

Robert Nozick's Minimal State: A Critique

Augustine Terhide Maashin
Department of Philosophy
Benue State University, Makurdi
Email: augustineterhide684@gmail.com

ABSTRACT

The book, *Anarchy, State and Utopia* by Robert Nozick's is his most celebrated work in which the author discusses his political thoughts. His theory of Justice (The Entitlement Theory) and the Minimal State constitute the major themes in this book. Against John Rawls's theory of justice which is distributive in nature, Nozick develops his theory of justice which he terms "entitlement theory", a theory that places emphasis on actual consent rather than rationality as the basis of political control which is actualized in the minimal state. For Nozick, the minimal state is the only morally justifiable form of government. This contention rests upon his understanding of the separateness of each person, the existence of inviolable rights, and the side constraint that these rights impose on the behaviour of others. Nozick claims that persons are rational, they are moral agents, and they have free will. In addition, they have the ability to regulate and guide their lives in accordance with some overall conception of their choice. His advocacy of a minimalist state limited to the protection of the people against theft, fraud and the enforcement of contract, his emphasis on the exclusive right to own property, rejection of coercive taxation, rejection of the provision of public social amenities amongst others is flawed and constitutes a problem in this regard. This paper concludes that, the kind of state envisaged by Nozick is utopia. However the good elements of his theory can be modified to make for the kind of state that prioritizes individual rights.

Keywords: Justice; state; rights; minimal state..

INTRODUCTION

The subject of justice has over time received attention by social and political philosophers (Simmons, 2010). Robert Nozick, one of the most influential contemporary thinkers stressed the fact that human beings have rights and these rights mark the limits to which anything can be done to them. In 1974, Robert Nozick published his most celebrated work, "*Anarchy State and Utopia*", in which he developed a political theory named "Entitlement Theory". He argued that the *minimal state* is the most extensive state that can be justified, and that any state more extensive violates people's rights (Salahuddin, 2018). In his entitlement theory he stressed that people are free to own and transfer property, justly with little or no infringement of such right.

Robert Nozick championed the minimalist conception of justice, where he conceived a minimal state or "night watch" state, a government which protects individuals, via police and military forces, from other forces, fraud, theft, and administer courts of law and does nothing else (Shenge & Mchia, 2021). The intervention of the state should be minimal, limited to the negative function of preventing an individual or group from encroaching on the liberty of another. The paper intends to explore Nozick's thoughts as regards his notion of the minimal state. There are four approaches to achieving this set goal. The first looks at a brief background to Robert Nozick's notion of the minimal state. This will also take into cognizance his life and works. The second part deals with an

understanding of his notion of the minimal state. The third part evaluates Nozick's theory of the minimal state with the intention of bringing to the fore the merits and demerits of his theory. The fourth takes care of the concluding remarks with respect to Nozick's notion of minimal state.

LIFE AND WORKS OF ROBERT NOZICK

Robert Nozick was born in Brooklyn on 16th November, 1938 to a Russian Jewish immigrant family. His mother was Sophia, his Jewish father was born with the name Cohen, and he ran a small business (Dematteis, 2003). From an early age Nozick exhibited a strong interest in politics: he joined the youth wing of Norman Thomas' Socialist Party and, after enrolling at Columbia College, founded the local chapter of Students for a Democratic Society (SDS). It was also at Columbia that he was first drawn to the serious study of philosophy. His interest in the subject was ignited when he found himself enrolled in a required general education class which (as it happened) was taught by Sidney Morgenbesser. (Dematteis, 2003) By the time he graduated from Columbia in 1959, Nozick had "amassed enough courses to 'major in Morgenbesser'" (as he later put it) and had resolved to pursue graduate study at Princeton University (Nozick, 1997). In 1959, Robert Nozick got married to Barbara Fiere and the marriage was blessed with two children Emily and David.

Nozick eventually divorced and remarried the poet Gjertrud Schnakenberg. And in 1963 he obtained a Ph.D. in Philosophy from Princeton University. He taught for a couple of years at Princeton, Harvard, and Rockefeller Universities before moving permanently to Harvard in 1969 (Nozick, 1997). His doctoral thesis "The Normative Theory of Individual Choice" was notable for containing the first scholarly discussion of Newcomb's Problem. The thesis thus foreshadowed his later seminal paper "Newcomb's Problem and Two Principles of Choice", which introduced Newcomb's Problem to the philosophical world, an event which initiated a revolution in the foundations of decision theory. It was also as a graduate student at Princeton that he first began to seriously question his early socialist beliefs, a process that was prompted largely by his reading of economists such as Ludwig von Mises, Friederich Hayek, and Milton Friedman. (A willingness to subject his earlier views to critical scrutiny was a trait that he would retain throughout his life.) This process of reconsideration ultimately culminated in the writing of his most famous work, *Anarchy, State, Utopia* (1975). Later books include *The Examined Life* (1989), *The Nature of Rationality* (1993), and his collected papers, *Socratic Puzzles* (1997). His last book, *Invariances: The Structure of the Objective World* (2001) underscores the degree to which his intellectual curiosity extended beyond philosophy: there, he draws upon fields as diverse as evolutionary biology, cognitive psychology, neuroscience, game theory, quantum mechanics, welfare economics, and cosmology in an attempt to illuminate traditional philosophical problems.

