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Nozick's program: First, a theory of individual rights. Then the question: 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.

### **Nozick's theory of rights:**

*Content:* Each of us has 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.

*Structure:* Rights are "side-constraints." We may not violate a right, even to prevent a greater number of rights from being violated.

### *Justification:*

- (1) The "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).
- (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.

### **Nozick's theory of the state:**

With this theory of rights in place, we now ask what sort of state, if any, might arise without the violation of these rights.

As we know from Locke, the state of nature suffers from certain inconveniences. Leaving the enforcement of rights to the uncoordinated efforts of individuals is thus ineffective and destabilizing. Nozick suggests that Locke may have overlooked remedies that are less drastic than, and preferable to, the state.

One possibility open to individuals in the state of nature is to form mutual protection associations, in which all members agree to defend and enforce the rights of any member against any aggressor.

However, PAs suffer from an inconvenience of their own. Who is to assist? Everyone? Nozick thinks that this inconvenience might be handled by a division of labor and by exchange. Those with special inclination or ability to offer protective services will do so for a price.

Nozick then argues that there is a natural tendency to consolidation in protective services business. Monopolies on protective services will emerge in particular geographical areas. This is because protective agencies 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. Call such a monopoly a "dominant protective agency."

A dominant protective agency differs 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 it would not seem morally legitimate for them to announce it. There may be some individuals who do not join any protective association. They 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" differs from a DPA only in the first respect, but not in the second. It maintains a monopoly over the use of force, but it offers protection only to those who pay for it.

The "minimal state," by contrast, differs from a DPA in both respects. It not only claims a monopoly on the use of force, but also offers protection to everyone, and so seems redistributive.

Nozick considers two objections to the ultramiminal state:

- First, the justification denies that redistribution even to protect the rights of those who would otherwise go without protection is acceptable, because it would infringe the rights of those who would be forced to redistribute. But if protecting rights is so important, then why may we not infringe the rights of some to protect the rights of others?
- Second, the ultramiminal state violates individual rights. If everyone in the state of nature has the right to use force to punish and exact reparations, how can the state claim to be the only holder of that right?

Nozick considers two objections to the minimal state:

- First, the minimal state violates individual rights. It violates 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.
- Second, the justification of the minimal state seems potentially unstable. It seems to permit one kind of redistribution, but not other kinds. But what justifies this distinction? If some kinds of redistribution are acceptable, then why not other kinds?

Nozick's replies to these objections appear in Chapters 4–5, and 7. In Chapters 4–5, Nozick shows, first, how a DPA can become an ultramiminal state, or something like it, in a way that violates no one's rights. Nozick then argues that the ultramiminal state is not only morally permitted, but morally obligated to make itself a minimal state.

More important than Nozick's claim that the *minimal* state *is* justified is his claim that *any more extensive* state is *not* justified. As we will see, Rawls believes that that a state that fails to redistribute wealth is necessarily unjust. This Nozick firmly denies. No more extensive state can be justified as "necessary (or the best instrument) to achieve distributive justice" (149).

### **Nozick's "justice in holdings," or historical entitlement theory:**

- (1) Justice in original acquisition: how something that no one holds can come to be justly held by someone
- (2) Justice in transfer: how something that is justly held by one particular person can come to be justly held by another

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.

What if these principles are violated?

- (3) Rectification of injustice in holdings: Presumably, to approximate, in one way or another, the distribution that would have occurred if there had not be injustice.
  - How are we to apply this?
  - Wouldn't it require massive upheaval?
  - Does (3) threaten to make the (1) and (2) irrelevant, at least for our lifetimes? As you will read, 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).

### **Arguments against non-historical accounts of distributive justice:**

*The Wilt Chamberlain example:* Someone who accepts an alternative to the historical entitlement theory is committed to certain premises, and we can deduce a contradiction from them.

- (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 play.
- (8) Therefore, D2( $\neq$ D1) is just. This contradicts (1).

*First,* why should someone who rejects historical entitlement theories accept (6)? Distinguish between two different subjects of justice: *distributions*, on the one hand, and *actions*, on the other. Three possible relations between these subjects: (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; and (iii) justice in action is defined in terms of justice in distribution.

If (i), then why accept (6)? If (ii), then aren't we just assuming that a historical entitlement theory is correct. If (iii), so that a just action is whatever will produce a just distribution, then why accept (4)?

