

Robert Nozick's Libertarian Framework of Distributive/Economic Justice: A Critical Assessment of Its Prospects for Providing Global Distributive Justice

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Abstract

This paper addresses a primary disjuncture between the capitalist business and capitalist state. Whereas capitalist business has gone global, the capitalist state remains national. This paper contends that this disjuncture accounts for the absence of provision of global capitalist distributive/economic justice. Within the framework of Robert Nozick's entitlement theory of justice, it investigates whether a minimal state can be spontaneously evolved from anarchy providing distributive/economic justice within national borders, and whether a minimal state can ultimately lead to the emergence of a global minimal state providing global distributive/economic justice. It is argued in this paper that a framework for the provision of global distributive/economic justice cannot be developed on the basis of Nozick's entitlement theory of justice primarily because of problems of Nozickian rectification of past injustices, and disjuncture between national minimal state and an imagined global minimal state.

Keywords: Minimal state, Distributive justice, Justice in transfer, Justice in acquisition, Rectification of injustice, Global distributive justice.

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1. Introduction

This paper addresses a primary disjuncture between the capitalist business and capitalist state. Whereas capitalist business has gone global capitalist state remains national. One major outcome of this disjuncture is that whereas capitalist distributive/economic justice is provided by the nation-state at the national level the provision of global distributive/economic justice seems to be no one's responsibility. Capitalist markets, whether operating within or across national borders, do not provide distributive/economic justice on their own. The neoclassical standard economics do not offer a program of distributive justice but rather merely provides theory of factor prices. For example, unlike Nozick's libertarian approach

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standard economics does not address the problems of legitimacy of initial acquisition and rectification of past injustices. However, Nozick's view of rectification of injustices seems to be too abstract.

This paper explores Nozick's theory of justice at the national level and critically scrutinizes its prospects for the provision of global distributive/economic justice. It argues that a framework for the provision of global distributive/economic justice cannot be developed on the basis of Nozick's theory of justice primarily because Nozick's entitlement theory of justice necessarily demands the existence of a minimal national/territorial state for the provision of justice within national/territorial borders but it does not allow the establishment of a world minimal state. Nozick offers a market rationalization for the emergence of the minimal state. The primarily economic rationale that Nozick provides for the national minimal state does not work for the global minimal state.

1.1 Nozick's Conception of Justice at the National Level

Nozick's key text *Anarchy, State and Utopia* has been celebrated as "the central text for all contemporary academic discussions of libertarianism" (Fried, 2005). Nozick's approach to the problem of justice is called justice as entitlement. Because of Nozick's essential renouncement of redistribution, he also calls it justice in holdings. Nozick understands his own theory as a historical backward-looking theory of justice. End-state theories or principles are "all those principles that (held that) the justice of a situation is independent of how it came about: They are un-historical" (Hunt, 2015). Nozick divides historical theories of justice in two broad categories: patterned theories of justice and un-patterned theories of justice, and contends that his own theory is an un-patterned one, whereas, Rawls's, for example, is a patterned theory. Past circumstances or actions of people are of great significance for historical theories of justice. Overall, patterned theories are those that are expressed as "to each according to his—" and fill in the blank with some term such as "needs", "merits", "deserts", "marginal product", "virtue", "IQ", or whatever (Nozick, 1999).

Nozick is of the view that production and distribution are not independent spheres. He argues that patterns violate liberty whereas liberty upsets patterns. In upsetting liberty, patterns promote equality whereas in upsetting patterns, liberty promotes inequality. In resolving the conflict between liberty and equality Nozick rejects equality as a value. However, though Nozick disapproves both of equality of utility and that of Rawlsian primary goods, he "does demand equality of libertarian rights" in the sense of equal individual liberty (Sen, 2009).

1.2 *Assessing Nozick's Tripartite Conception of Libertarian Distributive/Economic Justice at the National Level*

Nozick proposes a tripartite conception of justice as entitlement: justice in acquisition (initial acquisition) (henceforth JIA), justice in transfer (henceforth JIT), and the rectification of injustice. It is JIT that Nozick seems to have attached greatest importance to and has analyzed relatively in greater detail. JIA deals with the issues and processes of “how unheld things may come to be held” (Nozick, 1999). Previously unclaimed/unowned land and intellectual property rights are among its conventional examples. Whereas JIA is concerned with appropriation of unowned property, JIT deals with the procedures for legitimate possession of a property that is already owned. The essence of Nozick's justice/legitimacy in transfer is voluntariness (Wolff, 1996). Thus, “a transfer from one person to another is thoroughly just if thoroughly voluntary” (Schmidtz, 2011). Nozick's view of justice approves of market transactions, gifts, charity, and barter whereas rejects theft, extortion, swindle, and redistributive taxation (Davis, 1982). Nozick, because of his rigorous accentuation of individual liberty, approves of the so-called ‘victimless crimes’ such as prostitution, drug dealing and unconventional sexual activities (Ryan, 2007). Nozick's theory of justice with a minimal state implies that government is not responsible to provide public education, health care, public transport, and public parks (Kymlicka, 2002). Nozick approves of philanthropy because it is consensual. Whereas JIA is related to the procedure and conditions of just appropriation, JIT is related to the transference of property already justly appropriated. Thus, taxation, to Nozick, is illegitimate unless it is to fund defense, policing and the administration of justice (Wolff, 1996). Nozick offers an inductive definition of justice (given below), which holds true in a world presumed to be wholly just (Nozick, 1999).

1. An acquirer is entitled to a holding if s/he has acquired it in accordance with the principle of justice in acquisition.
2. An acquirer is entitled to a holding (i) if s/he acquires it in accordance with the principle of justice in transfer (ii) acquires it from someone else entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of one and two.