According to Lacey (2014), Robert Nozick was one of the most influential political philosophers of the 20th century he cited his influences as follows Locke, Kant, Mill, Morgenbesser, Hempel, Rothbarth and Hayek. Nozick also influenced

Long, Narveson, Schmidtz and Gender. The major force in his conversion to libertarian views was his conversations at Princeton with his fellow philosophy graduate student, Bruce Goldberg. It was through Goldberg that Nozick met the economist Murray Rothbard who was the major champion of “individualist anarchism” in the later decades of the twentieth century. Nozick's encounter with Rothbard and Rothbard's rights-based critique of the state including the minimal state led Nozick to the project of formulating a rights-based libertarianism that would vindicate the minimal state. Robert Nozick died in 2002 from stomach cancer for which he was first treated in 1994 (Hull, 2013). The next part of the paper x-rays Nozick's thoughts as regards the minimal state. There is a trace back to his conception of the origin of the state so as to better appreciate his thoughts on the minimal state.

NOZICK'S NOTION OF THE MINIMAL STATE

Nozick's conception of the origins of the state is reminiscent of the social contract tradition in political thought represented by Hobbes, Locke, Rousseau, and, in contemporary thought, Rawls (Chemhuru, 2017). For insofar as the state arises out of a process that begins with the voluntary retention by individuals of the services of an agency that will inevitably take on the features of a state, it can be seen to be the result of a kind of contract. The details of the state-originating process in Nozick's account are very different from those of other social contract accounts, however; and, most importantly, for Nozick, unlike other social contract theorists, individual rights do not *result* from, but exist *prior to*, any social contract, and put severe constraints on the shape such a contract can take. Furthermore, the parties to the contract in Nozick's conception are to be imagined very much on the model of human beings as we know them in “real life,” rather than along the lines of the highly abstractly conceived rational agents deliberating behind a “veil of ignorance” in Rawls' “original position” thought experiment. It becomes evidently very clear that Nozick's notion of the minimal state stems from his thoughts about the origins of the state.

For Nozick, the minimal state is the only morally justifiable form of government. This contention rests upon his understanding of the separateness of each person, the existence of inviolable rights, and the side constraint that these rights impose on the behaviour of others (Patterson, 2005). Nozick claims that persons are rational, they are moral agents, and they have free will. In addition, they have the ability to regulate and guide their lives in accordance with some overall conception of their choice. Nozick states:

A person is a being able to formulate long term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not mere the plaything of immediate stimuli, a being able to limit its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others and so on (Wolff, 2018, p. 29).

Deducible from the above assertion by Nozick is the fact that, a person cannot in any way violate the rights of others through interference or aggression. It goes

further to mean that, a person cannot also infringe on the rights of others in the pursuit of some object or goal, even if that goal or aim is to achieve an overall minimization of the violation of rights. This is the grounds on which Nozick rejects utilitarianism (Sartorius, 1985). The minimal state evolves through a multi-stage process. Firstly, in the state of nature individuals form ‘mutual protective associations’ in order to protect their rights because other people’s judgements when disputes occur are biased in their favour and because individuals, by themselves, will lack power and be unable to enforce their rights when confronted with strong individuals that disagree with them. Secondly, because some people may not wish to take on the costs of protecting

Nozick proceeds to develop his argument fairly rapidly in favour of a minimal state in four steps: (1). Individuals in a state of nature have a right to band together, through contractual agreement, for purposes of mutual protection. (2). Those individuals have the right, collectively, to assign to employees or agents such rights of self-protection, punishment, and so forth as they possess individually and have pooled contractually.” (3). Market forces, strategy calculations, and the like may lead to the emergence of a dominant protective association in a territory. Such an association will possess a *de facto* monopoly of physical force, which it has acquired by a series of totally permissible acts.”(4)The monopoly protective association, or “ultra-minimal state”, Will have an obligation to compensate non clients, if there are any, for the disadvantage they suffer in their dealings with clients backed by so powerful a protective association. Hence it will have a right; indeed, it will have a duty, to “tax” its clients for the money to buy some sort of protection for the disadvantaged non-clients. This apparent “re-distribution” constitutes it a night watchman state, in the traditional sense” (Wolff, 1977).

