

## Philos 117AC, Fall 2017

Main text:

Robert Nozick, *Anarchy, State, and Utopia*, pp. ix, 149–164, 167–182, 213–227, 230–1

### Nozick's overarching argument:

- First step: A theory of individual rights.
- Second step: What kind of state, if any, could come to be without violating these rights? Only such a state is legitimate.
- Conclusion: No state more extensive than the “minimal state” is legitimate.

### Nozick's theory of rights:

*Content:* More or less Locke's list:

- To act and dispose of property however one likes, so long as this doesn't violate the similar rights of others.
- To punish rights violations.

*Structure:* Not goals, but “side-constraints” on what we may do. I may not violate a right, period—even to prevent more rights violations in the future.

*Justification:* Not entirely clear, but some suggestions...

1. That people must be treated not simply as means, but as ends in themselves.
2. That people are separate and so cannot be sacrificed for the benefit of others.
3. That people have the capacity to lead meaningful lives.

### What sort of state, if any, might arise without the violation of these rights?

*State of nature:* As with Locke, the state of nature has “inconveniences.” Leaving the enforcement of rights to the uncoordinated efforts of individuals is ineffective and destabilizing.

*Mutual protection associations:* All members agree to defend and enforce the rights of any member against any aggressor. MPA's have an inconvenience of their own. Who is to assist? Everyone? We need a division of labor, through exchange.

*Protective agencies:* Commercial MPA's. Those with special inclination or ability to offer protective services will do so for a price.

*A dominant protective agency:* a monopoly PA. DPA's will emerge in particular geographical areas. This is because PA's will be brought into conflict with one another, and as soon as one agency gains an edge over the other, it will attract all of the other's clients.

DPA's differ from the state, traditionally understood, in two respects.

- First, the state claims a monopoly on the legitimate use of force. It announces that it will punish anyone whom it finds has used force that it has not authorized. A protective agency will not announce this, and cannot legitimately announce it. Individuals who do not join any protective association reserve the right to protect themselves.

- Second, in states everyone is protected, and so typically some pay for the protection of others. In a protective agency, only those who pay for protection receive it, and they do not pay for the protection of others.

The *ultramiminal state*: Like a DPA, but claims a monopoly over the use of force.

The *minimal state*: Like the UMS, but also offers protection to everyone. Somewhat redistributive.

- Objection: violates individual rights. Not only by claiming to be the exclusive holder of the right to punish and exact reparations, but also by compelling some to pay for the protection of others.
- Objection: justification seems unstable. It seems to permit one kind of redistribution, but not other kinds.

Nozick believes that the minimal state is justified. However, we skip his arguments. His replies to these objections appear in Chapters 4–5, and 7.

However, Nozick believes that *no more extensive* state is justified. In particular, no more extensive state can be justified as “necessary (or the best instrument) to achieve distributive justice” (149).

By contrast, utilitarians and Rawls argue that a more extensive state is justified, in order to see to it that income, wealth, health care, education, etc., are distributed among people according to a certain pattern. Which pattern?

- For the utilitarian, that which produces the greatest sum total of happiness.
- For Rawls, roughly, that which makes the worst off as well off as possible.

### **Nozick’s Historical Entitlement Theory**

To repeat, Nozick thinks that this approach is a mistake. Our question is not: “We have a giant pie of GNP. How is it just to slice it up?” Instead, our question is: “How did you get what you have? Without doing anyone an injustice? Then it’s justly yours. The end.”

“Whatever arises from a just situation by just steps is itself just” (151). Someone is entitled to a holding, or holds it justly, if and only if he has come to hold it in such a way that none of these principles has been violated:

- (1) A principle of justice in original acquisition, which explains how something that no one holds can come to be justly held by someone
- (2) A principle of justice in transfer, which explains how something that is justly held by one particular person can come to be justly held by another
- (3) A principle of rectification of injustice in holdings. Requires us to approximate the distribution that would have occurred if there had not been injustice.
  - How are we supposed to determine this?
  - Nozick concedes that “some patterned principles of distributive justice,” such as the utilitarianism, or Rawls’s Difference Principle, might be “rough rules of thumb mean to approximate the general results of applying the principle of rectification of injustice.” “Past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them” (231).

### ***The argument for the Historical Entitlement Theory***

Someone who accepts an alternative to the historical entitlement theory must accept the following *reductio*:

- (1) For some D1, D1 and only D1 is a just distribution.
- (2) People are entitled to whatever they hold in a just distribution.
- (3) Therefore people are entitled to whatever they hold in D1
- (4) Nothing that people do with what they are entitled to is unjust.
- (5) Therefore, using one's holding to pay to watch Wilt play is not an unjust act.
- (6) Just-steps principle: "Whatever arises from a just situation by just steps is itself just."  
That is: If distribution Y arises from just distribution X solely by actions that are not unjust, then distribution Y is itself just.
- (7) D2 arises from D1 simply by people using their holdings to paying to watch Wilt C. play.
- (8) Therefore, D2(≠D1) is just. This contradicts (1).

Why should someone who supports the alternative conception accept (4)?

- Granted, being entitled to something means having the right to use it in *some* ways.
- But why should we agree that an entitlement includes the *maximal* right to use it in *whatever* way one pleases, with no constraint whatsoever?
- In fact, Nozick does *not* think that one can do *anything* one wants with one's entitlement. (You can't use one's entitlement to violate others' rights.)

So (4) needs to be replaced by:

- (4a) Nothing that people do with what they are entitled to, *barring violating the rights of others*, is unjust.
- (4b) Paying to watch Wilt play does not violate anyone's rights.

Is (4b) true? (4b) may *seem* obvious, because the people who pay to see Wilt play *choose* to do so. But *third parties* have no choice in the matter whether D1 becomes D2.