Nozick thus specifies that just holdings are those that are in accordance with principle of JIA and principle of JIT (Nozick, 1999). The principle of JIA implies some principles of justice that explain how a person or group may justly come to own previously unowned property (for example, farming an unowned tract of land makes the farmer entitled to it); the principle of JIT implies some principle or set of principles that explains how a person or a group may come to own property that was previously owned by others (for example, if A buys B's computer, then A justly acquires the computer, and B justly acquires some money); the principle of justice in rectification (henceforth JIR) implies some principle or set of principles that explains what to do when people violate principles one and two (for example, if A

purchases a stolen car, then even if A did not know the car was stolen, A should return the car to its rightful owner) (Brennan, 2012).

Injustice in acquisition or/and injustice in transfer engenders the need for JIR whose purpose is mainly to compensate for past injustices. JIR is concerned with the cases of wrongful acquisition or transfer. Theft, fraud, enslavement, or seizing people's product and violating their freedom of choice, or preventing competition are different ways of violating JIA and JIT (Nozick, 1999). Nozick contends that principles such as Rawls's difference principle shapes patterns that cannot come into existence without non-voluntary transactions (such as redistributive taxation), and they can only be sustained by the functioning of intermittent non-voluntary transactions. Nozick argues that wealth is not like manna falling from heaven. Those who even talk of distributing wealth neglect entitlements, and treat wealth as manna (Nozick, 1999). It is Nozick's contention that distribution of wealth by government is similar to provision of spouses in a society rather than letting people freely choose their mates (Nozick, 1999). This implies that some people might have better spouses than others but that is the outcome of a voluntary choice, and, therefore, the talk of redistribution is illegitimate.

With the help of the Wilt Chamberlain example, Nozick attempts to show that liberty in the sense of voluntary transactions upsets patterns. There are many like Wilt Chamberlain in the society/utopia that Nozick conceives of. Wilt Chamberlain is a popular basketball champion who attracts a great number of people as his audience willing to pay to watch him play. Nozick invites us to imagine any non-entitlement view of just distribution for example, socialist distribution, or distribution in accordance with Rawls's difference principle. Through Chamberlain's example, Nozick intends to demonstrate that our imagined non-entitlement view of justice cannot be sustained without violating individual liberty. Nozick uses the notation D1 for our imagined distribution. Nozick assumes a patterned distribution D1, in which, "perhaps everyone has an equal share, perhaps shares vary in accordance with some dimension you treasure" (Nozick, 1999). D1 is a distribution pattern that has been established, let's say, through state intervention, before the commencement of the basketball season.

The basketball season starts and fans of Chamberlain rush to watch his sport. In order to update Nozick's example, Sandel (2009) imagines the iconic basketball champion of recent times, Michael Jordan, rather than Wilt Chamberlain. Jordan was paid \$31 million in his last year with the Chicago Bulls, which is more per game than Chamberlain made in a season (Sandel, 2009). By the end of the basketball season Jordan has more money than he had before the beginning of the season while the others have less. Nozick calls this new distribution (after the basketball season is over) D2 and raises the question whether this new distribution is just or unjust. Nozick contends that because viewers voluntarily chose to give money to the basketball star to watch him play, it would be illegitimate to redistribute that

money without the consent of the player. It is Nozick's contention that any outcome is just if it emerges through just steps from a just situation (Nozick, 1999). Hence, D2, according to Nozick is just. Now D1 cannot be established by voluntary transactions. Thus, Nozick's entitlement theory summarily states: "from each as they choose, to each as they are chosen" (Nozick, 1999).

However, it may be noted that the Wilt Chamberlain example, though it illustrates Nozickian injustice in terms of violation of consent to restore D1, assumes D1 (patterned distribution) as just distribution. Nozick's theory of JIT and the theory of JIA are interrelated in the sense that if the original appropriation is illegitimate then transfer becomes unjust or at least questionable. In other words, the right to transfer is embedded in the right to own. Nozick's theory of JIA deals with the problem of original appropriation.

Nozick's theory of JIA and his view of rights draws on the ideas of John Locke and Immanuel Kant. He connects Locke's theory of property¹ with Kant's formula of humanity² and draws the conclusion that self-ownership leads to ownership of the outside world, and respect for rights. Nozick holds that the rights (that he also calls 'side constraints') conceives of individuals in the Kantian sense as ends-in-themselves and not merely as means, that is, individuals cannot be used without their informed consent (Nozick, 1999). Thus, I own the fruits of my labor because of self-ownership and because I am an end in myself and not a means, no one has a right to appropriate the fruits of my labor without my consent. Nozick, therefore asserts that "taxation of earnings from labor is on a par with forced labor" (Nozick, 1999). The only legitimate taxation, to Nozick, is that that fulfills the purpose of protecting the background institutions required for the working of the system of free exchange; these institutions include the police, defense, and justice system for enforcement of contracts (Kymlicka, 2002). Nozick approves taxation, as mentioned earlier, only to fund defense, the police, and the administration of justice (Wolff, 1996). Thus, Nozick rejects positive or welfare rights.

"The distinction between negative and positive conception of rights, and a (general) willingness to recognize only the former as just, lies at the heart of contemporary libertarian philosophy" (Friedman, 2015). The starving person, to Nozick, for example, has no subsistence rights. Nozick argues that "untalented people would have starved any way had the land

¹According to Locke, life, liberty and estate are three forms of property which no one has a right, including the government, to violate because the main purpose of shifting from the state of nature to the establishment of a state is the protection of property (Locke, 1980). Moreover, according to Locke, the property, intrinsic to every person is the natural property, is derivative—derived from "that original, natural, and underived property" (Goldwin, 1987).