However, to be a *state*, even a minimal state; an institution has to have some sort of monopoly on the use of coercive force over a sufficiently large territory or set of people. To rise to statehood within a given territory or with respect to a set of people, a protective agency must fairly successfully fulfill its aspiration to be the suppressor of other actors who seek to engage in rights violating force and (at least) to be the controller of other actors who seek to engage in rights protecting force. Hence, to rise to statehood, a protective agency must either shut down or exercise substantial control over other *non-outlaw* agencies. In short, it seems that it must act toward its non-outlaw competitors in ways that Nozick would declare to be impermissible among competitors in the delivery of any other sort of service.

In defense of his minimalist state theory Nozick produces his ‘entitlement theory’ to provide a justification of the rights of individuals over their legitimate ‘holdings’. A more adequate theory of justice would in Nozick’s view enumerate three principles of justice in holdings (Van Der Veen & Van Parijs, 1985). The first would be a principle of justice in *acquisition*, that is, the appropriation of natural resources that no one has ever owned before. The best-known such principle, some version of which Nozick seems to endorse, is the one enshrined in Locke’s theory of property, according to which a person (being a self-owner) owns his labour, and by “mixing his labor” with a previously unowned part of the

natural world (e.g. by whittling a stick found in a forest into a spear) thereby comes to own it. The second principle would be a principle of justice in *transfer*, governing the manner in which one might justly come to own something previously owned by another. Here Nozick endorses the principle that a transfer of holdings is just if and only if it is voluntary, a principle that would seem to follow from respect for a person's right to use the fruits of the exercise of his self-owned talents, abilities, and labour as he sees fit. The final principle would be a principle of justice in *rectification*, governing the proper means of setting right past injustices in acquisition and transfer.

Nozick believes that if the world were wholly just, only the first two principles would be needed, as "the following inductive definition would exhaustively cover the subject of justice in holdings: 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" (Salahuddin, 2018). Nozick claims that the rights of others determine the constraints on our actions. That is, a person's rights are not merely superficial claims that can be overridden. Rather, they are boundaries not to be crossed without the free consent of the person whose rights they are.

EVALUATION/CONCLUSION

Although Nozick raises some interesting points, however this paper is compelled to criticize some of the elements of his theory. One of the problems that come with Nozick's theory as regards the minimal state arises from the claim that taxation violates people's freedom. Such a claim creates some difficulties. The first problem is that although the claim might be true sometimes, in some cases it is not. Taxation violates a person's freedom because it is an imposition that goes against one's personal will. But taxation will only be forceful if it is done against the person's consent. If, on the other hand, the person consents to the terms of the taxation then his freedom is not being violated. Now consider the notion of a contract of citizenship, by this it is referring to the arrangement by which a person voluntarily agrees to become a citizen of a state. Citizenship here implies, for the neo-citizen, the acceptance of certain obligations to the state. The reason why the neo-citizen agrees to oblige derives from the benefits of citizenship, that is, the rights he will gain by being a citizen of that State.

The citizenship contract is therefore a rational agreement by which the citizen accepts to perform certain duties in exchange for the commodities that the State provides. Amongst these duties is, often, if not always, the duty of paying taxes in order to benefit from the services that the State provides. However, the argument of the contract of citizenship cannot be applied to all citizens, for there are at least two ways of acquiring the citizenship of a country. The first one is by voluntary acquisition, hence a contract of citizenship. The second is by inheritance. A person who inherits a citizenship is someone who is given, without his consent the status of citizenship. While in the first case the decision to acquire citizenship is voluntary, in the second case it is imposed. Someone who is born in

the Nigeria generally does not have the choice not to be a Nigerian citizen. He is a Nigerian citizen not because he decided to be one, but because he inherited that condition. A critic might claim that the person could decide to renounce to the Nigerian citizenship when he is old enough. However, this is not a real option. He cannot renounce his Nigerian citizenship because he would have no citizenship at all if he did. Where would he go? Where would he live? How would he make a living? For someone who is born in a country in which/where citizenship is inherited it is not a matter of choice but a fruit of circumstance that the individual is not responsible for. Whereas in the first case, citizenship is a matter of choice, in the second case it is not. Hence, the claim that taxation violates people's rights cannot be sustained in the cases where citizenship is acquired via contract, but it can still be sustained in the situations where citizenship is inherited (Epstein, 1988). In as much as citizens accepts taxation as one of their duties as citizens, the state should also be considerate in their act of taxation.

