficient for the entitlement theory.

⁶⁷ Nozick, *Anarchy, State and Utopia*, 152

However, Nozick realizes that there have been past historical injustices, such as slavery and genocide. In order to address these unjust events, he brings forth the principle of rectification. He raises several questions as to what the principle ought to address, namely, the way in which these injustices ought to be rectified, who carries the obligation, how far back in history one ought to go to seek out injustices, and who the beneficiaries ought to be.⁶⁸ These are all important questions as they are necessary in order to form a coherent theory of rectification to handle past injustices. While he never offers such a theory, he does speculate as to a possible mechanism by which historical injustices may be rectified. He states that the mechanism would use historical information to assess the occurrence of past injustices, after which, a calculation would be made to determine the amount or number of holdings that were lost by the individual or a group affected within a given society.⁶⁹ If this calculation shows that the individual or the group affected currently holds less holdings than they would have if the injustice has not occurred, then the difference ought to be realized in order to rectify the past injustice.⁷⁰ This mechanism is deeply flawed, considering that the type of historical information that the mechanism would use remains undefined. What we can infer, however, is that it defines an injustice as a violation of the two principles of justice in holdings, principles that are themselves not adequately specified. Moreover, there is no information given by Nozick regarding how far back in time the mechanism should be used to address injustices. Furthermore, there is no mention as to who should assume direct responsibility for compensating the individual or the group affected. As it concerns the actual rectification of the historical injustice, Nozick argues that rectification ought to

⁶⁸ Ibid.

⁶⁹ Ibid, 152-3

⁷⁰ Ibid, 153

occur inasmuch as it concerns holdings and holdings alone. The question is whether mere holdings, or, in other words, property can really make up for past historical injustices, injustices which may have affected not only the yield of holdings or wealth, but also the lived experience of the individual and the group. I shall not address whether holdings or property may in fact be used to rectify the affected lived experiences of the individual, for that is a paper unto itself. For the sake of argument, let us bracket the lived experience and speak of property holdings only. If the principle of rectification offered a sufficient temporal guideline, along with guidelines for who is obligated to carry out the rectification and who the beneficiaries are, then perhaps the mechanism would be sufficient for a theory of reparations. However, as the principle of rectification as well as the mechanism by which the principle is realized remains poorly defined, the principle is ineffective or at least unacceptable. I therefore contend that both, the principle, and the mechanism are insufficient in their aim to rectify past injustices.

CONCLUSION

The goal of this thesis is to demonstrate that the entitlement theory is not a plausible theory of justice in holdings and does not qualify as an adequate theory of distributive justice. The principles that make up the entitlement theory, the principle of justice in acquisition, the principle of justice in transfer, and the principle of rectification, are not beyond criticism. The addendums that Nozick offers to amplify the undefined principles of justice: the Lockean Proviso and the principle of justice in acquisition; the Wilt Chamberlain example and the principle of justice in transfers; and historicity of the entitlement theory as it pertains to the principle of rectification, all fail in their aim to offer any constructive guidelines for clarifying the formal principles which Nozick supports. Hence my conclusion: Nozick's entitlement theory is neither historical nor is it a workable theory of distributive justice. Of course, if other libertarian philosophers choose to expand upon the principles of justice that Nozick sketches, and if they also choose to address history, not only in methodology but in analysis also, then perhaps the entitlement theory could be a contender within contemporary political philosophy discourse. Until then, it is my contention that the theory and any argument stemming from the theory or any component thereof, is flawed.

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