

Justice, Nozick, and Rawls: A Symposium

In May, Harry Johnson, President of this Association, passed on. The symposium contained in this issue was conceived and developed by Harry and Ray Canterbury. Ray undertook most of the task of coordinating the contributions after Harry's untimely passing, and, besides putting together the introduction and his own comments, edited Harry's contribution as well. Such a symposium, along a path of inquiry that Harry was just beginning to pursue, may be the best testament to the creativity and vigor of his thought and, it is hoped, a fitting tribute to his memory.

Introduction

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The purposes of these introductory comments are to provide (1) a brief overview of Robert Nozick's principles of justice as they contrast with those postulated by philosopher John Rawls in *A Theory of Justice* and (2) a summary of the articles in this symposium. This introduction is the stage and the articles constitute the performance.

Nozick and Rawls ask the same question. What is a just society? Is it one that achieves the greatest possible degree of equality among its members, or one that pays the greatest possible respect to the rights of the individual? Or, for that matter, are the two types of society inseparable?

Rawls and the egalitarians appear to have had the advantage because of attempts to redress racial and economic inequalities during recent decades. Now, however, philosopher Robert Nozick argues that any state that pursues egalitarian goals as an *end state* condition is inherently unjust. This unjustness is not related in any way to the nobility of intent.

Nozick's book attacks government's redistributive efforts and, at its core, is perhaps the most tightly-argued defense of *laissez faire* since Adam Smith. At the same time it is providing a theoretical framework for the expanding libertarian movement.

I. Contending Philosophers: Nozick vs. Rawls

Nozick's book is the main philosophical counterpoint to the widely acclaimed 1971 volume by John Rawls. Both of these philosophers contend that classical utilitarianism does

not provide a proper framework for basic rights. Nozick favors a social contract derived within the bounds of the laws of nature. Within such bounds, individuals should be free to order their actions and to dispose of their possessions as they see fit. He calls this "capitalism between consenting adults."

The laws of nature (following John Locke) state that no person ought to harm another in his life, health, liberty, or possessions. Certain "inconveniences" in the state of nature plus the advantages of division of labor and differentiation of services lead to the origination of private protective firms. Contending claims among clients give rise to a dominant protective association that has a territorial monopoly. This version of an *ultraminimal state* fails to provide protection and enforcement services to everyone in its territory. Therefore, Nozick recommends for the state an extension of its protective responsibilities to *everyone* within its boundaries. It nonetheless is a *minimal* or "nightwatchman state" limited in functions to protecting all its citizens against violence, theft, and fraud, and providing for the enforcement of contracts.

Friedmanesque protection vouchers are financed from tax revenues. All persons are given tax-funded vouchers which in turn can only be used for the purchase of protection from the state. In this concept of the state Nozick walks a fine line between the rejection of anarchy and a state which would have substantial redistributive functions. Moreover, he attempts to justify such a minimal state without recourse to the device of a unanimous contract.

Nozick's distrust of the state is stronger even than Adam Smith's. Nozick argues that

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"individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do" (p. ix).

At first glance it appears that some economic redistribution does occur in the minimal state. Because taxes are collected, *potential* protectees pay for the protection of others whose rights actually are violated. Such a form of redistribution might provide the pattern for other and more extensive redistributions in a more-than minimal state.

Nozick proceeds to argue, however, that "the minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights" (p. 149).

Nozick's theory of economic distribution is an "entitlement theory." This theory states that a person is entitled to any holdings so long as their acquisition does not violate any individual's natural rights.

In a just world, the following definitions 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 that holding is entitled to the holding. (3) No one is entitled to a holding except by (repeated) application of (1) and (2). Nozick's "complete principle of distributive justice" states simply that a distribution is just if everyone is entitled to the holdings he possesses under the distribution. If any of the three of the original principles is violated, his principle of rectification comes into play as a fourth principle.

It is difficult, perhaps impossible, to avoid comparing Nozick's principles with those of John Rawls. Indeed it is clear that Nozick's main philosophical target is Rawls and 20th century democratic egalitarianism.

The Rawlsian principles of justice are chosen behind a "veil of ignorance" in "the original position" under a unanimity vote. No one can know his place in the ongoing society, and, therefore, people adopt a maximin rule for decisions in order to avoid risks. At this "constitutional convention", the people first adopt a basic liberty principle similar to Nozick's, except *individual* ownership of material resources for production is not required. The people choose a second principle requiring that social and economic inequalities meet two conditions: they must (a) be to the greatest expected benefit of the "worst off" members of society (the maximin equity criterion) and (b) be attached to offices and positions open to all under conditions of fair equality of opportunity.

