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# GOVERNMENT BY INSURANCE COMPANY: THE ANTIPOLITICAL PHILOSOPHY OF ROBERT NOZICK

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ROBERT NOZICK's recent book, *Anarchy, State, and Utopia*, is a spirited and provocative philosophic defense of the minimal or nightwatchman state, "limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on." (P. ix.) Underlying and integral to its argument is a rejection of politics. Nozick's minimal state is not a political order but a business enterprise: a kind of insurance company which sells people protection against the invasion by others of their individual rights. Politics has to do with public things, and there is no place for public things in the relationship of a business enterprise to its clients. Nozick's defense of the minimal state is thus a proposal to privatize and hence depoliticize virtually all of human life. I wish to examine that proposal. I believe that Nozick's minimal state is indefensible. His justification of the minimal state, however, provides a stimulating backdrop against which to inquire into the nature and value of politics, and I hope that the discussion which follows will serve to clarify and heighten our sense of the significance of political life. I shall begin with a brief sketch of Nozick's defense of the minimal state and then analyze in detail certain specific points which illuminate especially well his concept of the state. I shall conclude with an assessment of Nozick's antipolitical vision.

## THE DEFENSE OF THE MINIMAL STATE

Nozick makes his case for the minimal state in three interlocking parts. Part I is designed to counter the anarchist's claim that the state is intrinsically immoral. Here Nozick argues that the state would arise out of anarchy — out of a Lockean state of nature — by a process which need not violate anyone's rights and that it therefore need not be illegitimate. He imagines individuals in the state of nature forming private protective agencies to guarantee their security against one another. One of these achieves a monopoly within a territory, becoming the *dominant protective agency*. It is Nozick's minimal state. It violates no one's rights either in its development or in its activities. Hence, Nozick claims, he has provided a justification of the state.

Part II makes the claim that a state which does anything more than provide protective services will necessarily violate people's rights and so cannot be morally legitimate. Here Nozick argues primarily against the view that a major function of the state is to achieve distributive justice conceived as the right pattern of distribution of goods or "holdings" for a society. He maintains that any "patterned" principle of distributive justice requires constant governmental interference with liberty to maintain the pattern and so must infringe individual rights. He proposes what he calls an *entitlement theory* of justice, which focuses on how people acquire and transfer things rather than on who has what and therefore does not require governmental redistribution to ensure justice. Part II ends with an ingenious moral

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NOTE: This is a revision of a paper entitled "Robert Nozick: Political Inaction and Individual and Private Action," presented to the Foundations of Political Theory Group at the Annual Meeting of the American Political Science Association, September 5, 1975. I wish to thank John Rodman and Frank J. Thompson for their helpful comments on the original paper. The page references in parentheses in the text refer to Nozick's *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

tale entitled "Demoktesis," which is designed to "illuminate essential aspects of the more extensive states people everywhere now live under, laying bare their nature," so that we can see clearly how very undesirable they are.

In Part III Nozick contends that the minimal state, because it provides an environment in which individuals are free to seek the good life as they perceive it, in small communities of their choice, is an inspiring vision, a "framework for utopia." Each part can stand alone, but each is intended to reinforce the other two, by converging upon the same conclusion: that the minimal state and only the minimal state is morally legitimate.

Certain themes play a central role in Nozick's argument. The first and most important is the principle of the inviolability of individual rights. He begins with the proposition that "individuals have rights, and there are things no person or group may do to them (without violating their rights)." Thus is posed what he takes to be the basic question of political philosophy: "the question of what, if anything, the state and its officials may do." (P. ix.) A second theme is the insistence that processes rather than goals provide the proper standards for structuring and evaluating a society — and related to this, a preference for what he calls "invisible hand" explanations of social phenomena over explanations in terms of people's intentions. A third theme is social atomism, the view that a social group is no more than the sum of its separate individual parts. Finally, underlying and pervading the entire discussion is the fundamental assumption that the essence of the state is force.

These themes all work against a political perspective. The assertion of each individual's absolute right to do as he pleases, so long as he does not encroach upon another's "moral space," eliminates the state as a public arena for the resolution of conflicting but legitimate claims. The insistence that processes alone are the criterion of a good society prohibits public action to achieve common ends. The principle of social atomism dissolves the concept of a public interest. Finally, and most important, if the essence of the state is force, then governmental action is by definition coercive and, unless kept within very narrow limits, an invasion of individual rights: a form of aggression against persons whom the state is supposed to protect.

