

## **Justice and Rights in Nozick's Libertarianism: what prospect for community and nation?**

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### **Abstract**

*Human right is also known as self-right. All men have fundamental rights which is not borrowed, or given. Does it presuppose that some rights are given or borrowed? Of course some rights are given and others are not. Such are the rights to moral feelings or emotion including some basic rights of social association and ability to freedom. On the one hand, some rights, such as, governmental, associational, societal permission to act and function in the society are given. Nozick associated his dictum to a more basic moral principle postulated by Immanuel Kant precisely the second formula of his famous categorical imperative. For Fidelio E. Egbunu, in his article 'Africans and African humanism: what prospect'? He described justice and right as 'responsibility featured in the cognizance of a communalistic life'. Nozick simply present human being as a rational being, endowed with self awareness, free will and the possibility of formulating a plan of life, has inherent dignity and cannot properly be treated as a mere thing or used against his will as an instrument or recourse in a way an inanimate object might be. He called human being self owners; they have certain rights inherently. The excursus of this article is therefore to analyse the absolutism of these rights as a means to attain justice in a society and the credibility of justice as a standard for community for nation.*

**Key words: Justice, Rights, Libertarianism and Model**

### **Introduction**

Generally, the word freedom means, the absence of restraint, or a state of no force to act or to do anything against the will. For political philosophy, were critical debates are on concerning liberty. Amongst these philosophers who made tremendous contribution lately is Nozick. However, it is pertinent to state the non debilitating fact that, Nozick's libertarianism is a reaction to Rawls notion of liberty especially in his contributions to distribution or redistribution of property, rights and resources in the society. It is glaring that Rawls notion of justice is equality to all,

and Nozick tied justice to liberty Original possession of property and resources and there are things that even the government would do to infringe on the rights of an individual. While Nozick oblige people to have original acquisition of resources, Rawls, tied justice to fairness also to the benefit of the less privilege in the society. This is a pertinent issue especially when one is faced with the understanding of liberty and justice.

To recap the thoughts of ancient philosophers, we see the argument of Plato, that the "excess of liberty, whether in a state

or in individuals, seems only to pass into excess of slavery.”<sup>1</sup> For him what we call freedom could mean only a hypothetical exercise because freedom is not absolute at least not for certainty. A counter argument to Plato is Aristotle whose views that “slaves are like animals: both use their bodies to minister the needs of life.”<sup>2</sup> For him people should act and exercise their freedom willingly not necessarily because they are caused to do so but that “they are virtuous and choose the virtuous action for its own sake not for blind habit or fear of social pressure.”<sup>3</sup> What could be this social pressure? The two ancient figures concentrated on the action of the individual in the society, but the society is rapid developing to a state, in which of this assertion will justify the objective of the state?

Nozick attempts the theory of the state of nature by asking salient questions which progressively address the theory of the state of nature from the associations to the protective association, the dominant protective associations and may be the state. But Nozick is quite certain that in these entire exodus, man has not arrived or attained its status of happiness of the state or well being, because man has been entangled and engulfed with the politicking of either the laws of the state or functions of capitalism. So, in addressing these abnormalities he states, “Individuals have rights, and there are things no person or group may do to them (without violating their rights).”<sup>4</sup> Nozick is a libertarian who pushes the extreme position of libertarianism to its finality. He seeks to protect individual right, freedom and private property at the expense of the functions of the state.

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<sup>1</sup> Irwin. T. H. *Aristotle's First Principles*, (New York: Oxford Claridon Press, 1992), p. 413

<sup>2</sup> *Ibid.* p. 82

<sup>3</sup> T. H. Irwin, *Aristotle's First Principles*, (New York: Oxford Claridon Press, 1992), p 413

However, he provided a platform at which the state should function; this he called the minimalist state also known as the night-watchman state. This state is only meant to protect the individual from external force of attack by the society. This extreme position of Nozick is antagonizing to Rawls egalitarianism whose position holds that “each person is to have an equal right to the most extensive total system of equal basic liberties compactable with a similar system of liberty for all.”<sup>5</sup>