Rawls claims a lexicographical ordering of principles with the basic liberty principle ranked first. Lexicographical (or lexical) ordering means that no quantity of a lower-ranked principle can be a substitute or a complement to a higher-ranked principle even though some quantity of all principles is desired. A Rawlsian social contract would therefore—given basic liberties—include the principle that those who have been favored by nature with talent, wealth, or other social advantages may gain in their good fortune only on terms that improve the situation of those who have otherwise lost out.

This appears to conflict directly with Nozick's entitlement theory of justice. Everyone, to Nozick, is entitled to his initial natural endowments and whatever returns they yield. Thereafter the justice of distribution depends solely upon acquisitions and transfers that do not violate the laws of nature.

Rawls views the distribution of natural assets as "morally arbitrary" and considers the distribution of natural ability as a "collective asset", much as European peasants once viewed the Commons. Everyone then has some entitlement or claim on the totality of natural assets. The "ideal Rawlsian society" is one that encourages

co-operation within a setting in which the natural endowments of individuals and the natural endowments of resources are the society's common property. The "better off" in society make transfers to the "worst off" in order to gain and maintain their cooperation.

For arrangements in the on-going society, Nozick sides with Adam Smith in favoring free capitalistic exchange. He contends "I believe that the free operation of a market system will not actually run afoul of the Lockean proviso" (p. 182). He goes beyond most orthodox economists and argues that the prices of free exchange can be judged as "fair."

This contrasts with the on-going Rawlsian cooperative society in which the fairness of rewards based upon marginal products is brought into question. Economic inequalities in excess of those required for an efficient economy are assumed by Rawls to emerge under a system of free capitalistic exchange. Free exchange also cannot rectify inequalities that are derived from random endowments. Thus Rawls *openly advocates* the development of redistributive institutions within a democratic state.

In closing this introduction to Nozick and Rawls it is fitting that we return to Nozick's parallel with Adam Smith. Nozick expresses a methodological reason for preferring his system of liberty: it is an "invisible hand" theory of government. Here Nozick, literally and figuratively, joins hands with Smith.

Adam Smith's invisible hand explanation of the operations of the free private enterprise system is neatly summarized in his famous statement: "[Every individual] intends only his own gain, and he is in this, as in so many other cases, led by an invisible hand to promote an end which was not part of his intention." Smith saw unconstrained individual selfishness ending in a social harmony in which consumers reaped the benefits from the lowest possible prices. No one intended this outcome; it just "happened."

Nozick expresses the invisible hand notion somewhat more precisely. An invisible hand explanation shows how some overall pattern or design, which one would have *thought* had to be produced by an individual's or group's plan, instead was produced and maintained by a process that had no intrinsic pattern or design in mind.

The process is independent of the outcome. For this reason Nozick prefers such explanations. *Fundamental* explanations, says Nozick, do not use any notions of the process itself, and the less we use notions constituting what is to be explained, the more we understand. The invisible hand explanation suits this criterion because the outcomes are not the consequence of persons' desires or beliefs.

The opposite explanation would be one of "hidden hands". For example, in a conspiracy, what *looks like* an unintentional outcome is actually the product of a group's *intentional* design. Nozick offers a number of examples of invisible hand explanations in addition to his theory of government. Not surprisingly, among them is the neoclassical price theory that traces its roots to Adam Smith.

It would be misleading to suggest that Nozick is only concerned with the operation of the economy. He marshals a reasoned plea for the protection of individual rights from several different perspectives. He no doubt will hit a responsive chord among both libertarians and democratic egalitarians when he contends that more laws and state regulations establish still more avenues for government coercion of citizens.

Nozick asks us to examine again the justification for state coercion and reassess the limits that apply to the state. Even for those who do not wish to put the limit of the state at the minimal threshold, the encounter with Nozick will cause them to think more clearly than ever about the proper limits of state coercion. Thus, even when the contributors to the present symposium disagree sharply with him, they have

clearly been challenged by Robert Nozick's *Anarchy, State, and Utopia*.

II. The Articles: An Editors' Summary

The contributions presented herein have one conclusion in common: Nozick and Rawls have not provided theories of justice or else have given us incomplete principles of justice. Israel M. Kirzner sees Nozick's entitlement theory as incomplete. Jan Tumlir denies that immutable principles of justice ever exist. Vincent J. Tarascio views Nozick's and Rawls' theories as well-reasoned summaries of respectively, nineteenth century liberalism and contemporary American liberalism. Finally, Abba P. Lerner contends that principles of "justice" are derived from preferences, not from moral premises. But, we will see the authors go well beyond this theme.

