

That Politics is Necessary... A Response to Nozick's Anarchy

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In all great controversies, much depends on where the tale begins.

Churchill, *Great Contemporaries*

The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical Philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such delicate shades and minute gradations, that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. The boundaries between the great kingdoms of nature, and still more, between the various provinces, and lesser portions, into which they are subdivided, afford another illustration of the same important truth... When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself, as from the organ by which it is contemplated; we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity.

Publius, *Federalist Papers*

The world, nature, human beings do not move like machines. The edges are never clear-cut, but always frayed. Nature never draws a line without smudging it. Conditions are so variable, episodes so unexpected, experiences so conflicting, that flexibility of judgment and a willingness to assume a somewhat humbler attitude towards external phenomena may well play their part in the equipment of a modern Prime Minister.

Churchill, *Great Contemporaries*

Like the work of John Rawls – which we considered last week – Nozick's book, *Anarchy, State, and Utopia*,¹ fights from opposite political sides. But, on the one side – anarchist-libertarian disputes as to justification of the state – the intent is to resolve that dispute in favor of the libertarian. Thence Nozick would marshal the forces of both armies against the common enemies of the left/right collectivist variety. The practically significant enemy is on the left, the socialist (or communist, whichever is the fashionable term of the day). Academically, the socialists are represented in the egalitarianism of Rawls.

It is paradoxical, then, that I shall argue, first, that Nozick fails to refute the anarchists, because he in fact sets forth as his own foundation the only possible foundation of anarchy. And, second, I argue that, though he refutes Rawls's attack on inequality, he

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nonetheless paves the way for a Rawlsian kind of state. The paradox is not wonderful, I will suggest, simply because the Rawlsian state amounts to nothing more than bureaucratic anarchy. That is, the fundamental failing of anarchy is that its attack on politics ends in a defense, by practical necessity, of a bureaucratically organized human life based on principles of radical atomism or egoism, which identical result is the theoretical necessity of Rawls's work.

Finally, I shall show that Rawls's and Nozick's identical conclusions follow from the fact of their unacknowledged identical beginnings: a rejection of politics as a source of moral guidance. Each work constitutes an attack upon the possibility of discovering rational foundations for human morality in human political life as such. Each work is an attack on politics or statesmanship.

Neither is it difficult to identify the sources of their views. I have elsewhere described it as a defective view of liberalism, from the left and the right. In Rawls we still see the defect of left liberalism: the turn to historicism in place of reason.² In Nozick we see a radical version of the defect of right liberalism:

The defect of right liberalism was the notion that man's selfish desires could furnish the *complete* basis for his attachment to a regime and obviate the necessity for reasoned reflection on the nature of that regime. Hence, once natural rights were discovered and a regime established, there remained only the flurry of interested activity to keep in it in motion. (Emphasis supplied.)³

What we encounter in Nozick as in Rawls is the continuation of the attempt to deal with the modern crisis without yielding to the judgment that the crisis is in the very attempt to liberate humankind from the ambiguities of reason.

The title of this essay suggests that Nozick has presented a defense of anarchy, which defense I intend to refute. This notion would surprise Nozick himself. For, in the beginning of his work, his chief pains are devoted to refutation of the anarchists and defense of what he calls the "minimal state." Apparently, either I believe he fails to refute the anarchists – and thus *de facto* supports that argument – or, Nozick's own conception of politics is radically defective in spite of a successful attack on the anarchists.

In order to make clear the point of this essay, I will undertake to present Nozick's argument as he saw it – as an attack on anarchy. But, in order that we see why, in the end, he defends anarchy himself, I will begin with his account of political life as such. This is found in Part II of the book. At the close of Part I Nozick states that we have concluded the refutation of the anarchist principles and demonstrated the necessity of the "minimal state." The next question to ask is to "demonstrate that we should proceed no further."

The entirety of Part II is devoted to discussion of three subjects: distributive justice; equality as a political principle; and the American regime. In order to show that no state beyond the minimal state is justified, Nozick must discuss the quintessentially political principles and reveal their limits. If we can understand from this discussion the limits of politics (how much it *can* do), we will be in a position to judge his refutation of anarchy.

