

Phil 115, May 31 and June 1, 2007
Contrast with libertarianism

Robert Nozick's *Anarchy, State and Utopia*:

- First step: A theory of individual rights.
- Second step: What kind of political state, if any, could arise by steps that do not violate these rights? If a kind of state could arise only by the violation of rights, then that kind of state is not legitimate.
- Conclusion: No state more extensive than the "minimal state" is legitimate.

Nozick's theory of rights:

Content:

- More or less Locke's list.
- Basic moral rights to act and dispose of her possessions as she will, so long as she does not violate the similar rights of others.
- When these rights are violated, each of us has the right to punish the offender for purposes of reparation and deterrence.

Structure:

- Not goals.
- Instead, "side-constraints" on what we may do. If someone has a right, then we may not violate it, period.
- In particular, we may not violate her right even to prevent a greater number of rights from being violated.

Justification:

Not entirely clear, but some suggestions...

- (1) "Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent" (30–31). To violate their rights for some end is to treat them as means, as a kind of tool.
- (2) "But there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more.... To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has" (33). "This root idea, namely, that there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints."
- (3) A creature with the capacity for a meaningful life is a creature with rights. This suggests that the point of rights is to allow this capacity for a meaningful life to be exercised.

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

State of nature: As we know from Locke, the suffers from certain "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 suffer from an inconvenience of their own. Who is to assist? Everyone? We need a division of labor and by 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 US, 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. His replies to these objections appear in Chapters 4–5, and 7. (See bonus handout.)

Nozick also 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).

Nozick's Historical Entitlement Theory

“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 neither 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, in one way or another, the distribution that would have occurred if there had not be injustice.
 - How are we supposed to determine this? (Consider the European's treatment of Native Americans.)

- Nozick eventually concedes that “some patterned principles of distributive justice,” such as the difference principle, might be “rough rules of thumb meant to approximate the general results of applying the principle of rectification of injustice.” “Past injustices,” he writes, “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) “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).

First question: Why should someone who rejects historical entitlement theories accept (6)?

- We need to distinguish sharply between two different subjects of justice: *distributions*, on the one hand, and *actions*, on the other. Either:
 - (i) justice in distribution and justice in action are independent of one another;
 - (ii) justice in distribution is defined in terms of justice in action; or
 - (iii) justice in action is defined in terms of justice in distribution.
- If (i), then there is no reason to think that the just-steps principle is true.
- If (ii), so that a just distribution is whatever arises from just actions, then the just-steps principle will be true. But (ii) just assumes that a historical entitlement theory is correct.
- If (iii), so that a just action is whatever will produce a just distribution, then the just-steps principle will again be true. But someone who accepts (iii) will reject (4).

Second question: 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.

A different tack: 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. Again, it all depends on the underlying 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* of appropriation, instead of simply a world in which no one appropriates *that particular thing*, X?
- Why is the baseline a world in which there is *no system*? Perhaps you would have been even better off in one of these *other systems*.
- Why is the relevant baseline a world in which *no one* appropriates the thing? Perhaps you would have been even better off if *you* had acquired it, or if some *third person* had acquired it.

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 to a cure 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:

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?

- First, as we have seen, Nozick's theory implies that it can be entirely just to withhold from others resources that they need to survive.
- Second, Nozick's theory implies that 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 deny promotions to women, one is entitled to do so.
- Finally, if people own themselves in the way in which they own things, then they sell themselves into slavery (331). Basic rights are *not* inalienable.

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:

Samuel Scheffler: "every person has a natural right to a sufficient share of every distributable good whose enjoyment is a necessary condition of the person's having a reasonable chance of living a decent and fulfilling life, subject only to the following qualification. No person has a natural right to any good which can only be obtained by preventing someone else from having a reasonable chance of living a decent and fulfilling life."

- This right does not have the first consequence.

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

- This right does not have the second or third consequence.

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?