²Kant's formula of humanity demands to treat every person including oneself not merely as a means but also as an end (Kant, 1993)

remained unowned” (Kymlicka, 2002). Amartya Sen remarks that people can die at a massive scale because of grave famines even without violating anyone’s libertarian rights (Sen, 1983). Nozick, however, emphasizes one condition for the existence of absolute property rights, namely, “enough and as good is left in common for others,” a proviso that he takes from Locke and modifies it. The Lockean proviso seeks to promote equality by striving to prevent the situation of others from being worsened (Nozick, 1999). In other words, a legitimate acquisition is one that “does not worsen anyone’s situation” (Kymlicka, 2002). However, it has been argued that the Lockean proviso is not practicable in today’s world. The Lockean proviso cannot be met in the contemporary world characterized by overpopulation and scarce resources (Held, 1980). Nozick modifies the Lockean proviso and tries to make it compatible with the present world (will be explained below).

For original appropriation Nozick accepts the first come, first served principle. Nozick in a footnote relates a case analyzed by Hastings Rashdall which imagines a traveler who happens to reach several miles ahead of others and appropriate the only source of water in the desert (Nozick, 1999). To Nozick, Locke’s is a stringent proviso, therefore, it would not allow the appropriation of the well by one person because appropriation by one person does not leave “enough and as good” for others. However, supposedly, in consonance with the spirit of the Lockean proviso, Nozick proposes a weak version of the proviso according to which the first appropriator is the rightful proprietor of the water-source “provided that the first traveler shares the water with the others (or sells it to them, though not charging whatever he pleases for it)” (Hunt, 2015). On the weak version of proviso, if an appropriation does not aggravate opportunities of others to use things it is legitimate (Fabre, 2007). It can be understood even from the weak proviso that Nozick, by conditioning the legitimization of private property with creating opportunities for others, promotes equality, though, to a lesser extent than, for instance, Rawls does. Contrary to Nozick, for Rawls, past distribution is irrelevant to present patterns of distribution (MacIntyre, 2007).

Nozick prefers the weak version of the Lockean proviso also to resolve what Wolff (1996) has called ‘zipping back’ argument, or it may be called the ‘zipping back’ problem (Hunt, 2015). For Nozick, the weak version of the Lockean proviso resolves the ‘zipping back’ problem in that it compensates for the inability of the non-appropriators to access the land by generating new opportunities of transfer for them. Thus, it is Nozick’s contention that appropriation and private property with weak proviso is legitimate on many accounts. Two major reasons are that it promotes efficiency and profitability by putting the means of production in appropriate hands; secondly, it encourages experimentation (Nozick, 1999). The moral foundation for the protection of property rights, for Nozick (in accordance with Kant’s formula of humanity), is that human beings, normatively speaking, cannot be instrumentalized.

One of the major objections to Nozick's entitlement theory of justice is that "gross inequalities," endorsed by Nozick's theory, "destroy any sense of community" (Wolff, 1996). Duncan (2005) argues that rejection of positive rights leads to concentrated economic power (a type of force) in the hands of the appropriators which they use over labor. Private economic power can be used to create and maintain "a caste like system of social stratification" (Duncan, 2005). Private economic power is used to instrumentalize labor and the property less (Duncan, 2005; Kymlicka, 2002). However, it should be noted that labor contracts are supposedly freely chosen and, in Lockean as well as Nozickean sense, there are no property less persons since everyone has a body. Duncan argues that "the state's power can be used to make these private forms of power more accountable, by (among other things) enabling... the formation of employee organizations (e.g., unions); and by-passing anti-discrimination laws, health and safety laws, minimum wage laws, and mandatory over-time pay laws" (Duncan, 2005). Some theorists have argued that Nozick's rejection of the stringent version of the Lockean proviso justifies forcible taxation in order to ensure reparation for those who are made worse-off because the Lockean proviso is not enforced (Kymlicka, 2002). In the case of inventions and innovations, Nozick (1999) strongly supports patents and intellectual property rights. However, as a rough rule of thumb, a time limit must be placed on patents on the basis of approximation of time required for independent invention or discovery in the absence of current knowledge of discovery or invention (Nozick, 1999).

If a selfish scientist using her own brainpower and funds finds a cure for cancer and holds out for 20 trillion dollars in compensation, the Nozickean line of reasoning suggests that the threat to the global economy must not be evaded by invading his/her hard drive to take the formula while presenting her with 50 billion instead (Miller, 2018). However, Nozick fails to show as to why equality is not a value, or why liberty is more significant than equality (Wolff, 1996). It appears that Nozick does not succeed in resolving the tension between liberty and equality. Nozick attempts to resolve the problem of balancing liberty and equality by endorsing any level of inequalities and embracing liberty as the only or the most important value. However, it is perhaps in the context of tension between liberty and equality that "the exact nature of his [Nozick's] theory is left for future work" (Davis, 1982). Nozick has founded his theory of justice on a circular definition of freedom for which he has been criticized by many theorists such as Trebilcock (1993), Cohen (1995), and Olsaretti (1998), among others. Nozick conceives of justice in transfer as voluntariness and he understands voluntariness as justice (Cohen, 1995). That is, Nozick contends that a transfer is just if it is voluntary (i.e., coercion-free), but when we ask what constitutes voluntariness, Nozick replies that someone's action is voluntary if and only if there were no unjust limitations on his opportunities (Cohen, 1995). Nozick's conception of freedom seems "indeed to be just tailored to defend private property" (Fleurbaey, 2004). For example, public ownership of roads, Wolff (1996) contends, promotes liberty rather than impeding it. Thus, Nozick's position on

equality (his rejection of equality as a value) is not rigorously justified and his stance on liberty (circular as well as tailored) is not clear. Nozick appears to be reticent on problems such as egalitarian commitment (in principle) of governments to provide equal security to all. If security is privatized the rich are likely to be able to buy more security than the poor leading to severe inequalities in personal security (Taylor, 2021).