In the exposition above, the research spotted out a lacuna between the freedom of the state and the absolute freedom of the individual in the state; both features of freedom are product of the ontological nature of the state. The state is an embodiment of this freedom as phenomenal entity; since each freedom stands inviolate of constraints does it explain an invisible nature of worlds in the state? Meaning the world of the freedom of the state and the world of the absolute freedom of individual, could this possibility of worlds be a resultant value for a common ground of a libertarian political society? It is on this note that we shall explain these worlds as an imaginary form of a political model. Nevertheless, we shall engage the thought of other scholarly view of absolutism of freedom within the boundaries of the state.

Paul Jeffrey is one of those philosophers whose view on Robert Nozick is quite controversial. In his book, *Nozick Anarchism and Procedural Rights* (1977), he agrees on the uniqueness of Nozick libertarianism. He appraises the position that, “While many minimal state theorists, such as Ayan Rand, have found in anarchism an unacceptable vehicle for the conveyance of natural rights,

<sup>4</sup> R. Nozick. *Anarchy State and Utopia*. (Cambridge: Mass the Belknap Press of Harvard University Press, 1971), p., IX

<sup>5</sup> O. A. Oyeshile. *A Compendium of Philosophical and Political Quotation*. Op cit, pp. 104-105

libertarianism, Nozick, with Locke, do not dispute the logical compatibility of anarchism and natural theory.”<sup>6</sup>

Instead of having conceded to the anarchist that advocacy of no government is not inconsistent with the espousal of natural libertarianism. Nozick purported to have demonstrated that (a) a state-like entity will emerge naturally from anarchy, and (b) that its emergence is both morally necessary and proper.<sup>1</sup>

The inference of this argument will only amount to the fact that, there will be overcharges if at all the right of the individuals in the society will be protected by the minimal state. Because the reluctant will always seek refuge and pay for protective service in order to be protected by the minimal state.

Jeffrey would argue that Nozick appear to be an instance of collective redistribution, and consequently will draw his condemnation. It is based on this approach that Jeffrey saw the uniqueness of Nozick’s puzzle. To this effect, Jeffrey draw great influence on the controversial argument of Barnett that, the “burden of proof lies with the pro-government at list and the libertarian government must defend the state, not attach anarchy.”<sup>1</sup> He further argued, that no human being coerce another, if this is the case, then why allow physical force be applied according to the subject inclinations of buyers in the marketplace? He rested his argument that the use of force ought not to be left to human choice according to natural rights theory.”<sup>2</sup> The researcher would agree that, these arguments are based on the fallibility and the limitation of human being as a dynamics creature.

However, Jeffrey opines that Nozick refrain from this thought. But, Jeffrey began with what he agrees as the procedural rights, He

But they deposited something more conceded to the anarchist advocacy that is;

conceived of this notion to be the linchpin of Nozick’s argument as well as would not agree that Nozick’s theory serve as a compensation principle. Nevertheless, he seeks to show further what follows as a hope to demonstrate two things “one, that Nozick’s argument will not go through if it is deprived of the notion of procedural right. Secondly, that procedural right cannot possibly have the status which Nozick’s argument must require of them.”<sup>3</sup>

From this assertion, he has reconciled the contention between the procedural right and the end of compensation principle. Here, he pushes two arguments forward, one, the right to property defense save of all individual which they may delegate to others. This explanation includes; each individual have rights to be judged according to procedures, and if by any means he deprives the protection of another property he must compensate him sufficiently to enable the re-acquisition of those means. It could be agreed that such deprivation is evidently moral because the latter is still left with his property and procedural right still intact.