Fully half of Part II is devoted to the chapter (6) on distributive justice. And the central task of that chapter is to refute the notion that there is some indefinite supply of good things awaiting only an organizing principle in order to be made available to men. “There is no *central* distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out.” (149) Indeed, so strongly does he wish to establish this point, that he denies that any distribution, as such, occurs. And he constructs a new theory, called the “Entitlement Theory,” based on the notion of “holdings” or rights of possession, as a substitute for distributive justice. (150) That this is a fair rendering of the theory is suggested in King’s defense of Nozick, where he writes, “the entitlement theory states principles of justice which will *make specific for application* in political circumstances the content of the moral or natural right to property.”⁴

The theory is extensive. But it is not so important to know it completely as to see what it replaces. Nozick is in agreement with John Rawls and contemporary philosophy in general in treating distributive justice as essentially rooted in material things. In that view, the question is primarily and most interestingly a question of how wealth is distributed. Nozick rightly points out that to speak in this way is to assume or at least strongly suggest a community standard for the sharing of wealth. And his entitlement theory is designed to oppose this welfare presumption. We will shortly consider how.

But there is an older tradition in philosophy in which the question of distributive justice was concerned fully as much if not more with the distribution of offices and honors than with material rewards *per se*. In that view, of course, it was necessary to presuppose a community or political standard of distribution, for the obvious reason that what was recognized in distributive justice was what we might loosely call, community service. Distributive justice, in other words, recognizing the merit of the individual, looked toward the end of the polity.

Now, Nozick’s rejection of distributive justice clearly involves a rejection of far more than a community standard for the sharing of wealth. It also eliminates the only dimension of distributive justice which suggests, in itself, the way and character of the polity. That is, no element of the scaled down theory of distributive justice – the entitlement theory – can, on this account, suggest the political life other than as a convenient means of organizing the particular ways in which wealth is already held among some persons.

So what is the entitlement theory? It begins from the reflection that some specific pattern of actual holdings exists at a given time and is in principle explainable. Nozick holds that any given pattern is but the random configuration resulting from numerous and diverse voluntary transactions. Like Topsy, the particular configuration of holdings just “grew” that way. Nonetheless, it may be judged right or wrong. If it grew, it has a history. And its history can be culled to ascertain the justice of the growth.

We can judge whether each person possesses whatever he possesses rightfully – whether he is entitled to it – in light of judging the individual transactions which led to the possession. “Whatever arises from a just situation by just steps is itself just.” (151) Thus, we require to know only the standard of justice and whether it was present at the origins, in order to apply this theory. At the beginning of the chapter it was said that “Any state more extensive (than the minimal state) violates people’s rights.” This princi-

ple of right was developed in Part I. We will return to it. But we may summarize it here as the condition of consent, in its various forms, in all transactions. Thus we get the conclusion that holdings are just so far as they come about through voluntary transactions, in their various forms.

Of the several elements of this theory but two are important. First, to be applied it must be wholly abstracted from politics. This is so because the theory can *only* comprehend individuals – not communities.

... human bodies are physically distinct from one another... Each of these creatures is a distinct center of motivation... Any attempt, therefore, to provide *rational* grounding for the obligation of those creatures to moral and political principles must necessarily be addressed to individuals... To the extent that no one is able successfully to argue for possession of legitimate authority to take (some) thing from him against his will he has a natural right to the thing.⁵

Although this appeal to opinion is the very model of the true political method, it may be doubted that such an appeal is the source of moral *authority*. And this is what is suggested. Because of the heterogeneity or atomism of opinion that is anticipated, the consequence is that justice or moral authority bears all the particularity and distinctness of the several human bodies to which it may apply. As such it cannot be the basis of a community. That is, political claims cannot interfere with the claims of justice. (151) Hence, no given polity may be just, even if every member of that polity held what was due to him in the eyes of the polity, for so long as the same thing could not be said of the rest of mankind in their relations with *every* member of that polity.