JIR deals with the problem of past injustices. Though rectification of past injustices seems impossible, Nozick is willing to invoke Rawls's difference principle in order to provide a one-time general redistribution of resources (Kymlicka, 2002). There may be past injustices in acquisition as well as in transfer. If A were to hold a piece of property that he stole from B (or that he bought from someone who stole it from B), justice and respect for property rights would demand rectification—that is, redistribution (Zwolinski, 2018). Taxation, for example, may be a type of injustice in transfer, and therefore, rectifiable. Acquisition of land through colonization³ is injustice in acquisition. Cases of colonization demonstrate that not only individuals may be subjected to harm and oppression, but nations and communities fell prey to injustice. No reasonable person among us can say with confidence that the property we claim as our own is not tainted with injustice, if we trace its origins far enough back into the distant past (Zwolinski, 2018). Herbert Spencer remarks that the titles to property are traceable to such sources as violence, superior cunning, and coercion (Spencer, 1995). Spencer (1995) also claims that the passage of any amount of time does not transform an illegitimate acquisition into a legitimate one. The nineteenth-century American libertarian and abolitionist Lysander Spooner advocated the violent revolution of the Irish peasantry against their landlords precisely on the libertarian rectificatory grounds (Zwolinski, 2018).

Though Nozick remains silent on the possibility of violent revolutions against illegitimate owners of property, he, nevertheless, is tilted to approve of 'patterned principles of justice' as rough approximations for the rectification of injustices. In order to achieve this goal, Nozick is willing to approve of the organization of the society "so as to maximize the position of whatever group ends up least well-off in the society" (Nozick, 1999). The endorsement of this rough rule of thumb implies that Nozick's theory of JIR, in certain cases, seems to lead us to Rawls's Difference Principle! (Wolff, 1996). Thus, the principles of acquisition and transfer appear to contradict with the principle of compensation/rectification in that the latter approves of coercive taxation (Fabre, 2007).

³Colonization implies the occupation of a foreign land with the settlement of colonists (Ferro, 1997).

1.3 Assessing the Prospects for the Provision of the Nozickian Global Libertarian Distributive Justice

The original appropriation/acquisition is a central problem of justice, especially, at the global level. The afforested analysis of Nozick's entitlement theory of justice suggests that a just Nozickian appropriation seems to pass through three stages: (i) first come, first served principle (ii) mixing of labor with unappropriated resources (iii) fulfillment of weak version of the Lockean proviso. However, neither Locke's stringent version of the entitlement proviso nor Nozick's weak version of it can be applied to the lands that have already been appropriated from native people. In any case, colonizers are bound to violate the first of the three stages mentioned above for Nozickian just acquisition because they come second and not first. Likewise, enslavement that prevailed in many countries is a case of unjust holding on Nozickian grounds. For example, there are numberless questions about past conquests, and illicit gains, such as the question of determining the living standards of the Black members of the USA if the White had not enslaved them (Gregori, 1979). It has been estimated that, since 1619 to the abolition of slavery in 1865, the USA alone exacted a total of 222,505,049 hours of forced labor from the Black; the evaluation of these hours at the minimum wage in the USA, with a modest interest rate, gives the figure of \$97 trillion today (Hickel, 2017). Currently, 14 Caribbean nations, represented by the law firm Leigh Day, are in the process of suing Great Britain for slavery reparations worth \$300 billion (Hickel, 2017). Thus, JIR seems impossible in the cases of past injustices in acquisition. Nozick unconvincingly expresses his inability to determine a point of time in history from where rectification of past injustices needs to be started and concludes that he does not "know of a thorough or theoretically sophisticated treatment of such issues" (Nozick, 1999). This inability exhibits, on the one hand, the abstract character of Nozick's libertarian entitlement theory of justice, and, on the other, continuing failure of capitalism to conceptualize a theoretical framework for the provision of global distributive justice.

JIR may be established in the form of compensation or reparations for past injustices. However, in relation to JIA and in transfer Nozick rules out a state having authorities more than the minimal state. Among the most common examples of historical rectification are the compensation received by the Jews from Germany after the Holocaust, and adoption of affirmative action by the US government in order to favor the Black and other former slaves (Collste, 2015). On Nozickian grounds of JIR, David Lyons (1982) conceives of the case for returning much of the USA to the American Indians to rectify past injustice in acquisition. Fabre (2007) advocates compensation by the US government for the violation of the Sioux Treaty of 1868. Waldron (1992) argues that the present descendants of Native Americans do not have claim to the land appropriated by the new settlers because much of the land was unappropriated by the Native Americans before the new settlers arrived. This scenario reveals that Nozick's theory does not succeed to systemically develop and illustrate the application

of JIR on the cases of colonization which implies that his theory does not seem to work at the global level. It may be noted here that the more mainstream capitalist theories of justice, such as Rawls's theory of fairness do not conceive of rectification of past injustices. Wong (2021) argues that libertarians such as Nozick may constitute a sect (of capitalism) within a political liberal state. Wong (2021) calls them 'unreasonable but intelligent citizens. The liberal state should not disregard them but try to convince them on the state's use of coercion in order to bridge the gap with them (Wong, 2021).