What does this leave to government? Only the protection of private rights. Even the common interest in security which Nozick's state guarantees is only the sum of each individual's private interest in his own security. And Nozick would have us turn even the provision of security into a profit-making enterprise conducted by private entrepreneurs as part of the economic division of labor in society.<sup>1</sup>

#### THE STATE OF NATURE AND THE NATURE OF THE STATE

Nozick begins with what he calls "state of nature theory," seeking an explanation of the state which will tell us what kind of thing it is and what it can legitimately do. His hypothetical state of nature is *the best anarchic situation*: that in which people generally act as they ought. If we start by assuming that in the best anarchic situation people will take voluntary action to remedy the inconveniences of anarchy, then, he says, we will be able "to see how serious are the inconveniences that yet remain to be remedied by the state and to estimate whether the remedy is worse than the disease." (P. 11.) Nozick borrows Locke's list of inconveniences: Natural law may not provide properly for every contingency; men who judge for themselves will favor themselves so that there will be endless disputes which cannot be finally settled; and individuals may lack the power to enforce their

<sup>1</sup> Thus, as Peter P. Witonski says in a highly laudatory review, Nozick's minimal state "is more of a free market than a state," and it "is inextricably linked to market forces from which it cannot escape without violating its ethos." *The New Republic*, April 26, 1975, pp. 29-30.

rights against an adversary who is stronger. How might these be dealt with voluntarily in a state of nature? Let us begin, Nozick suggests, with the last: with the problem of enforcement.

Groups of individuals may form mutual-protection associations . . . . The inconvenience of everyone's being on call, whatever their activity at the moment or inclinations or comparative advantage, can be handled in the usual manner by division of labor and exchange. Some people will be *hired* to perform protective functions, and some entrepreneurs will go into the business of selling protective services. Different sorts of protective policies would be offered, at different prices, for those who may desire more extensive or elaborate protection. (Pp. 12f.)

Ultimately, out of these voluntary arrangements, a dominant protective agency would emerge: a *de facto* state which violates no one's rights and is preferable to anarchy.

But *why* would the state, in the form of a dominant protective agency, emerge from the most favored situation of anarchy? Nozick envisages individuals in the state of nature as isolated and self-interested, each encapsulated within a shell of natural rights and concerned lest others trespass across his boundaries. Nevertheless, if people generally act as they ought, it is unlikely that *fear* would impel them, as Nozick thinks, into protective agencies for security against one another. To begin with the last Lockean inconvenience of the problem of enforcement makes the solution of protective agencies seem obvious. But the starting point is inapt. In a state of nature in which people generally try to do what is right, the first inconvenience of uncertainty about what *is* right in particular cases would be far more pressing. And if individuals rarely *deliberately* invade one another's "moral space," any agency or procedure whose decisions all could accept as binding would do as a remedy. Arbitration boards without enforcement power, for example, would probably suffice; and there would then be no impetus for the development of the state as a coercive institution.<sup>2</sup>

In fact, a number of scenarios other than the one Nozick gives us can plausibly be imagined to flow out of his best anarchic situation. The most obvious alternative is a social contract creation of the state. And given Nozick's "strong formulation of individual rights," which requires contract or consent as the basis for relationships of obligation, it would seem that a legitimate state with a monopoly of force would *have* to be the product of unanimous individual consent. Social contract theory, however, is obviously ill-adapted to justifying the minimal state and only the minimal state. If one takes the idea of contract seriously, as Nozick does, one must grant that people can put into a social contract *any* provisions to which they all agree; and there is nothing in Nozick's concept of a person or in his hypothetical state of nature to guarantee that they would choose the minimal state. In fact, his version of the minimal state as a profit-making enterprise is incompatible with a social contract theory. A social contract could conceivably generate a state which was an economic enterprise, but it would have to be a consumers cooperative, with the quite different ethos that form of economic organization embodies. Nozick's state of nature, interestingly enough, does contain the seeds of a contrac-

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<sup>2</sup> Nozick thinks that we could now develop "diverse forms of judicial adjudication, differing from the particular package the state provides," but that most people are driven to use the state's system of justice because of its power of "ultimate enforcement." (P. 14.) This certainly oversimplifies. We accept governmental decisions because we regard them as authoritative, and they are authoritative in part because we accept them, not just because the government can enforce them. But the better competitive position of adjudication backed up by enforcement would be irrelevant in the state of nature if there were no reason to move to enforcement at all, and noncoercive adjudication therefore would be quite feasible in Nozick's most favorable situation of anarchy.

tual cooperative association, for he mentions as a possible route to the dominant protective agency that "groups of individuals may form mutual-protection associations"; but that possibility is quickly abandoned in favor of "entrepreneurs" who "will go into the business of selling protective services." The minimal state is not to be characterized by either cooperation or contract.