Secondly, Nozick demands that persons be known to be guilty. In other words that they be punished, hence, procedures which do not tend to lead to such knowledge may be prohibited. This requirement is quite different from what Barnett alleges, it

<sup>6</sup> P Jeffrey “Nozick anarchism and procedural rights” *Journey of Libertarian Studies* Fall. 1977, p. 337

<sup>1</sup> *Loc. Cit.*

<sup>1</sup> R E. Barnett ‘*Witther Anarchy? Has Robert Nozick Justify the State*’ *libertarian studies* 1.No. 1, p.15

<sup>2</sup> P Jeffrey. p. 338

<sup>3</sup> *Ibid*

means this argument never abandons the intention of the procedural rights, it only elucidate. Here, Nozick simply put, that everyone has the right to be known to be guilty were the person is not guilty the person remain unpunished. So it does not give room for subjugation, depression, nepotism, and so on. Again, the guilty party's procedural rights supersede the violated property rights of his victim. Finally, the position of Jeffrey is crystal clear even though it sounds so controversial it also shows to close the necessary gabs that attach Nozick's argument.

G. A. Cohen, in one of his books, *Self Ownership Property and Equality* postulated a critical study on Nozick's positions of libertarianism, these positions seems to be an attack on libertarians owning to the fact that "equality had indeed been derived with no breach of the rules of self ownership"<sup>4</sup> This claim has been reflected in numerous article, precisely in this article *Self Ownership Property And Equality and Freedom*, Cohen set out arguments attempting to derive property claim in alienable objects, such as 'world ownership' and non patterned distribution of income and capitalist inequality from property claim in self ownership.<sup>5</sup> In his description on these three enterprises, namely, self ownership, freedom, and equality, he claimed to have showed that, final equality of condition assured when that egalitarian hypothesis about ownership of external resources is conjoint with the thesis of self ownership. It is on the basis of this assertion that, Cohen concludes on the need of equality to have been derived with no breach of the rules of self ownership. This congested arguments for him, succeeded in exploding the libertarian position. In an article *Contemporary Political Philosophy; An Introduction* by Will Kymlikn, the question was asked, what would happen if the world was jointly

owned and then not subjected to unilateral privatization?

The possible response to this question by Cohen has recently produced arguments which shows, "That libertarianism cannot be defended in the way that most libertarian

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<sup>4</sup> T. G. Palmer., *Realizing Freedom: Libertarianism Theory History and Practices.*(United State of America Printing

<sup>5</sup> Press, 2009) p, 129  
*Loc. Cit.*

philosophers want to defend it.”<sup>6</sup> Cohen in this wise, could be seen as an egalitarian, whose view is to defend the position of the thoroughgoing distribution of the

A union of self ownership and unequal distribution of worldly resources, leads to indefinitely great inequality of private property in external goods, hence, to inequality of condition, on any view of what equality of condition is.<sup>1</sup>

The caption above is a practical attempt of delegitimizing the position of libertarians on private property right. The effect of this

A process normally giving rise to a paramount bequeatable property right in previously un-owned things will not be so if the position of the others is no longer at liberty to use the thing is thereby worsened.”<sup>1</sup>

In Cohen’s view, the proviso just quoted above is not a general proviso, but what he regards as Nozick’s doctrine of appropriation. To be more conscious “if Nozick presents any doctrine of appropriation, then the quoted statement above is the controversial element in his

Is owned by all together, and what each may do with it is subject to collective decision, the appropriate procedure for reaching that decision may be hard to define, but it will certainly not be open to any one of the point owners to privatize all part of the asset unilaterally, no matter what compensation he offers to the rest ----- so if joint ownership rather than no ownership is, morally speaking the initial position, then B has the right to forbid A to

egalitarian’s income which he says is incompatible with egalitarian ownership. In this defense he opines;

attack is to reduce Nozick’s entire theory of appropriation to Nozick’s version of the ‘Lockean proviso’ which holds:

doctrine, therefore the element requires close scrutiny.”<sup>1</sup>

As an alternative, Cohen agrees that, a single act of intuitive relevant is that of joint ownership because a resources;

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<sup>6</sup> W. kymlicka, *Contemporary Political Philosophy*, (Originally Published In Critical Review 12, No 3, Summer 1998), pp, 121-122

<sup>1</sup> G .A Cohen, *Self Ownership, Freedom and Equality*. (Cambridge; Cambridge University Press, 1995), p, 69

<sup>1</sup> *Loc. Cit.*

<sup>1</sup> *Ibid.* P, 131

appropriate, even if B would benefit by what he thereby forbids.<sup>1</sup>

By this argument, Cohen has succeeded in setting a problem both for himself and the libertarian. In the long run, he never makes distinctively what too much inequality can or should mean, or how one might know how much was too much.

