

NOZICK'S THEORY OF JUSTICE IN HOLDINGS

I. A Typology of Theories

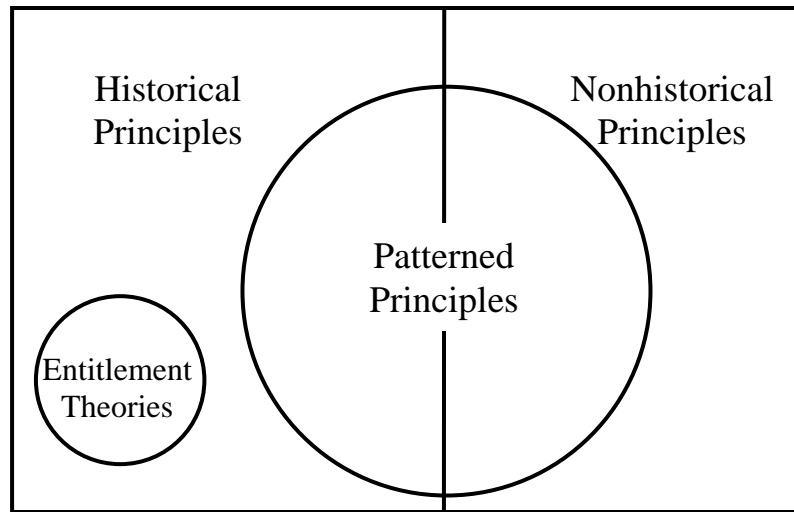
A. Historical v. Nonhistorical Principles

1. **Historical Principles:** Nozick describes historical principles as those that hold “that past circumstances or actions of people can create differential entitlements or differential deserts to things” (*Anarchy, State and Utopia*, p. 155). This is too weak. Even utilitarianism, a paradigm of a nonhistorical theory, will hold that past circumstances or actions of people *can* create differential entitlements. Nozick must mean that historical theories hold that these things, in and of themselves, constitute a *prima facie* justification of differential holdings. An extreme form of an historical principle would hold that only such historical considerations can count in determining the justification of holdings.
2. **Nonhistorical Principles:** [NOTE: For convenience, Nozick uses the terms ‘end-result principle’ and ‘end-state principle’ to refer both to current time slice principles and end-result (end-state) principles in the stricter sense defined below.]
 - a) **Current Time Slice Principles (CTS Principles):** CTS principles determine the justification of holdings by “how things are distributed . . . as judged by some structural principle(s) of just distribution” (*ASU*, p. 153). An example would be a principle that held that distributions are just if, and only if, they give equal shares to each person. Call such a view, ‘momentary egalitarianism’.
 - b) **End-Result Principles (End-State Principles):** Current time slice principles are not very popular. However, many hold that distributions are to be justified by structural principles of just distribution applied *in the long run*. Nozick calls these principles end-result (or end-state) principles. Typically, egalitarianism is understood not as a current time slice principle but as an end-result principle—holding that distributions are justified to the degree that they promote equality.

(It is odd to construe utilitarianism, which is a paradigm of an end-result principle to hold that distributions are justified by *structural* principles—since the structure of a distribution is of no intrinsic importance to the utilitarian.)

B. Patterned v. Unpatterned Principles

1. **Patterned Principles:** A patterned principle of justice calls for distributive shares to be in proportion to some “natural dimension, weighted sum of natural dimensions, or lexicographical ordering of natural dimensions” of individuals. For example, a principle that justified distributive shares based a person’s intelligence, effort, need, productivity, etc. would be a patterned principle.
2. **Unpatterned Principles:** Unpatterned principles do not call for distribution in accordance with some natural dimension, etc. of individuals. Utilitarianism is an unpatterned principle; so is an entitlement theory (see below).
 - a) A Pictorial Representation:



b) The above distinctions are independent, giving the following four categories:

	Patterned	Unpatterned
Historical Theories	e.g. Meritocracy	e.g. Entitlement
End-Result (includes Current Time-Slice)	e.g. Egalitarianism	e.g. Utilitarianism & Rawlsianism

II. The Entitlement Theory of Justice in Holdings

- A. **General Characterization:** Entitlement theories of justice in holdings are unpatterned, historical principles of justice. Indeed, they are the extreme form of historical principle according to which only historical facts are intrinsically relevant to the justice of a distribution.
- B. **The Recursive Account of Entitlement Theories:** As ideal theories of justice, entitlement theories can be defined recursively as follows. (An ideal theory of justice is a theory of what justice would require provided no one acted unjustly. Thus, an ideal theory of justice won't include a theory of retributive justice, because it assumes there will be no injustices for which to extract retribution.)
 - 1. **Basis: Just Acquisition.** Holdings are just if they are acquired in accordance with a correct principle of justice in acquisition.
 - 2. **Recursion: Just Transfer.** Holdings are just if they are acquired in accordance with a correct principle of justice in transfer from someone who held them justly.
 - 3. **Limit: Closure.** No holdings are just unless justified under 1 and 2, above.
- C. **The Non-ideal Entitlement Theory:**
 - 1. **Rectification:** Holdings are just if they are acquired in accordance with a correct principle of justice in rectification.

- D. **The Content of The Entitlement Schema:** While the above schema of a theory of justice in holdings may seem vacuous so long as the various principles are not specified, Nozick believes that even this skeletal schema is substantive enough that, if it can be defended, it would rule out many popular theories of distributive justice. In particular, he thinks it is incompatible with utilitarianism, Rawlsianism egalitarianism, etc.

III. Criticisms of Nozick's Entitlement Schema

- A. **Existence Problem:** Nozick must show that there is a correct principle of justice in acquisition—that the class of entitlement theories is not empty. The possibility of doing this is hindered by the fact that entitlements are *very* strong. Can we really acquire such rights over external objects? Do we have such rights over even our own bodies?
1. Two Examples: Paving the Grand Canyon, The Bigoted Mutant
- B. **Simplistic Moral Ontology: The Problem of Children and (Nonhuman) Animals.** Nozick's moral theory seems explicitly to recognize only things that can be owned and things that are owners. Things that can be owned have no rights and, once acquired, may be disposed of at the whim of the owner(s) provided that doesn't violate the property rights of others. Owners, have virtually absolute rights over their property. There is no satisfactory answer to the question of where children and animals fit into this schema. We have certain rights to control these entities contrary to their choices, but they are not our property in the Nozickean sense. But once we recognize that property rights are an extremely strong *bundle* of rights, we see that it is possible to have limited rights over things and to have a fiduciary relationship to those things we have a right to control. That is, we may have a right to control something provided we are putting it to good use, or exercising our control in the best interest of the thing we control, *etc.* Once this is admitted, we realize the possibility that even our rights over inanimate external objects might be somewhat weaker than the sort of entitlements Nozick imagines. Like Locke, Nozick needs to meet Proudhon's Challenge. (See our earlier discussion of Locke.)
- C. **Problem of Rectification:** Even if it were true that Nozick's theory gives us a correct theory of ideal justice, it wouldn't tell us anything about what we should do given that an injustice has been done in the past. To do this, he needs to specify a principle of justice in rectification. But in light of some of the features of Nozick's theory, this may be impossible. Solutions to past injustices must not violate rights. (Nozick says rights may be violated only to avoid "catastrophic moral horror".) Therefore, it may be impossible to set up any program to rectify broad-scale injustices in the more remote past. Programs we could set up, would surely confer benefits on some people who have not been victims of injustice and burdens on some who have not benefited from injustice. But to do nothing, would be to enforce current holdings, some of which are known to be the product of injustice. This is to violate the rights of those who are entitled to rectification. Even in the case of a localized injustice in the very recent past, there seems to be no determinate answer to what is required by justice in rectification.