1.4 Assessing the Role of the Nozickian State in Implementing the Entitlement Theory of Justice

1.4.1 The Nature of the Nozickian Minimal State

Nozick developed his idea of the minimal state in response to the anarchist claim regarding the establishment of the state. Anarchists claim that the establishment of the state is immoral because the emergence/establishment of the state, as a monopoly of violence and as a protector of everyone within a territory, is bound to violate individuals' rights in the course of its emergence (Nozick, 1999: xi). Nozick employs invisible hand argument to explain the establishment of the minimal state, according to which the minimal state, through a gradual process, comes into existence from anarchy (the Lockean state of nature) by the actions of rational and self-interested individuals, without encroaching on anyone's rights in the process and without anyone intending to establish it. The idea of the invisible hand is that "actions by many people can lead to a result which looks as if it was intended, but in fact was not" (Lacey, 2001). The emergence of money, to Nozick, is also an example of the invisible hand argument. By using the invisible hand explanation for the growth of the state Nozick gets rid of reliance on artificial, unspontaneous social contract, according to which the establishment of a legitimate state depends on the consent of the governed whether tacit or expressed.

The minimal state, to Nozick, emerges naturally by the operation of spontaneous market forces. Nozick rules out the idea of a relatively extensive state in favor of the minimal state and contends that the former "violates people's rights" (Nozick, 1999). It is thus Nozick's contention that a minimal state is an unplanned outcome of the spontaneous actions of individuals in the state of nature (Bader, 2010). The spontaneity argument⁴ also implies that the free market system is natural, as Adam Smith calls it a 'system of natural liberties. Nozick begins by assuming that the competitive process in the defense industry would ultimately lead to the emergence of a single dominant firm because of the exceptional scope of the economies of scale in this industry; moreover, the dominant firm would drive out the

⁴The spontaneity argument states that the minimal state could have come about through a series of incoherent private transactions from the 'state of nature' (say, Lockean) without violating rights of any individual (Fried, 2011).

competing firms by force and this use of coercion would be legitimate because the “rival judicial procedures would impose illegitimate risk on the dominant firm’s clients” (Caplan, 2008). Thus, Nozick offers an economic account of the origin of the nation-state (Moss, 2010).

Nozick’s minimal state does not emerge all at once but is the outcome of progression through six stages. These stages are: (i) anarchy or the Lockean state of nature (ii) mutual protection associations (or independent protective associations) (iii) commercial protection agencies (iv) dominant protection agency or a federation of cooperating agencies (v) the ultra-minimal state (will be explained below) (vi) the minimal state. The first stage is anarchy where only the law of nature (i.e., the law of reason) prevails. Though the law of reason prevails in the state of nature there are many ‘inconveniences’ that can only be remedied by civil government (Locke, 1980). In a similar vein, Nozick argues that the state of nature is undesirable because unregulated self-interest of individuals, in the state of nature, will produce endless acts of retaliations and exactions of compensations along with the inability of persons to enforce their rights (Nozick, 1999).

Nozick argues that persons possess natural rights in the state of nature that cannot be adequately protected in that state. Thus, because of the ‘inconveniences’ of the state of nature groups of people will unite to form ‘mutual protection associations’ which would take care of the rights of the members of the associations. On the question of why others would join with the individual for the private enforcement of his rights, Nozick remarks that they would support him by repulsing an offender or going after an attacker because they may be public spirited, or his friends, or they may be reciprocating his past help, or they expect his help in future, or they want something in exchange of help (Nozick, 1999). This process would lead to the emergence of mutual protective associations which are independent from each other. Each of the associations “is pursuing the identical, *prima facie* legitimate end (protecting its own members from wrongful transgression by nonmembers). In the course of pursuing that end, each imposes identical risks on nonmembers by virtue of its unavoidably error-prone procedures” (Fried, 2011). Thus, these associations would not only offer solution to the problem of security but would cause problems as well. In the absence of a division of labor it would be unclear who has when to perform which job. Members may also take undue advantage of the association. Members will be unduly required to spend time and take risks. This scenario would give rise to the market for security services leading to emergence of several commercial protection agencies or companies on the same geographical area set up by entrepreneurs on the principle of free market or *laissez faire* (Nozick, 1999). The commercial protection agencies will rival with each other to protect the interests of their clients against each other which will lead to violent conflicts. The consumers/members would flow to the most powerful agency. Nozick (1999) argues that when the maximal and the less than maximal product compete on a free market the worth of the latter goes down disproportionately as more consumers choose the former. Consequently, “customers will not stably settle for

the lesser good, and competing companies are caught in a declining spiral” (Nozick, 1999). Gradually, a process of mergers, takeovers, and cartels will ensue which will lead to the advent of one dominant protection agency, or a federation of cooperating agencies, though, not a monopoly (Wolff, 1996). The dominant protection agency will extinguish all other independent associations. Nozick contends that a single dominant agency would emerge because the clients would seek to become the members of the strongest protection agency which would lead to the gradual disappearance of the weaker agencies (Bader, 2010). Thus, a dominant protection agency emerges, which marks the fourth stage.