*Second,* why accept (4)? Why not say that an entitlement is the right to use it in whatever way one pleases, so long as doing so doesn't create too much inequality?

In fact, Nozick does *not* think that one can do anything one wants with one's entitlement.

Strictly speaking, (4) should be replaced with:

(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.

Now (4b) may seem obvious, because the people who pay to see Wilt play *choose* to do so. So how can it violate anyone's rights? Well, there may be *other people* in the society. These third parties have no choice in the matter whether D1 becomes D2. Nozick: third parties' shares have not changed. This reply seems insufficient: They no longer live in an egalitarian society, and their shares may not have the same worth they once did.

The larger point is that *everything turns 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. So the crucial question is why we should accept Nozick's list of rights.

*A different point?* Not that any conception that called for us to maintain D1 would be an incorrect conception of distributive justice, but instead that it would be *too invasive*. It wouldn't be worth the cost in liberty.

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.

*First*, perhaps a scheme of distributive justice that sought always to maintain a fixed distribution like D1 would involve continuous interference. But must this be true of all alternatives to the historical entitlement conception?

*Second*, what makes an infringement of liberty unacceptable? That it prevents someone from doing what he has a right to do. So what Nozick is claiming is that the tax code is an intolerable infringement of liberty, because it prevents people from using their holdings in ways to which they have the right to use them. Again, everything turns on the underlying theory of rights.

*A related point:* Is redistribution a trade-off between individual liberty and some *other* value? 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. So perhaps the real issue is what kind of liberty should take priority, or what kind of distribution of liberty we should aim at. Everything turns on the underlying theory of liberty.

### **Justice in original acquisition:**

What constraints, if any, should there be on acquiring unowned resources? The "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.

Nozick then asks: “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*, why is Nozick’s proviso the right restriction to put on original acquisition? Nozick assumes that the relevant baseline is a world in which the thing goes unappropriated. Why is *that* the relevant baseline? Perhaps you would have been much better off if *you* had acquired it, or if some *third person* had acquired it.

*Second*, why put a restriction on original acquisition, but not on other activities that may leave people worse off, such as transfer? Why does the first principle have a proviso, whereas the second has none?

On p. 179, Nozick comes close to endorsing a proviso on transfer. Just as one cannot appropriate all of the world’s water, he concedes, one cannot buy of it all up. So there is this proviso on transfer: transfers must not have the same effect that a violation of the proviso on original acquisition would have had. Transfers, so to speak, *inherit* the proviso on acquisition.

Yet this inherited proviso on transfer is not general. One may not buy up all of the world’s water and refuse to sell at any price, but one may buy up all of the world’s AIDS drugs and refuse to sell at any price. In both cases, one monopolizes a resource with the result that others are much worse off, indeed so badly off that they will die. The difference is that when one buys up all of the world’s water, one achieves the same result that could have been achieved by a violation of the proviso on original acquisition. By contrast, when one buys up all of the world’s AIDS drugs, one does not achieve the same result that could have been achieved by a violation of the proviso on original acquisition, since the drugs are not a natural resource. But why should this matter?

### **Self-ownership:**

The fundamental right that underlies Nozick’s theory is a right of self-ownership. The right of self-ownership is 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.

This hypothesis helps to explain Nozick’s claim that redistributive taxation is unjust. Redistributive taxation violates the taxpayer’s right of self-ownership.

This also explains why Nozick treats natural resources so differently from artifacts. We do not own the world, but we do own ourselves. Thus, while I may not hoard natural resources in a way that leaves others worse off, I am free to hoard the fruits of my own labor, or the fruits of

someone else's labor that she freely transferred to me, in a way that leaves others worse off. The medical researcher invented the AIDS drug through her labor.

Is the idea of self-ownership an attractive and defensible idea?

- First, as we have seen, it implies that it can be entirely just to withhold from others resources that they desperately need, indeed resources without which they will die.
- 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 can alienate themselves, in the way in which they can alienate things. Just as the medical researcher can transfer her rights to her invention—which is, in a sense, simply part of herself, simply how she employed herself for a period of time in the past—so too she can transfer her rights to how she uses herself henceforth. She can sell herself into slavery. We tend to think, by contrast, that certain basic rights are inalienable.

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

- the value of living a decent and fulfilling life.
- the value of relations of equality with others. This value might base a right to equal standing with others.

Early on in his book, Nozick offered 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?