Second, historical as it is – founded on the form of acquisitions and transfers – the entitlement theory defines the *essential* task of social life as rectification of injustice. Justice is a matter either to be preserved in the forms of social intercourse or re-established. Justice is never won! For polities to be considered legitimate as such, they would have had to begin in a golden age. Otherwise, every other human circumstance – politics included – comes about as rectification of injustice.

If historical justice requires rectification, it raises the question of who will do the rectifying. Nozick speaks of the “principle” of rectification “making use” of historically probable information. But, of course, only some human being or institution could actually “make use” of information. When distributive justice was severed from politics as such, no natural agent of justice was suggested. In Part I we have the origin of the minimal state, the “protective agency,” as the natural enforcer. But in Part I, the protective agency was chosen by the client, in the nature of the case. He was buying insurance. Now, it seems, the protective agency will have to “choose” its clients. Its historical researches, if they yield likely evidence of injustice, will commit the agency or state to realizing a just state.

The example of this kind of attempt, and its consequences, might be an affirmative action program, or reverse discrimination. In itself illegitimate, this activity becomes legitimate through application of correctives to a previously defective view of natural rights. After scientific simulation of probable historical development, the state is morally mandated to preserve or achieve the just distribution that *would have* occurred. It must,

therefore, abstract from all intervening political and moral elements as irrelevant to questions of justice.

Can this include intervening attempts at rectification? Either they form part of our calculations or they are considered the in fact historical beginning, if we are consistent. But intervening rectifications may have been imperfect. Then they would constitute inappropriate points of origin – states of injustice. It seems that such efforts still deserve our attention. But it is impossible that they receive it, unless we take seriously the moral and political claim in those defective attempts.

We can never know if reverse discrimination is legitimate under a natural rights scheme that prohibits discrimination, without also succumbing to a political analysis that defeats the purpose of our abstracting from intervening history.

What is more, we can not know if, succumbing to the temptation of reverse discrimination out of a love of justice, we will not permanently obscure the foundations of justice – those natural rights which alone informed men’s practical judgment, however defectively.

This is a curious though not paradoxical result. I believe I know the source of this paradox. The foundation of Nozick’s philosophy is materialism, but not merely so. He is determined to provide a non-teleological account of human life – he calls it a non “end result” account. He is, therefore, determined to avoid not only all specific moral *goals* but those human activities and faculties which might entail or imply moral goals. The voluntary transactions people make must be fundamentally irrational and yet just. Hence, justice itself comes to seem irrational. The basis of rights is not *simply* arbitrary preferences, but it is *fundamentally* irrational preferences – preferences untutored by reason. The imbecile becomes the model of the voluntary man. (262)

The principle of entitlement, Nozick holds, will not suggest any particular order to the properties people hold. (157) So far is this the case – and peoples’ choices irrational – that he must even maintain that there is no natural connection between one’s faculties in general and one’s acquisitive faculties in particular. (263)

I do not intend to address Nozick’s refutation of Rawls. But I cannot resist indicating that the massive “end result” system he has in mind seems to be Rawls’s administrative tyranny. And the foundation of that tyranny is Rawls’s notion that the natural capacities will indeed determine people’s possessions unless checked. And since those talents are “undeserved,” they will be checked.

The only way Nozick can find to refute that claim is to deny the natural connection between capacities and holdings or acquisitions. He emphasizes, therefore, that we can not speak of people deserving all their holdings, even though they acquire them justly. (159) But, of course, his theory *is* based on natural capacities. (note, 157) Only, it reads “to each according to his capacities” – formulated negatively through the elimination of all extraneous considerations. Extraneous considerations are removed through the proviso that no one may apply his faculties to the determination of the conditions of others, on any basis whatever.

He finally admits this – denying it all the time – in the maxim, “From each as they (sic) choose, to each as they (sic) are chosen.” (160) Since all have a right to choose and

none a right, as such, to have been chosen, being chosen, as much as choosing, will depend on the exercise of one's faculties and the effect that has upon others – constraining their choices through persuasion. People's preferences are arbitrary, but confined to a finite range. With regard to philanthropy or benevolence, people are free to undertake giving, but may not *act* so as to preserve the benefits they imagine themselves to convey. This reveals, of course, a silent appeal to ultimate moral authority in some form of human authority or institutions: some enforcement power. But only the basis of that authority is revealed in Part I, and its character is revealed only in Part III.