A social contract theory of the origin of the state would not suit Nozick in any case because it suggests the propriety of deliberately constructing a state; and this is something he wishes to avoid. He uses instead an invisible hand explanation in which the state is the product of individual acts which are not designed to create a state. Invisible hand explanations, Nozick holds, are *more fundamental* explanations, because they "minimize the use of notions constituting the phenomena to be explained" and thus "yield greater understanding than do explanations of them as brought about by design as the object of people's intentions." (Pp. 18f.) Yet if the state were "brought about by design as the object of people's intentions," an explanation which omitted their intentions would shed little light upon its character. His explanation thus begs an important question. It also has very specific consequences for the concept of the state. To begin with, if the state is the result of private commercial transactions between buyers and sellers of protective services, citizenship turns into a clientele relationship between each individual and the state: it cannot be a relationship among individuals whose interest the state is designed to serve. In addition, a state which is the product of invisible hand processes has an accidental quality to it which undermines any claim it might make to special authority. And, indeed, Nozick quite explicitly seeks to destroy the "mystique" of the state. When he says the minimal state is legitimate, he means that it is not illegitimate, that is, that it violates no one's rights. There is for him no *de jure* as distinct from a *de facto* state.<sup>3</sup>

Let us, however, suppose that individuals in Nozick's best anarchic situation do establish cooperative associations for their mutual protection or for the pursuit of other objectives. They might well want an association to perform some positive functions. Even the minimal state of the nineteenth-century liberals, after all, was supposed to do socially necessary things such as building roads which would not likely be done if left to the forces of the market. Could a dominant cooperative association, if one emerged, be a state? If not, why not? Certainly the state would *look* quite different under the rubric of a cooperative association. Citizenship would be a relationship of interdependence among members with a stake in the association, who constitute it in such a way that state and citizens are two sides of a single coin. A protective agency, however, must be prior to and separate from its clients. There can be no real membership in a state which is a dominant protective agency. A citizen who is only a consumer of services need not concern himself with public goods. If the state is a business enterprise, and one is dissatisfied with its performance, one's appropriate response is withdrawal: to cut off one's patronage.<sup>4</sup>

To see the state as a cooperative association also removes the centrality of force from the concept of the state. Nozick uncritically accepts Weber's criterion for the existence of a state, and his problem therefore is to show that an agency with a monopoly of force within a territory can develop and function without violating

<sup>3</sup> "Having more entitlements to act," Nozick writes, the dominant protective agency "is more entitled to act. But it is not entitled to be the dominant agency, nor is anyone else." (P. 140.) Thus Nozick does not discuss political obligation, except to dismiss it. Indeed, many of the traditional problems of political philosophy are conspicuously absent from his analysis.

<sup>4</sup> See Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge: Harvard University Press, 1970), for an insightful discussion of comparative modes of responding to "decline" in organizations of different kinds.

anyone's rights. But a monopoly of force cannot be a sufficient criterion for the existence of a state, without the addition of the public quality which characterizes a political order. A monopoly of force may not even be a necessary criterion. The alternative tradition which envisages political association as a mode of cooperation is, I believe, by far the more satisfactory one. But it cannot fit into Nozick's picture of governing as part of the economic division of labor in a market economy; and he does not consider it.

#### THE PRINCIPLE OF FAIRNESS

Nozick's vision of the state stands out with especial vividness in his rejection of the *principle of fairness*, initially suggested by H. L. A. Hart and developed by John Rawls. According to Nozick's formulation, which closely follows Rawls, the principle holds that

... when a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission.

And, Nozick adds, "acceptance of benefits (even when this is not a giving of express or tacit undertaking to cooperate) is enough, according to this principle, to bind one."<sup>5</sup>

Nozick argues that because the minimum state has a monopoly of protective services within a territory, it is morally required to protect everyone within its territory to justify it in prohibiting private enforcement of justice. But he insists that the state has no right to *force* anyone to pay for protection. If it forced people to become its clients, it would be a protection racket, not a protection agency. Therefore, anyone who wishes to do so is entitled to remain independent, opting out of the state's system of cooperation and "riding free" on the payments of the rest. The principle of fairness contests the morality of riding free in society. Nozick objects to the principle of fairness on two grounds. In the first place, if there were no right to ride free, people might think the state is entitled to *enforce* cooperation, and if it is entitled to enforce cooperation in the payment for protective services people might think it may also enforce cooperation across a broad spectrum of activities, thus making it a much-more-than-minimal state. If the principle of fairness were valid, he insists, it would be only a moral principle, not a principle enforceable by the state. But in the second place, he argues, the principle of fairness is *not* valid; and he gives a counterexample to show that it is "objectionable and unacceptable":

Suppose some of the people in your neighborhood (there are 364 other adults) have found a public address system and decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them. On his assigned day (one can easily switch days) a person is to run the public address system. . . . (P. 93.)