The larger point is that *it all depends on the underlying theory of rights*. If people have a right to live in a society where inequality doesn't get out of hand, then paying to watch Wilt play *might* violate their rights.

### **Or is the problem interference with liberty?**

Nozick goes on to say that the "general point illustrated by the Wilt Chamberlain example... is that no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives" (163), or without forbidding "capitalist acts between consenting adults."

This is actually a *different* point: that realizing alternative conceptions of distributive justice—i.e., always striving to maintain D1—would infringe individual liberty. This point, apparently, is supposed to be a premise in the following argument:

1. Always striving to maintain D1 would infringe individual liberty.
2. Infringing individual liberty in this way is worse than failing to maintain D1.
3. Therefore, we ought not maintain D1.

This argument is *compatible* with the claim that the correct conception of distributive justice is one that calls for us to maintain D1—only that distributive justice isn't worth the cost in liberty.

Perhaps a scheme of distributive justice that sought always to maintain a fixed distribution like D1 would involve continuous interference.

- But must all schemes of distributive justice involve continuous interference?

Nozick might reply: Even if redistribution does not mean *continuous* meddling, it is nonetheless an unacceptable infringement of individual liberty.

- But when is an infringement of liberty unacceptable? When it prevents someone from doing what he has a *right* to do? Then, again, it all depends on the theory of rights.

*A related point:* It is often said that redistributive taxation involves a trade-off between individual liberty and some other value, such as equality or welfare.

- But does redistributive taxation restrict liberty for the sake of *other* values?
- Redistributive taxation restricts the liberty of the rich. Their rights to use resources are less extensive than they would otherwise be.
- But by the same token, *failing* to redistribute restricts the liberty of the *poor*. Their rights to use resources are *also* less extensive than they would otherwise be.
- The real issue is *what* kind of liberty should take priority, or *what* kind of distribution of liberty we should aim at.
- It all depends on the underlying theory of liberty.

### **Nozick's Theory of Original Acquisition**

- *Lockean Proviso:* One may appropriate an unowned thing if and only if no one is worse off than he would be if the thing had been left unappropriated.
- "Is the situation of persons who are unable to appropriate (there being no more accessible and useful unowned objects) worsened by a system allowing appropriation and permanent property?" (177).
- No: A system of private property benefits everyone.

*First question:* Why is the Lockean Proviso the right test? Why is the baseline a world in which there is *no* system? Perhaps you would have been even better off in *another system*.

*Second question:* Why isn't there a Lockean Proviso on *any other* activity, such as transfer, that seriously worsens the situation of others? Why does Nozick treat original acquisition specially?

- On p. 179, Nozick comes close to a proviso on transfer: transfers must not have the same effect that a violation of the proviso on original acquisition would have had.
- But this does not apply to *all* transfers:

A medical researcher who synthesizes a new substance that effectively treats a certain disease and who refuse to sell except on his terms does not worsen the situation of others by depriving them of whatever he has appropriated. The other easily can possess the same materials he appropriated; the researcher's appropriation or purchase of chemicals didn't make those chemicals scarce in a way so as to violate the Lockean proviso. Nor would someone else's purchasing the total supply of the synthesized substance from the medical researcher (181).

- So: One may not buy up all of the world's water and refuse to sell at any price, but one may buy up the patent for a vaccine for AIDS and refuse to sell at any price.
- But why treat natural resources and human artifacts so differently?

### **Self-ownership**

Hypothesis: the fundamental right that underlies Nozick's theory is a right of self-ownership: a kind of absolute property right in oneself.

- A *property* right in a thing is a right "to determine what will be done with" (171) that thing, subject to certain restrictions.
- An *absolute* property right in a thing is a right to determine what will be done with that thing subject only to the restriction *that it does not violate the similar property rights of others*.
- Hence, self-ownership, as an absolute property right *in oneself*, is a right to determine what will be done with *oneself*, as if one were a thing, subject only to the restriction that it does not violate the similar property rights of others.

Like a property right in chattel slaves, except:

- (i) the person owned is the owner himself,
- (ii) the right of self-ownership is a moral, rather than a legal right, and
- (iii) the right of self-ownership is even *more* extensive!

This hypothesis explains Nozick's claim that redistributive taxation is unjust. It's akin, he reasons, to slavery!

Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it. End-state and most patterned principles of distributive justice institute (partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people (172).

This hypothesis also explains why Nozick treats natural resources so differently from artifacts. We do not own the world, but we do own ourselves. Therefore, we are *more* constrained in what we do *with the world* than we are in what we do *with ourselves* or in what we do *with what results from* what we do with ourselves.

### **Is the idea of self-ownership attractive and defensible?**

Here are some worries about self-ownership:

- (A) It can be entirely just to withhold from others resources that they need to survive.
- (B) Racial discrimination can be entirely just. If one wants to exclude nonwhites from one's lunch counter, which one justly holds, one is entitled to do so. If one wishes to pay women less, one is entitled to do so.

(C) If people own themselves in the way in which they own things, then they sell themselves into slavery (331). (Basic rights are *not* inalienable, contrary to Locke.)

There are other values, besides self-ownership, on which we might base a theory of rights.

*Alternative 1:* The value of living a decent and fulfilling life:

- This right does not have consequence (A).

*Alternative 2:* The value of relations of equality with others.

- This right does not have consequences (B) or (C).

*Question:* Early on in his book, Nozick offers three grounds for his theory of rights:

1. That people must be treated not simply as means, but as ends in themselves.
2. That people are separate and so cannot be sacrificed for the benefit of others.
3. That people have the capacity to lead meaningful lives.

Do these grounds entail the right of self-ownership? Might they entail one or both of the alternative rights instead?