Lomasky, is one of those social and political philosophers who see Nozick as quite enthusiastic with the manner of how he argues the objectives of libertarianism. Lomasky Loren's point of departure, discuss the *Anarchy, State, and Utopia*. Lomasky objects Nozick's claim by pushing that, libertarian utopia makes no sense. For Lomasky, it may have the broadest implication for political philosophy in general. He criticized Nozick's ends as fallacious and cooked with faint ideas. He criticized Nozick's entitlement theory based on the ground that, "One has justifiable title to some items so long as one has come to possess it, either, through just original acquisition, just voluntary transfer, or just compensation by

How if at all, do things change if the beneficiaries and those made worse off are not direct parties in any injustice but, for example, their descendant? Is an injustice done to someone whose holding was itself based upon the unretified injustice? How then back must one go in wiping clean the historical slate of injustice? What may victims of injustice permissibly do in other to rectify the injustice being done to them, including the many injustice done by persons acting through their government? I do not know of a thorough or theoretically sophisticated treatment of such issues.<sup>1</sup>

This response by Nozick, creates a platform upon which justice could be actualized giving the demand that its foundation is solidified upon equality. But the starting

way of rectifying a prior injustice, no other criteria are needed."<sup>1</sup> He concludes that, the latter acquisition may not be the problematic of other theories as provided by Nozick but the initial.

However, Lomasky posited that, all that needed to be known is to establish the ground upon which the initial property is justly acquired and should be rightfully owned from a party who rightfully owned till ad infinitum. That is, to justify the action free from initial abuse. He further ask a question, how often will one be able to determine with any assurance that a chain of title is unsullied by any episode of injustice? The question is not a merely theoretical one; history is awash with episodes of rapines, murder, enslavement, plunder and dispassion. The hope for achieving pristine title is lacking and pressing.<sup>2</sup> This is a controversial argument militating against Nozick's theory, but on the long run, Nozick provided answer which seems not to justify the rationale behind the entitlement theory, for Nozick:

point does not create room for historical interference of acquisition. Lomasky would rather conclude that, the inability of Nozick to thoroughly and satisfyingly account for

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<sup>1</sup> *Loc. Cit.*

<sup>1</sup> *Social Political and Policy. Natural Rights Libertarian from Locke to Nozick.* Volume 22 No.1 U.S.A: Cambridge University Press, 2005. P.197

<sup>2</sup> *Loc. Cit.*

<sup>1</sup> *Loc. Cit. p. 198*

how to understand the entitlement theory in a wicked world contributed to leading him away from libertarianism

### **Principles of Imaginary Political World**

Nozick's libertarian theory and principle is a framework for utopia. The theory according to Nozick is the totality of condition we would wish to impose on societies we are pre-eminently to qualify as utopia.<sup>1</sup>

The term utopia is simply a word that is used to qualify a non-existing state. In his *Anarchy, State and Utopia*, Nozick define utopia as, 'a state which was really morally neutral, which was indifferent to all values rather than that of maintaining law and order.'<sup>2</sup> It could be fascinating that the only prevailing principle in this state is the minimalist state of which no more extensive state can be justified. But, is the minimalist state utopia? This question suggests a thorough investigation into the world preferable for man. Individually, the best of all possible world is variable in the sense that, what the best world for one man may be, may not be the best for another, between these variables of worlds lies the utopia world, so that, there will be a common ground upon which individuals will live in such uncommon world of understanding.

Now, let us imagine such a world full of association characterized by no objective laws or moral order. Man in this imaginative world, strive to identify with the kind and type of association, profiting and protecting. Amidst this statutory gimmickry, there will eventually be a stable world, but the basic feature of this world will be economical because individuals would have to trade their comfort until there will be a preferential rational treatment in the society, this characteristic world seems to be competitive commercially, economically and politically.