You enjoy listening to the public address system; you benefit from it; but do you have an obligation to take your turn? "Whatever you want, can others create an obligation for you to do so by going ahead and starting the program themselves?" (Pp. 93f.) Clearly not. Benefits which are an incidental result of others' activities impose no obligations.

<sup>5</sup> Nozick, p. 90. For Hart, see H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review* 64 (1955). For Rawls, see John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), sec. 18. Quotations from Hart and Rawls are taken from these sources and will not be further cited.

Now, what Nozick rejects with this story, I suggest, is not so much the principle of fairness as the concept of a "just, mutually advantageous, cooperative venture according to rules," on which the principle rests. What is the force of "Suppose some of the people in your neighborhood. . . ."? Very little. If the neighborhood were a community, it might be different. But Nozick has in mind a geographic area in which a number of individuals just happen to reside. And this is precisely his image of the state: "Suppose some of the people in your neighborhood" decide to establish a protective agency. They hire guards and post a schedule of fees. "Whatever you want, can others create an obligation for you" to pay a prorated share of the cost of the service, "by going ahead and starting the service themselves?"<sup>6</sup>

The principle of fairness, however, assumes a different context: not a number of individuals who together do something from which I incidentally benefit, but a system of which I am a part and in which I have a share, a system which is "a just, mutually advantageous, cooperative venture according to rules." The obligation to do one's share under the principle arises, according to Hart, out of a *special relationship* among persons; and both Hart and Rawls emphasize that the obligation is owed to those with whom one is cooperating. What Nozick rejects is precisely this view of society as a special relationship of cooperation.

Rawls specifies that the principle of fairness holds "that a person is required to do his part as defined by the *rules of an institution*" when two conditions are met: "first, the institution is just . . . , and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests." So Nozick is correct that it does not require explicit or even tacit consent. Nevertheless, I think that for Rawls, accepting the benefits of the arrangement *within* a just institution which is a cooperative venture *is* a form of consenting, because one is *already* cooperating by one's participation. The clients of a protective agency, however, are not cooperators; and the principle of fairness cannot apply to them. Their ties are to the state, not to one another. Moreover, Nozick's social atomism precludes people from becoming cooperators in the sense the principle requires. Thus, although Nozick's state of nature might conceivably generate a cooperative state, the terms of each individual's participation in it would have to be completely set out in the contract and renegotiated at every turn in its affairs, because the social relationship *itself* could not oblige. Nozick insists that rights naturally adhere to separate individuals; and the emergence of the state out of the state of nature must leave individual rights precisely as they were before.<sup>7</sup>

<sup>6</sup> Again, of course, the answer is "no." However, perhaps in the case of the neighborhood protection agency this is less clear than in the case of the neighborhood public address system. Part of the force of Nozick's counter-example is its triviality. We do not *need* a public address system; but we do need protection — at least, Nozick thinks so, and this is what gives point to his inquiry into the nature and functions of the state. Rawls would argue, perhaps, that in cases where cooperation is urgently required there is a *natural duty* to do one's share; but he would not place this under the principle of fairness; see sec. 51 of *A Theory of Justice*.

Most of Nozick's examples are rather trivial. Sheldon Wolin asks: "If we stipulate that at the very least a political philosophy should tell us something about real politics, what shall we say of a book that contains no reference to any actual political event, action, or society, that omits such topics as war, foreign affairs and military service, that discourses on the rights of dogs but is silent about racism?" See his review of Nozick in *the New York Times Book Review*, May 11, 1975, pp. 31–32. Some of Nozick's examples are nevertheless telling; but others sometimes completely miss the mark: see particularly the discussion of "Having a Say Over What Affects You." (Pp. 268–71.)

<sup>7</sup> Nozick insists that "individuals in combination cannot create new rights which are not the sum of preexisting ones." (P. 90.)

THE ENTITLEMENT THEORY OF JUSTICE

The core of Nozick's defense of the minimal state is his theory of justice. Most theories of justice, he says, are patterned. They tell us that a social distribution of goods is just if it corresponds to a certain pattern. His entitlement theory, in contrast, tells us that a social distribution of goods is just if it has been generated by processes that are just.<sup>8</sup> Under it, therefore, *any* distribution may be just. The entitlement theory is summed up in a simple slogan: "From each as they choose, to each as they are chosen." (P. 160.) Patterned theories justify a more extensive state than the minimal state because the state must do whatever juggling of distributions is necessary to maintain the pattern. The entitlement theory, however, justifies *only* the minimal state because it limits the state to overseeing the processes of acquisition and transfer but prohibits it from attempting to guide them in any particular direction.

