

Phil 115, May 31, 2007

**Bonus Handout: A brief sketch of Nozick's argument for the minimal state**

The DPA is the sole *effective* enforcer of the right to prohibit others from using *on its clients* guilt-determining procedures that are not known to be fair and reliable. By “guilt-determining” procedures, I mean procedures to determine whether or not a client has violated the rights of someone else and hence may be punished or compelled to make reparations. By “prohibit from,” Nozick means “announce that one will inflict punishment for.”

Nozick does not claim that the DPA has this right exclusively. As a matter of morality, *everyone* has the right to prohibit others from using on them guilt-determining procedures that are not known to be fair and reliable. Indeed, the DPA acquires this right only through its clients' ceding their individuals rights to the DPA. But the power of the DPA is so great that it is the only body that can really exercise the right (at least as far as its *clients'* guilt is concerned). In effect, the DPA determines what will count as a guilt-determining procedure (at least as far as its *clients'* guilt is concerned). This makes the DPA something like the ultraminimal state.

The DPA may therefore “disadvantage” those nonclients who use different procedures. So long as nonclients use procedures that the DPA does not endorse, they cannot effectively protect their rights against violation by its clients. By “disadvantage,” Nozick means something like, “prevent from engaging in some important activity that is done by almost all.”

In prohibiting nonclients from using their guilt-determining procedures on its clients, the DPA is, in effect, prohibiting nonclients from imposing a risk on its clients. (Note that prohibiting the imposition of a risk means committing to punish people whether or not their risky actions have ill effects.)

Prohibitions on the imposition of risks, Nozick argues, are governed by the “Principle of Compensation”: “those who are *disadvantaged* by being forbidden to do actions that only *might* harm others must be compensated for these disadvantages foisted upon them in order to provide security for the others” (82–83). (The Principle of Compensation does not apply to actions that *definitely will* harm others. People are not entitled to compensation for being prohibited from performing from *those* actions.) The DPA is therefore morally obligated to compensate nonclients. The DPA does this by providing nonclients with protection against *its own clients* (although not against other *nonclients*). This makes the DPA something like the minimal state.

Why “something like” the minimal state? First, the DPA does not claim a *de jure* monopoly on the legitimate use of force within its territory. At most, it has only a *de facto* monopoly, being the only effective exerciser of the right, held by everyone, to determine what counts as a guilt-determining procedure within its territory. Second, the DPA does not have even this monopoly, since it neither enforces, nor has a right to determine what counts as a guilt-determining procedure *as used on nonclients*. It only enforces the right to determine what counts as a guilt-determining procedure as used on *its own clients*. (Does Nozick overlook this point at pp. 117–118?)