A dominant protective agency does not fulfill the definition of a state on two accounts. First, everyone is not a member of the dominant protective agency because it does not obligate everyone to become its member, and therefore, it cannot be called a monopoly of legitimate violence. In other words, some individuals at this stage may enforce their rights privately. Secondly, the dominant protective agency does not provide its security services to all but only to those who consensually get its membership. Thus, under a dominant private protection agency everyone who uses force without agency’s permission is not punishable (Bader, 2010). But the dominant protection agency cannot long tolerate the private enforcement of punishment and exaction of compensation by individuals, especially when the members of the dominant agency are subjected to private enforcement of justice by nonmembers. The dominant protective agency would thus disarm the nonmembers and would become a de facto monopoly of violence, that is, the ultra-minimal state. It is yet deficient in one attribute to become the minimal state, that is, it does not provide security services to all, but only to its members, that is, its services are denied to those who do not join or cannot pay (Feldman, 2011). The ultra-minimal state does claim a monopoly of authorized violence, and thus, “prohibits the formation of other protective agencies (such as the Mafia, or the KKK) within its domain” (Feldman, 2011). The ultra-minimal state does not provide any other services than protection to its members in exchange for money (Feldman, 2011). However, the ones, whom the dominant agency (now the ultra-minimal state) has deprived of the right to privately enforce punishment and exact compensation, now need to be compensated by the state, though they are not members. Finally, the dominant protective agency provides security services to all whether clients or nonclients, and thus attains the status of the minimal state.

The basic presumed reason for self-interested rational individuals to ultimately progress towards the founding of the minimal state is the underlying realization that clashes add to the transaction costs of economic activity (Moss, 2010). Nozick’s spontaneity argument does not appear to be plausible because the evidence demonstrates that (with a few exceptions) the modern states came into existence militarily and by means of conquest and colonization (Sylvan & Sparrow, 2007).

At the global level, Nozick imagines a utopia⁵ that “is Tieboutian⁶ paradise, in which every imaginable sort of community is on offer” (Fried, 2011). These imagined diverse communities satisfy the preferences of “visionaries, and crackpots, maniacs, and saints, capitalists and communists, and participatory democrats” (Nozick, 1999). Nozick is well-aware that the real world is not analogous to his imagined utopia. Nozick remarks that communities, in the real world, create “problems of foreign relations, and self-defense, and necessitate modes of adjudicating and resolving disputes” between them (Nozick, 1999). However, Nozick’s view of the global utopia may be grasped by the following example:

“(If) American citizens do not like the laws adopted by their fellow countrymen by majority rule (indeed, by any procedure), they are free to leave. If they would prefer a more socialist-democratic alternative, there is Canada and Western Europe. If they would prefer something closer to the libertarian ideal of unregulated capitalism, there is the Cayman Islands” (Fried, 2011).

1.4.2 Functions of the Minimal State

For the provision of justice at the national level, Nozick proposes a minimalist account of the state (a night-watchman state of the classical liberal theory) which holds that the institutions of the state are required essentially to protect individual liberty in the sense that the state must be confined to the functions of (i) protecting the citizens from force, (ii) from fraud, and (iii) the enforcement of contracts (Nozick, 1999). The police are required to protect the citizens from internal coercion whereas the military is established to protect the citizens from invasion or external coercion.

Nozick subscribes to the Weberian definition of the state that the state is an agency that possesses “a monopoly on the use of force in a geographical area⁷” (Nozick, 1999). The Nozickian state is established within a geographical area, and more than that, Nozick proposes an “economic account of the origin of the nation-state” (Moss, 2010). The Nozickian minimal state also performs the function of collecting taxes, though not for the purpose of redistribution. The imposition of Nozick’s entitlement theory of justice demands performance of three of the four functions of the state specified by Therborn (1978). First, Nozick’s minimal state is a monopoly of violence in a geographical area which has its military defense

⁵“The best of all possible worlds that Nozick can imagine is one in which we are given a choice among a reasonably diverse range of communities and then told, with respect to each of them, take it or leave it” (Fried, 2011).

⁶The Tiebout hypothesis was formulated by economist, Charles Tiebout. According to it, in different societies, different taxes are levied, providing different bundles of public goods and services resulting in a Pareto-optimal allocation allowing individuals to choose their place of residence in a society they desire (Auerbach, 2008). It needs, however, to be noted here that apart from the dissimilarity between such an entry fee and the actual tax on property, many other issues are involved in viewing the soundness of the Tiebout model (Auerbach, 2008).

⁷Prospects for a Nozickian world state will be analyzed in the next section.

to protect its members from the outside invaders. The Nozickian state uses the apparatus of the military, the police, prisons etc. to safeguard its monopoly of violence. Secondly, Nozick does not explicitly articulate political governance (by supreme rule-making) as one of the functions of the minimal state. He proposes his minimal state as if “it does not have a constitutional structure, legislative bodies, political parties, electoral campaigns, or citizens” (Mack, 2011). Moreover, the Nozickean minimal state is undemocratic in that it does not mind lack of popularity among the citizens and is not subject to elections (Wolff, 1996). Finally, Nozick’s state also performs the function of judicial regulation of a given social formulation. With the emergence of the dominant protective agency, a common system, for the enforcement of rights and judgments in the face of competing claims, encompasses all persons in a specific territory (Nozick, 1999). The apparatus of the judiciary performs the function of judging between competing claims and enforcing rights by punishing or exacting compensation. It is in line with these functions of the state that Nozick approves taxation only to fund the defense, the police, and the administration of justice, as has been mentioned above. It needs however to be noted that differences between Rawls and Nozick regarding the extent of the state’s duties to the least well-off are not as significant as they might appear. For example, “the largest items in the federal budget of the United States—military expenditures, social security, and Medicare—have little to do with poverty relief per se” (Zwolinski, 2018). It is so because, for example, both Medicare and social security are justified on the grounds not of income but of age.