However, he later accepted on the other hand how taxation violates people's freedom. It is here admitted that, in the cases where citizenship is inherited taxation indeed violates peoples' freedom. However, this claim does not suggest that the violation of people's freedom for the purpose of taxation is never justified. In fact, the very notion of political community implies that, sometimes, violations of people's freedoms are necessary in order to achieve the greater good. This last sentence can be interpreted in a myriad of ways, from the utilitarian views that put the well-being of the community ahead of the rights of the individual, to the socialist theories that deemphasize the importance of private property, to liberals who sanctify property rights and civil liberties. However, all of these views share the assumption that some compromises must be made in order to make the existence of the State viable. Nozick's mistake is to assume that because an action violates someone's freedom, that action is not justified. This view, libertarian as it is, cannot coexist with any vision of a political community. The violations of people's freedom, the use of coercion, and the punishment of individuals are all undesirable actions that are asked for by any state precisely because they are necessary in order to maintain any form of the state. The only alternative to this is a condition of anarchy, which is indeed closely associated to libertarian views. Nozick, nevertheless, rejects anarchism in order to embrace a different kind of political theory, one that accepts the existence of the State, but advocates the cause of total freedom. Such a view is nevertheless impossibility in itself (May, 2008).

The minimal state might seem, even to those sympathetic to the arguments for it, to make for a rather austere vision of political life. But Nozick insists that we ought to see it as "Inspiring, as well as right." Indeed, the minimal state constitutes in his view a kind of *utopia*. Among all models of political order, it alone makes possible the attempt to realize *every* person's and group's vision of the good society (Dasgupta, 1980). It is often thought that libertarianism entails that everyone must live according to a *laissez faire* capitalist ethos, but this is not so; it requires only that, whatever ethos one is committed to, one should not impose it by force on anyone else without their consent. This paper concludes that, the kind of state envisaged by Nozick is utopia. It cannot be realized or

actualized even in our contemporary society. However the good elements of his theory can be modified to make for the kind of state that prioritizes individual rights.

REFERENCES

- Chemhuru, M. (2017). Gleaning the social contract theory from African communitarian philosophy. *South African Journal of Philosophy*, 36(4), 505-515.
- Dasgupta, P. (1980). Decentralization and rights. *Economica*, 47(186), 107-123.
- Dematteis, P. B. (2003). Robert Nozick. *American Philosophers, 1950-2000*, 279, 201.
- Epstein, R. A. (1988). Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent. *Harv. L. Rev.*, 102, 4.
- Hull, R. T. (2013). Biography: Robert Nozick. *The American Philosophical Association Centennial Series*, 471-473.
- Lacey, A. (2014). *Robert Nozick*. Routledge.
- May, T. (2008). *The political thought of Jacques Rancière: Creating equality*. Penn State Press.
- Nozick, R. (1974). *Anarchy, state, and utopia* (Vol. 5038). new york: Basic Books.
- Nozick, R. (1990). *Examined life: Philosophical meditations*. Simon and Schuster.
- Nozick, R. (1997). *Socratic puzzles*. Harvard University Press.
- Nozick, R. (2001). *Invariances: The structure of the objective world*. Harvard University Press.
- Patterson, R. (2005). The minimal state v the welfare state: a critique of the argument between Nozick and Rawls. *Southern Cross University Law Review*, (9), 167-182.
- Salahuddin, A. (2018). Robert Nozick's Entitlement Theory of Justice, Libertarian Rights and the Minimal State: A Critical Evaluation. *Journal of Civil & Legal Sciences*, 7(1), 1-5.
- Salahuddin, A. (2018). Robert Nozick's Entitlement Theory of Justice, Libertarian Rights and the Minimal State: A Critical Evaluation. *Journal of Civil & Legal Sciences*, 7(1), 1-5.
- Sartorius, R. (1985). Utilitarianism, rights, and duties to self. *American Philosophical Quarterly*, 22(3), 241-249.
- Shenge, I. M., & Mchia, T. T. (2021). An Appraisal of Robert Nozick's Entitlement Theory of Justice. *Nasara Journal of Philosophy*, 176-189.
- Simmons, A. J. (2010). Ideal and nonideal theory. *Philosophy & public affairs*, 38(1), 5-36.
- Van Der Veen, R. J., & Van Parijs, P. (1985). Entitlement theories of justice: from Nozick to Roemer and beyond. *Economics & Philosophy*, 1(1), 69-81.
- Wolff, J. (2018). *Robert Nozick: Property, justice and the minimal state*. John Wiley & Sons.
- Wolff, R. P. (1977). Robert Nozick's Derivation of the Minimal State. *Ariz. L. Rev.*, 19, 7.