It is the thesis of Israel M. Kirzner ("Entrepreneurship, Entitlement, and Economic Justice"), that Nozick's theory of entitlement does not—without significant reformulation—solve all the difficulties that may be alleged to exist in respect to the justice of the market. If the market depends upon the exploitation of profit opportunities made possible by the errors of others, and such profits are considered unjustly acquired, the justice of the market has been greatly compromised.

Kirzner argues that the only logical defense for the general morality of market transactions must be that the errors which characterize disequilibrium markets do not affect the voluntariness of the transactions completed. The profits won then would still fall under the rubric of Nozick's yardstick of discretionary justice in transfer. The particular insight into disequilibrium market transactions required to retain the market's morality is the "finders, keepers" ethic. The introduction of an ethic concerning entrepreneurial discovery and finders, keepers, according to Kirzner, justifies

the free operation of the market system with fewer qualifications than those of Nozick.

Jan Tumlir ("The Unintended Society? Some Notes on Nozick") dramatizes the difference between invisible hand and patterned outcomes by asking a fundamental question: In what way is a society able or "free" to control and deliberately steer its own development, and to what extent, by what methods? How much is governed by the invisible hand, and how much is or can be governed by deliberate and effective use of various design devices?

Tumlir considers this the central question of the social sciences. It is also a political question. To Tumlir, Nozick's minimal state offers society a high degree of control over its future in the sense of allowing the individual citizen to plan his or her future. The much-more-than minimal state, through the very expansion of its specific commitments causes its policies to be increasingly unstable, and reduces *everybody's* control over the future, including that of the government and of the individuals composing the society.

State policy outcomes therefore are also invisible-hand outcomes. This is so because we do not know enough to use the patterning mechanism in a way that would guarantee planned outcomes.

The claim for justice in (greater) equality of results logically presupposes a belief in the possibility of social engineering. Thus, even if we accept Rawls' principles of justice, an inadequacy of knowledge causes social engineering failures. Planning efforts crash on the shoals of ignorance. Such failures have little to do with justice. Contrary to Nozick (and Rawls), Tumlir views the rules of law as all the justice that society presently agrees to and these laws are mutable.

Vincent J. Tarascio ("Theories of Social Justice, Social Action, and the State") develops a theoretical framework based upon his own extension of Paretian utility theory in order to

assess Nozick and Rawls under the same umbrella. He considers both works to be, to some degree, an extension and modification of the principles of classical utilitarian philosophy, still the dominant theory in moral and political philosophy. The direct relevance of the theories to economics is displayed in Tarascio's article.

The moral foundations of classical political economy were essentially utilitarian in nature and modern economic science contains vestiges of utilitarian philosophy. Tarascio suggests that one of the basic differences between Rawls and Nozick is the extent to which "shared values" dominate over individual heterogeneity. Whereas Rawls sees individual and social (and economic) heterogeneity as a basis for possible injustice (resulting from inequality), Nozick sees in such heterogeneity the *only basis* for justice.

In the works of Nozick and Rawls the justification of the existence of the state remains tied to moral issues. From his general framework, however, Tarascio concludes that the *heterogeneity of individuals* is the basis for the state. He also concludes that the contention between both works concerning government's redistributive role is ex-ante and ex-post redistributive vs. ex-ante and ex-post compensatory. Each implies differences in degrees of government interference and individual and social action.

Abba P. Lerner ("Utilitarian Marginalism (Nozick, Rawls, Justice, and Welfare)") examines Nozick's entitlement theory of distribution and Rawls' difference principle of distribution within the economist's traditional utilitarian concept of distribution. Lerner suggests that

Nozick and Rawls fail to understand the attributes of marginal products in deciding an efficient income distribution.

Lerner goes on to show how the free market exchange conditions can be met while a "social dividend" is redistributed among the population. In this way he builds the case for a maximax, a simultaneous allocative and distributional efficiencies optimum. Where the maximax is unattainable, Lerner restates his rule for income transfers from higher to lower income receivers.

This optimum, derived from the contemporary utilitarian principle, is based on the assumption that the marginal utility of income is diminishing. Lerner concludes that the three approaches—Nozick's, Rawls', and the modified utilitarian view—are three configurations of preferences with each claiming to exhibit higher levels of societal satisfaction. None of the three approaches can be considered a construction of social justice.

Lerner objects to Nozick's theory of entitlement because it states that *whatever* income distribution exists is the correct one. He objects to Rawls' conception because it is derived from a state (the "original position") which can never exist. Lerner favors his own axiom for the redistribution of income because it provides an explicit definition of what it is that satisfies.

Finally, the concluding comments of the co-editors ("Further Reflections on Economic Justice") address issues in detail that are either ignored by the symposium authors or else touched upon lightly.