1.5 *The Non-Existence of a Global Solution: Rationale*

1.5.1 *Nozick’s Rejection of a World State*

At the national level Nozickian entitlement justice is provided by the national minimal state. Thus, it may be argued that JIA, JIT, and the rectification of past injustices at the global level is not possible in the absence of the Nozickian world minimal state. The imagined global minimal state has to perform its essential functions of protecting all people from force, fraud, providing security services to all, and enforcing contracts. The Nozickian world state would collect taxes at the global level and would fund the state apparatus such as the global police for the maintenance of law and order, and the global judiciary for the administration of justice. It would be one of the essential duties of a global minimal state to rectify past injustices, that is, it would take rectificatory measures against acquisitions of property based on force and fraud. In view of the fact that the present global inequalities in terms of concentration of property and wealth in rich countries are partially the outcome of unjust historical acquisitions in the form of colonization, slavery, and plunder; demand for rectification of unjust holdings is in line with Nozick’s approach to justice (Collste, 2015). Wolff (1996) argues that with reference to issues such that the land claims of American Indians, or the violations of rights of Black American slaves, or the expropriated peasantry, Nozick tends

to approve of taking back the anti-welfarism of libertarian doctrine. Nozick rules out the imposition of socialism for being too severe punishment “for our sins”; Nozick suggests “in the short run a more extensive state in order to rectify them (past sins)” at national level (Nozick, 1999). Historical injustices may be understood as “legalized natural⁸ crimes, committed by morally competent agents” (Schefczyk, 2009). Collste (2015) advocates the rectification of unjust acquisition of land through colonization. Efforts should be made for the rectification of past injustices in the form of generous immigration policies, and affirmative action (Collste, 2015). Such policies, however, are not visible. For example, the European Union functions as a fortress which invites people within its walls from one or two poor countries just to do the dirty menial work as well as heavy lifting (Klein, 2003). Hilary Beckles (2013) argues that Great Britain has an obligation to pay to the Caribbean peoples because they were subjected to drudgery and enslavement in the colonial era. A sizeable portion of the wealth produced through the Industrial Revolution as well as the gigantic economic progress of Great Britain was dependent on the trading of slaves and the slave economy (Beckles, 2013). Janna Thompson (2002) develops a theory of reparative justice, in particular, for the Aborigines in Australia and the Maori in New Zealand. In addition to colonization, in “current economy, corporations use government to game the economic system for their own advantage” (Brennan, 2012).

JIT is violated both at the national level and global level in a large variety of ways, such as giant MNCs and other big businesses receive multi-billion dollars “bailouts, subsidies, and loans from governments and use the power to seize land and property from the poor to their own benefit” (Brennan, 2012). Waldron (1992) argues that it is impossible to decide on the basis of counterfactuals, because there would have been multiple opportunities for the native people and one cannot be certain about the path they might have followed. Thus, Waldron (1992) contends that entitlements wither away over time. Nozick is silent on the application of his weak version of the Lockean proviso at the global level. The weak version of the proviso demands the provision of equal opportunities to all people across the globe who have been unable to benefit from the private ownership of property. The only way to introduce this Nozickean proviso “is to put ‘initially unowned resources’ under a special status of common rights-holding, so that, even when they are privately managed, their use can benefit all mankind” (Fleurbaey, 2004; Steiner, 1994). This seems practically impossible. Robert Penn Warren denounces the whole notion of untangling the debts of history as a grisly farce (Bittker, 2003). Nozick’s theory of entitlement is impossible to apply globally, because it fails to be attentive to changing circumstances (Waldron, 1992). The impossibility of rectifying past injustices implies the illegitimacy of initial acquisition also which casts doubts

⁸A natural crime implies an intentional violation of a ‘natural right’ whereas ‘legalized’ implies that a natural crime must be allowed or tolerated by the legal system (Schefczyk, 2009).

on the legitimacy of JIT as well. Moreover, Nozick does not seem to succeed in establishing a case as to why self-interested rational capitalist individuals would accept and practice the rectification of past injustices on libertarian grounds.

Nozick subscribes to the view that rights protection in general or security service in particular “is a marketable economic good comparable to laptop computers, fine meals at fancy restaurants, and haircuts” (Mack, 2011). Phenomena that lead to the emergence of a minimal state from anarchy include spontaneous formation of groups, division of labor, market forces/pressures, mutual protection agencies, economies of scale and rational self-interest; these forces and phenomena lead to the advent of “a minimal state or a group of geographically distinct minimal states” (Nozick, 1999). Regarding the size of the jurisdiction of the state, Nozick raises the questions on the size of communities and cities, and more importantly, he asks, “How will economies of scale operate to fix the size of the communities?” (Nozick, 1999). In response to these questions, Nozick favors the expansion of the boundaries of the state to the extent of optimal jurisdiction. “What is desired is an organization of society optimal for people” (Nozick, 1999). The optimal jurisdictional area⁹ may be understood with the example that follows:

“If the marginal cost of adding individuals to the protection agency rises, there may come a point, with rising average cost, at which the marginal sacrifice of private goods as perceived by the choice-making individual is greater than the marginal gain in security. At this point (short of world monopoly) the optimal size of the protection agency has been achieved” (Moss, 2010).