For Nozick, the entitlement theory is a clear application of the principle of individual rights. And it has considerable intuitive force, hinging on the concept of *mine*. If something is *mine* (*my* money, *my* house, *my* car), it seems that I ought to be able to do with it as I please — to use it, give it away, sell it, destroy it. (But consider: *my* child.) Thus Nozick's Wilt Chamberlain example:

He supposes that Wilt Chamberlain, in great demand by basketball teams, signs a contract with one team, which provides that in each home game twenty-five cents from the price of each ticket of admission goes to him. The fans, who want to see Chamberlain play, "cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it." One million persons attend his home games, "and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has." Now, Nozick asks, is there any ground on which we can say that this distribution is unjust? — that Chamberlain is not entitled to this income? No; because each of those one million persons "*chose* to give twenty-five cents of their money to Chamberlain." If the first distribution was just, and people "voluntarily moved from it" to the second distribution, the second distribution must also be just. (P. 161.) Why? — because it was *their* money. And if the second distribution is just, no one has any right to interfere with it by using governmental power to redistribute incomes.

However: Although I may be happy to transfer my twenty-five cents to Chamberlain in exchange for seeing him play, I probably had no idea that he would end up with \$250,000; and his income of \$250,000 is a quite unintended consequence of my act. Can it therefore be said that in dropping our respective quarters into the "special box with Chamberlain's name on it" we — all one million of us, individually — transferred those quarters to him in such a way that *we* gave him \$250,000? I think not. A sum of individual decisions is not a joint decision, and a sum of individual acts is not a joint voluntary act. Nozick seems to hold that principles apply the same in micro and macro situations and that they "may be tried out in the large and in the small." (P. 205.) But a sum of individual voluntary acts clearly does not have the same moral status as a single voluntary

<sup>8</sup> Peter Singer notes that this is "a radical departure from the theories of distributive justice discussed by most philosophers, especially in recent years," in a review entitled "The Right to Be Rich or Poor," *New York Review of Books* 22 (March 6, 1975): 19–24. The entitlement theory of justice is developed in large part through a probing critique of Rawls, which is not germane to my examination of Nozick's concept of the state and which will not be discussed here. It is, however, discussed in Singer's review. And for a recent critical discussion of the entitlement theory, see Hal R. Varian, "Distributive Justice, Welfare Economics, and the Theory of Fairness," *Philosophy and Public Affairs* 4 (Spring 1975): 223–47.

act, whether of an individual or a collective body.<sup>9</sup> Moreover, even the binding force of single voluntary acts may be overridden by other considerations, so that voluntariness is not the *only* thing to take into account in deciding who is entitled to what.

Let us now suppose that every person everywhere wants so badly to see Chamberlain play that we each individually sign over *all* our property to him, and Chamberlain winds up, not with a mere \$250,000, but with everything there is. Would *that* distribution be just? Certainly under the entitlement theory it would appear to be. Then, unless Chamberlain agreed to a redistribution, we would be stuck with having him as sole owner of everything, because he got it without infringing anyone's rights and it would not be legitimate for us now to take his holdings away from him against his will. And if he owns everything, can he do as he pleases with his property? Again, it would seem that the answer must be yes.

Monopolies raise obvious difficulties for the practice of liberty, however; and Nozick reneges on the principle that one can do as one pleases with what one owns, by advancing a "Lockean proviso" which limits property rights in circumstances when an appropriation worsens the situation of others in such a way that they are no longer able to use freely what they previously could. The effect is to undermine the concept of property. So perhaps everything would not *really* belong to Chamberlain after all.<sup>10</sup> In that case, although we might say it is nominally his, we could regulate it legitimately in spite of his protests. But then the term "mine" which made the entitlement theory initially so intuitively compelling would lose its force. Moreover, the Lockean proviso weakens the entitlement theory in other ways. It seems to acknowledge that not *all* processes which violate no one's rights end in just distributions.<sup>11</sup> It also seems to acknowledge some kind of *public* interest in who gets what.

Why, however, should we think there is only one principle of justice?<sup>12</sup> As against Nozick's simplistic entitlement theory, I agree with D. D. Raphael that justice is a complex concept; and I also agree with Raphael, against Nozick's absolutism, that on many issues there can be just claims of different kinds which will not always coincide or work out tidily to give us one right answer about what is just in each particular case. In particular, justice from the point of view of the community and justice from the point of view of the individual may conflict, so that sometimes the community will be *entitled* to make claims on the individual which he will be *entitled* to deny.<sup>13</sup> A recognition of complexity does not make for theoretical neatness; but the problems we confront in the world do not come to us neatly arranged, either. However, to hold that the community *can* make claims of justice requires a concept of the community as a public entity which Nozick does not have.