However, in this world no rational member can imagine another world he would rather live in (in which each person has the same imagination and migrating rights) which he thinks would endure, each person receives his marginal contribution to the world.<sup>3</sup> The corresponding analysis, present us with the possibility of worlds, of which, though one who imagine such world may not want other persons to accept his own principles in his own world. There might be others whose principle is quite appraising.<sup>4</sup> For instance, he might imagine that everyone in the world including himself accept a principle of equal division of product admitting anyone to the world with an equal share. If on the other hand, some dynamic factors of humanity occurs such as, greed and the quest to dominate made some attempt a create share of productivity and unanimously distribute according to the proviso of original acquisition then, the society goes back to the thesis of the synthesis. Thus Nozick argues further:

A world may give a person something worth more to him than worth to the others of what they gave up to him. A major benefit to a person may come for example, from coexisting in the world with the others and be a part of the normal social network. Given him the benefit may involve, essentially, no sacrifice by others. Thus, in one world a person may get something worth more to him than his pay

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<sup>1</sup> Robert Nozick. *Anarchy State and Utopia*. (Cambridge. Mass: the Belknap Press of Harvard University Press, 1971), p. 297

<sup>2</sup> *Loc. Cit.*

<sup>3</sup> *Loc. Cit.* 300

<sup>4</sup> *Loc. Cit.*

off from a stable association which most values his presence

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Nozick haven opined that quota, we discover that the end of this model if well investigated will be intrinsically interesting and has the possibility of promising deep result hopefully when metamorphosed into a more stable world. Let us call it a community or a nation.

### **Dialogical Paradox and Its Application for Community and Nation**

The model we discussed in the section above is best fitting for any Utopia, as a framework for community or nation, is quite hauling. The cardinal simulacrum between the Utopia and community or nation is liberty. Liberty based on volition of choice, the same choice in the Utopia

could exist in the community or nation let us call it state. So, there is great liberty to choose among states as confronted the individual in accepting the associations that is profiting.

The implication could be that, individual have rights to opt out of a particular provision of certain arrangement that infringes on his rights. The pressing questions are what will permit an individual to opt out of a state other than so much pressure restricting his freedom in the society or state? Which other community and nation could be best fitting for a person(s) who wishes to opt out of the society? Among other responds that may arise, Nozick's attempt would suggest that:

No founder and member of a small communist community may quite properly refuse to allow anyone to opt out of equal sharing even though it will be possible to arrange this. It is not a general principle that every community or group must allow internal opting out when that is feasible. For some times such internal opting out would itself change the character of the group from which they desire.<sup>1</sup>

Here, one can deduce an interesting theoretical problem. The group in the caption above could be construed in two folds; the micro and the macro groups. The micro serves as the small community formed within the society and the macro is the larger society, call it a nation. The very fact of entry and exist can be identified with

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person will swallow the imperfections of a package P (which may be a protective arrangement, a consumer good, and a community) that is desirable on the whole rather than purchase a different package (a community different package P, or with some changes), when no more desirable attainable different package is worth to him, its greatest

some association of the micro community even though the principle of nationalism and immigration could make it possible for an individual to opt out of a nation. Though people are of the liberty to choose the type of community they belong, they have rights to opt out of a nation's requirement:

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<sup>1</sup> See John Rawls, *Theory of Justice* (Cambridge: mass Harvard university press, 1971), chapter 9, section 7,9. The idea of social union and Ayn Rand, *Atlas Shrugged* (New York: Roundom house. 1957),pt,111 chapters 1,2

<sup>1</sup> Nozick R. *Anarchy State and Utopia*. (Cambridge. Mass: the Belknap Press of Harvard University Press, 1971), p.321

cost P, including the enough orders to participate in making the alternative package. One assumes that the cost calculation for nation is such as to permit internal opting out.<sup>1</sup>

The routine of this opting out is self-enfacing, because, one is opting out of a community to meet with the allies of other communities or nations tied to international laws and organization, for example, the United Nations (UN), African Union (AU), or the Economic Community of West African State (ECOWAS) community. This does not show any credibility of the kind of libertarian principle Nozick is clamouring for.