To Nozick, it is neither the state of anarchy nor a world state, but only the nation-state that provides the optimal jurisdiction area (Moss, 2010). What is common in anarchy and a world-state (one-world government) is that they are both, to Nozick, corner solutions, and thus, he rejects them both (Moss, 2010). The term ‘corner solutions’ seems to imply that they are both unsustainable solutions. Anarchy, to Nozick, is unsustainable in that it necessarily progresses to a minimal state (without anyone intending this progression) whereas a world minimal state is unsustainable because (if established) it would break up into several minimal states bounded by an optimal jurisdiction area. Though Nozick does not provide empirical evidence as to why beyond a certain territorial limit the costs of providing security services will rise, he does not conceive of a world state but rather the world with a number of distinct dominant protection agencies (Moss, 2010). To Nozick, the benefits offered by a minimal

⁹The optimal point, for example, between work and leisure for a person would be where there is parity between the utility attained by the extra consumption earned by the last hour of work and the last hour of leisure he would enjoy; similarly, the size of the territory and heterogeneity of population determines the optimal size of the territory of a state; more precisely, it is an optimal point between the economies of size and costs of heterogeneity that determines the optimal size of a country (Alesina & Spolaore, 2003).

nation-state outweigh the benefits offered by both anarchy and a world state. Whereas Rawls rejects a world state because it would, he argues, become a soulless despotism, Nozick does not use the criterion of liberty for ruling out a world state. Nozick's conception of justice at the national level is based on equal liberty but he does not invoke this criterion to renounce the idea of establishing a global minimal state. Whereas Rawls contends that liberty cannot be sacrificed for the sake of efficiency, Nozick seems to downplay equal liberty for average cost. Nozick rules out a world state because a nation-state offers more benefits in terms of being cost-effective. Moreover, Nozick has rejected a global minimal state without adequately accounting for his claim that "costs may be expected to rise with further expansions in the size of protection associations" (Moss, 2010). However, "as soon as optimization is at issue, trade-offs can become necessary to achieve the optimal way of approximating utopia" (Bader, 201). The rationale for the optimal jurisdiction size is that it seeks the trade-off between the economies/benefits of size/scale and the costs that the scale brings in the form of heterogeneity (Alesina & Spolaore, 2003). "For high economies of scope, the world would be optimally organized," not in the form of a world minimal state, but in the form of "a number of non-overlapping centralized jurisdictions, each providing its citizens all the necessary public goods and services. We consider these centralized jurisdictions to be countries" (Alesina & Spolaore, 2003). In case of the homogenous inhabitants living in a specific geographical area, expansion of size will be rewarding only up to "a point where diseconomies of scale set in" (Alesina, Baqir, & Hoxby, 2004). Alesina, Baqir, and Hoxby (2004) provide empirical evidence which suggests that in case of small population in a jurisdiction, costs per person fall significantly but the significance of economies of scale starts declining beyond some specific point "and the decline is nonlinear" (Alesina, Baqir, & Hoxby, 2004).

In a similar vein without substantiating his contention with empirical data Nozick had argued in favor of natural emergence of multiple minimal nation-states. Nozick asserts that rational, self-interested and spontaneous actions of individuals and groups, in the state of nature lead to the emergence of "single protective agencies dominant over geographical territories; each territory will have either one dominant agency or a number of agencies federally affiliated so as to constitute, in essence, one" (Nozick, 1999). Nozick's model of global justice does not conceive of a global minimal state but several minimal states for different geographical areas. Thus, the Nozickian approach to justice rejects the replication of national state institutions and apparatuses at the global level which implies that the application of entitlement theory of justice at the global level seems impossible.

The non-emergence of a world minimal state is itself an evidence of the fact that a world state cannot come into existence on its own through a spontaneous gradual process that Nozick has proposed for the emergence of a minimal nation-state. Conversely, the claim for the emergence of a minimal state at the national level is also unsubstantiated. The Nozickian world consisting of various minimal states is utopian in the sense that it has never taken

place. “There is no evidence whatsoever that any state was founded or developed in the Nozickian manner” (Rothbard, 1977). Murray Rothbard argues that data (where available) show that the nation-states (more extensive than the imagined minimal state) were created through a process of violence, conquests, and exploitation, i.e., in violation of individual rights (Rothbard, 1977). Eric Mack contends that if rational self-interested individuals take individual rights as seriously as Nozick thinks they should, they “must reject even the minimal state,” which implies that the spontaneity argument for the emergence of the minimal state does not hold true (Mack, 2011). Nozick’s promised individual liberty, on Nozick’s own grounds, is violated in the sense that in “Nozick’s ultra-minimal state, dissenters want to remain completely independent, but have been denied that option” for the creation of a minimal state (Fried, 2011). On the similar grounds, libertarian formulation of individual liberty is denied in a political liberal state because liberal state does not deny welfare or positive rights. Nozickian reasoning for the ‘emergence’ of a minimal state contradicts the demand of spontaneity and ‘invisible hand’ interpretation. The Nozickian minimal state does not come into existence spontaneously but “the visible hand of one dictatorial protecting agency conquers and absorbs all the others by force,” thus coercively extinguishing every other independent protection agency’s natural right to self-defense (Fried, 2011). Consequently, the dominant protecting agency not only extinguishes all other independent protecting agencies by force, but it incorporates the nonmembers also by force. Thus, neither a minimal state is natural and spontaneous nor are there prospects for the development of a global minimal state for the provision of global capitalist libertarian distributive justice.

2. Conclusion

Nozick’s theory of justice consists of three parts: JIA, JIT, and rectification of injustice. In its essence, Nozick’s theory of justice seeks to provide equal liberty to all citizens of a nation-state. Distribution, to Nozick, is not separated from production. Thus, Nozick rules out redistribution of wealth and income. However, taking care of JIA, JIT, rectification of past injustices, and the provision of equal liberty is seen as the responsibility of the state at the national level. A serious problem with Nozick’s theory of justice is that it is too abstract. The application of his notion of JIA, and rectification of past injustices is unclear and abstract. Moreover, Nozick rejects the notion of establishing a global state on the grounds of non-optimality of the size of a global state. Thus, Nozick does not provide a framework for replicating the instruments and mechanisms of the state at the global level to provide global justice. However, Nozick would propose that all nation states should adapt the model of a minimal state.

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