<sup>9</sup> The most accurate description of Chamberlain's income is probably not "\$250,000," but "one million quarters." I am grateful to Robert C. Grady, Eastern Michigan University, for this point.

<sup>10</sup> Nozick, pp. 174–82. He says on p. 180: "Once it is known that someone's ownership runs afoul of the Lockean proviso, there are stringent limits on what he may do with (what it is difficult any longer unreservedly to call) 'his property.'" This hint that property may not actually be property is not, however, developed.

<sup>11</sup> Nozick says that "the Lockean proviso is not an 'end-state principle'; it focuses on a particular way that appropriative actions affect others, and not on the structure of the situation that results." (P. 181.) His disclaimer, however, is not convincing.

<sup>12</sup> Singer, "The Right to be Rich or Poor," seems to believe that there can be only one correct principle. He writes: "Our intuitions lead us in both directions" — toward the entitlement theory *and* toward a patterned (egalitarian) theory; and he says: "One must be wrong." But he does not explain *why*.

<sup>13</sup> D. D. Raphael, *Problems of Political Philosophy* (New York; Praeger, 1970), Chap. 7.

### UTOPIA

Despite the natural separateness of individuals, Nozick thinks that within the minimal state people will form small communities for the pursuit of their diverse conceptions of the good life. Because the minimal state allows for this, it is a "framework for utopia." No one of these small communities will exactly match each individual's personal utopian vision, but each individual will choose "to live in the actual community which (putting it roughly) comes closest to realizing what is important to him." (P. 309.) Thus the distribution of communal forms, like the distribution of goods and the monopolistic position of the dominant protective agency, will be generated by a market mechanism reflecting individual choices. And Nozick is willing to allow each community to assume any form at all desired by its members. Thus a community may establish a pattern which it requires the distribution of goods among its members to meet, and it may require its members to contribute to its support, although both these requirements are prohibited to the state.

The voluntary character of the small community presumably accounts for this difference. But suppose, says Nozick, that almost everyone in the state wishes to live in a communist community, so that there are no viable noncommunist communities for the one or two libertarians to choose. They would then have no choice but to live in a community which requires them to conform to a mode of life they abhor.<sup>14</sup> Still, Nozick argues, their rights would not be violated because no one *forces* them to conform. They have nowhere else to go, but this is due to actions which other people *had the right to perform*, so they remain *voluntarily*.<sup>15</sup>

The minimal state, of course, is also voluntary in this sense: one simply stays where one is instead of going elsewhere. But in the case of the state Nozick insists upon a stringent criterion of voluntary action: the individual must *consent*, before the state can make any claims upon him at all. The difference, he suggests, lies in the difference between a face-to-face community and a nation: in a nation, one need not be directly confronted by the nonconformity of nonconforming individuals, and hence one is not harmed by them, but "in a face-to-face community one cannot avoid being directly confronted with what one finds to be offensive. How one lives in one's immediate environment is affected." (P. 322.) This is an extraordinary notion of *harm* for one who insists that *all* individuals must be treated equally as "persons having individual rights with the dignity this constitutes." (P. 334.) The nonconformist, after all, also must live in *his* immediate environment.<sup>16</sup>

If other people can arrange my options for me so that I am restricted in what I can do without infringing my rights, they must logically be able to do so on the level of the state as well as on the level of the small community. Nozick insists that *no* group is more than the sum of its individual members and that *no* new rights emerge at *any* group level. The state is a *bigger* protective agency but not different in *kind* from little protective agencies. The account of the hypothetical process by which the minimal state emerges out of the state of nature, after all, is designed

<sup>14</sup> It seems odd that Nozick does not suggest that his libertarians might prefer to go it alone, rather than reside in a communist community. If individuals really are as he sees them, this would seem the normal thing to do. I suggest below that Nozick attempts implicitly to incorporate a *Gemeinschaft* element into his individualistic, atomistic framework, although they are quite incompatible.

<sup>15</sup> Nozick, p. 262; and p. 322, where he says that the recalcitrant individual "has no right that the others cooperate in making his nonconformity feasible."