So, Nozick's libertarian principle will not work as a model for 21<sup>st</sup> Century community or nations when applied. Nevertheless, were a nation have infringes

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A free system any large, popular revolutionary movement should be able to bring about its end by such a voluntary process. As more and more people see how it works more and more people wish to participate or support. And so it will grow without being necessary to force everyone or a majority or anyone into the pattern.<sup>1</sup>

A revolutionary action of this kind even if it justifies a good end, will bring the society to a corruptible one because; everyone wants to be self-autonomous. People are now so corrupt that they will not choose to cooperate voluntarily with experiment to establish justice, virtue, and the good life.<sup>1</sup>

Therefore, there are no grounds upon which Nozick's libertarianism could be applied in community or nation it should maintain its

on the rights of an individual, the principle of compensation stands. It is the cost of compensating the individual or group that demands the cost of opting out of the nation or community. It should be based on the liberty of the individual as guided by the law enacted, which in any case no society stands as Utopia as postulated by Nozick today.

The analysis thus far is controversial, because, people may be driven to form a society of their own which may result to violence. It caused that; the libertarian principle of this kind will justify revolution because

theoretical status as an academic credibility and epistemic intelligence for modification. Even, Nozick argues that people must be forced to act in accordance with the good pattern; and person trying to lead them along the bad old ways must be silenced.<sup>2</sup>

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<sup>1</sup> *Loc. Cit. p. 322*

<sup>1</sup> There remains a reason why, though permitted, possible of success, and not aggressive interfered with by the action of hostile persons, the experiments taking place in the different external environment might not have a fair chance to survive. For if the whole society does not have a voluntary frame work, then there might be an experiment, which i voluntary conner to the total actual framework, that would succeed in the wholly voluntary framework but won't succeed in the actual one, while no one is forbidden to perform any action strictly necessary to the success of the experiment, it might be that some illegitimate prohibition on other actions makes people less likely (ranging to extremely low probability) to perform the voluntary action comprising the success of the experiment. To take an extreme example, anyone in a certain group might be permitted to hold a certain job, yet everyone might be forbidden to teach them the skill used on the job, certification of such skill be the only feasible way to hold the job (though some other extremely difficult route is left open)

<sup>1</sup> Robert Nozick. *Anarchy State and Utopia*. P. 327

<sup>2</sup> *Loc. Cit.*

## Conclusion

At this juncture, Nozick's libertarian theory of justice and rights is to be based on claims of ethics and morality, not simply on the ability of the libertarian state to deliver superior material goods. Put differently, Nozick's libertarian theory has failed to recognize the fact that the primordial nature of the demand for the protection of lives and properties through history of the political

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status of individual in the society has passed through revolutionary process which eventually began from perfect freedom as postulated by Locke in his state of nature theory. Most fundamentally, Nozick's libertarianism has not heeded the notion that 'it is impossible to reflect on evolutionary processes without recognizing the intrinsic role of insurance. Any species that relied on nature's harmony and ignored its stochastic whims will soon extinct.'<sup>3</sup>

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<sup>3</sup> 'Insurance,' in the *New Palgrave: A Dictionary of Economics*, vol.2, ed. John Eatwell, Murray Mulgate, and Peter Newman (London: Macmillan press, 1987), p. 868. See also Kenneth J. Arrow, essay in the *Theory of Risk Bearing* (Chicago: Markham, 1971); Irvin Enrich and Gary S. Becker, 'Market insurance, self-insurance, and self-protection,' *Journal of political economy*, Vol.80, No. 4 (July-August 1972), p. 623; S.A Lippman, 'Optima Reinsurance,' *Journal of financial and quantitative analysis*, Vol. 7, No. 5 (December 1972), pp.2121-55; M. Rothschild and J.E Stiglitz, 'equilibrium in competitive insurance

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