<sup>16</sup> If the difference between the two is a matter of being directly confronted with what one finds to be offensive, surely the nonconformist is at least as offended by how others in his immediate environment live as they could possibly be by how he lives; but in his case the offense is compounded by the fact that he alone is required to adopt a life-style he detests.

to show that the state is *just* a protective agency. That account is also designed to show that a state which does anything more than provide protective services is illegitimate. Yet we can imagine such a state arising by steps which violate no one's rights; and Nozick himself does so in the construction of his moral tale, "Demoktesis," which he uses to demonstrate the undesirability of a positive state. Given his weak concept of voluntariness, however, and his acceptance of the results of invisible hand processes which violate no one's rights, such a state could not be unjust. How, then, can he insist that no state more extensive than the minimal state can be unjust? And how can he insist that a community within the state may be redistributive and may enforce cooperation, while the state may not, when both can come to do these things in ways which on his account violate no one's rights and restrict no one's freedom?

Let us suppose that a small cooperative community within the framework of the state as dominant protective agency makes itself so attractive that everyone within the territory of the state joins it, and it becomes coterminous with the dominant protective agency, eventually assuming its enforcement functions. If the process by which this occurs violates no one's rights, it is legitimate and the results must be just. To return to a question raised earlier: Would the cooperative community then be the state?

Nozick draws a line between state and community primarily, I think, in order to maintain a distinction between the negative function of enforcement he associates with the state and the positive function of achievement he associates with individual and private group action. Yet if individual achievement is possible within private groups, it ought also to be possible within public ones. And if both negative and positive functions are exercised by one corporate body, it would be absurd to say that that body is not a state on the ground of its positive functions. Nozick would not say that; what he does maintain is that a state which exercises positive functions is unjust. But this is inconsistent with his justification of the minimal state. In addition, his acceptance of enforced conformity within the small community suggests a recognition of a human need for close relationships and bonds which cannot be based on consent and self-interest alone. And this is inconsistent with his social atomism.

#### AN ASSESSMENT OF THE MINIMAL STATE

Nozick's entire enterprise is devoted to constructing a picture of the state as an agency which will protect everyone's rights against violation without itself violating anyone's rights. I think we want more from political association than a protective agency which violates no one's rights. And I submit that a justification of the state will be a justification of the positive state. If we are to understand the nature and functions of that state, we need to see it first of all as a political order. And we need to see citizenship as a relationship of reciprocity among persons who share membership in a political order and who have therefore public interests as well as private rights. Nozick could not, even if he would, see that state that way. His atomistic individualism does not allow him to see past "I" to "we." Still, Nozick is not wholly consistent in his individualism. The fact of human interdependence stubbornly intrudes into his argument, as in the Lockean proviso which limits property rights in what can only be a concept of a common good, and in his vision of the integrity of a common way of life within the small community. The minimal state can make only partial contact with the world in which people actually live.

Nozick's defense of the minimal state constitutes a prescription for political inaction. There are hints of a conservative conviction that if we try to direct social processes we are bound to fail because we are neither very efficient nor very bright.

There is also a sense of wonder at complex patterns unintentionally produced and a sense that it is aesthetically wrong to disrupt them. What he *argues*, however, is that we ought not to pursue common goals because there are no common goals; that the good life is a matter of individual taste which differs from one person to another so that no goal is right for everyone. Still, he finds patterns which are produced by impersonal processes acceptable even though they limit our choices. It is because he sees political action as in essence coercive that he regards it as illegitimate. Yet from the point of view of the individual, it may not matter much whether the constraints on his actions are due to personal force or impersonal processes. In fact, of the two force may be the more respectful of individual dignity. One can say "no" to a determinate threat; but how can one say "no" to an entire social order which has been structured by events beyond one's control to channel one's actions in undesirable ways?

Nozick expressly seeks to dissolve the concept of political authority. His libertarian views, he says, enable him "to see through the political realm." (P. x.) The state is useful and legitimate — but only when cut down in size to the minimal state; only when it ceases to be a political realm. The minimal state is a protective agency standing outside society and holding it together through coercion to ensure a neutral system of order which will allow individuals to go freely about their private affairs. It is an underpinning for private action. Nozick has little to say about forms of government, and the relative triviality of his state in the context of people's concerns as he sees them makes this partially comprehensible. It is odd, though, that he does not ask whether popular participation and therefore democracy may not be essential to individual self-protection. What is to prevent the dominant protective agency from using its monopoly of force tyrannically? Nozick thinks that once the state's claim to authority is shown to be spurious the state cannot do much harm. People would no longer cooperate voluntarily with it if it became aggressive, "since persons would view themselves simply as its victims rather than as its citizens." (P. 17.) The minimal state is thus very much like a Hobbesian sovereign, but a sovereign denuded of his sovereignty. Nozick is quite right, of course, that political power depends upon citizen cooperation, or at least upon citizen acquiescence. But how can an emperor be effective when he has no clothes — and is *seen* to have no clothes? And if power depends upon cooperation, just how central can the possession of a monopoly of force be to the concept of the state?

Still, the minimal state is wholly a coercive order, in that it has the single task of enforcing justice. And its unity might make it potentially more dangerous than a more complex state. This would be especially likely in the context of Nozick's social atomism. Even if people would not voluntarily cooperate with an aggressive agency, they would be unlikely to take concerted action to protect themselves against it. Being already divided, they would probably be easily conquered.

Nozick's prescription for political inaction is above all a prescription for stalemation. If we are not entitled to use public or political action to effect our ends, we will be stuck with whatever pattern the concatenation of individual transactions throws up. Is a pattern that arises by chance better than one we intend? Nozick seems to think so, because it is not imposed by force. But invisible hand processes are by definition beyond our control, and Nozick's preference for processes over goals commits him to a defense of *any* state of affairs which develops by means which violate no one's rights. Thus his insistence upon our right as individuals to make small choices forecloses us as a society from making big ones. His lack of interest in institutions for popular participation in governmental decision making reflects this. Government by insurance company does not require public participation in the making of public policy because there is no public policy to make.

We are not, then, to be masters of our collective fate. Moreover, because individual choices are structured by social patterns, to hold that we cannot legitimately interfere as a society with the processes that produce the patterns is to limit even our individual capacity to act as we choose.

So Nozick would solve our political problems by defining them away.<sup>17</sup> The minimal state offers us a kind of simplicity; but it is spurious, and it has a high price. It would require us to change our stance toward the political order in a crucial way: to see ourselves as clients rather than members, and with that to give up our claim to a right to participate in its affairs—in *our* affairs. The defense of the minimal state does attempt to speak to the real and pressing need of human beings in an increasingly complex world to control their lives. But in focusing solely upon governmental usurpation of individual choice, it obscures the degree to which impersonal forces structure human existence. The state is capable of great evils, and the desire to draw its teeth is not new. But the state can also be used for good. It is not the wholly coercive institution Nozick depicts. It is also, potentially and ideally at least, a cooperative enterprise in which we can participate as citizens to shape the common conditions of our common lives. The minimal state would deprive us of a major tool for personal effectiveness through collective action.<sup>18</sup>

Governmental control, however, is certainly not a royal road to freedom. Although I do not agree that governmental action is always coercive, it is nevertheless true that we often find it simpler to rely on governmental coercion when we might better seek other means to effect socially desirable ends. Nozick suggests some ways to institute voluntary systems for such public goods as the abolition of poverty, which are well worth our attention. His purpose, of course, is to substitute private voluntary measures for public governmental ones. My brief for voluntary action has a different basis. I believe that a society in which people share what Titmuss calls a "gift relationship," a society infused with a spirit of altruism, is a finer and a stronger society than one in which relationships take the form of economic transactions or one in which public-regarding actions are the product of compulsion instead of choice.<sup>19</sup> Moreover, unlike Nozick, I consider voluntary action which aims at public goods to be a form of political action. The point, I think, is not the means used but the end at which one aims. In saying this, I wish to emphasize again the public quality of political life and to affirm the centrality of political action to a social and therefore a human existence.

<sup>17</sup> Alan Graubard points out in a review essay that "a libertarian theory like Nozick's is a 'clean hands' theory. That is, there is no way to make political mistakes. . . [U]nder libertarian theory, since there is never any public policy, there can never be any mistakes." "Liberty and/or Justice for All," *Working Papers For a New Society* 3 (Summer 1975): 57-59, 73-77. And Marc F. Plattner, also in a review essay, asserts that "only someone of a doctrinaire and unpolitical cast of mind . . . could take seriously the minimal state" as Nozick presents it. Nozick "never even discusses the most obvious sorts of objections to the minimal state that would be raised by an ordinary politician or citizen." "The New Political Theory," *The Public Interest*, Summer 1975, pp. 119-28.

<sup>18</sup> The question of personal effectiveness has stimulated a considerable body of thought. Some recent works which attempt to suggest practical means of enhancing our ability to control our lives include: James S. Coleman, *Power and the Structure of Society* (New York: Norton, 1974); Robert A. Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970); and Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970). Nozick rejects the kind of approach these works embody, because they emphasize effectiveness *within* social and political structures.

<sup>19</sup> Richard M. Titmuss, *The Gift Relationship* (New York: Pantheon Books, 1971).

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### [Footnotes]

<sup>5</sup> **Are There Any Natural Rights?**

H. L. A. Hart

*The Philosophical Review*, Vol. 64, No. 2. (Apr., 1955), pp. 175-191.

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