Now this is the heart of the matter. For all that Nozick wants to advance a general human good, he undermines the only source of concern for the good of some particular people, by the attack – the needless attack – on distributive justice. He defends the attack by saying that he knows of no systematic account of the problem of rectification, especially where the government or its agents are guilty. But he could have found an admittedly brief though nonetheless comprehensive account in Aristotle's *Politics*, book III, chapters iii & ix. By the same token he could have found, in Aristotle's implicit directions in the differing accounts of the virtues in the *Eudemian Ethics* and the *Nicomachean Ethics* the explicit reason for accepting the account of constitutions or *politeias* in the *Politics* on his (Nozick's) own terms.

The concern for justice is *itself* the source of those distributive principles which differentially recognizes the capacities of citizens.

An active concern with political objects, a care for them which naturally expresses itself in both love and hate, is the very condition of their "visibility" to the eye of the mind.⁶

The very existence of justice or "political objects" becomes problematic when detached from the kind of care that the political partisan brings to his endeavors. Instead of recognition of this principle, we receive from Nozick an undifferentiated entitlement, whose foundations are as obscure as Rawls's original position with its veil of ignorance – a device Nozick unknowingly borrows. (304)

Because Nozick seeks to isolate questions of justice from *judgments* of opinion, *per se*, and capacities, a consequence of his theory is to commit mankind to an intimate familiarity with discrete, innumerable and complex events. Since men generally cannot achieve this, they must turn to some specific source of expertise. That source is the minimal state, of which it was the task of Part II to prove the entire sufficiency. No further state could be justified. But, it appears that minimal to Nozick refers only to the legitimate objects of attention – and perhaps not even that. For this state will require an elaborate administrative structure to keep order in people's entitlements – and their histories (as complete as possible).⁷

Thus, we have another paradoxical though not surprising result. The chapter on distributive justice closes with the following statement:

...an important question for each society will be the following: given its particular history, what operable rule of thumb best approximates the results of a detailed application in that society of the principle of rectification? (231)

The final section of that chapter was devoted to refutation of Rawls's *A Theory of Justice*. That it reaffirms the opening theme of the chapter is not surprising. What is the surprise? Nozick in fact maintains that the critique of Rawls is meant to suggest that the implicit welfare purpose of Rawls's analysis – to benefit the least well off – can only be morally justified on the basis of the entitlement theory of justice!

Although Nozick denies that his two principles of acquisition can justify more than a minimal state, he claims that his third principle, justice of rectification, can do so. But rectification is entirely based upon the application of historical entitlements: the principles of acquisition. In effect, the practical side of Nozick's anti-egalitarian philosophy would commence with a Rawlsian state – if temporarily – designed to create for men an original position, apparently without a veil of ignorance, and from which they could proceed through just acquisitions to a minimal state. Hence, the administrative tyranny with which we will begin must be scheduled to self-destruct punctually! The libertarian response to egalitarianism – on this reading – is that a well designed super state will correct inequities and conduct a people to the minimal state. (cf. 254)

The model of the super state (Are we receding from anarchy?) is developed in Part III, "Utopia." But, to understand it, we must first indicate the result of Nozick's treatment both of equality as a political principle and of consent. The discussion of voluntary transactions earlier suggested the path he follows: since consent of the governed, traditionally understood, is predicated as much upon the pre-eminence of public opinion (hence rationality) as upon its undeniable foundation, that each man himself among men holds the only ultimate authority to decide what conduces to his safety, consent is incompatible with a doctrine of individual choice based on irrational preferences.

Nozick interprets consent of the governed as mere majority or possibly unanimous rule. He fails to see it as minority rights – which, in the extreme case as well as by definition, it could only be. (269) His attack on consent is based on the appearance that consent gives each a "say" in matters affecting the lives of others. But, as I said, that reading simply fails to see it as it is, acknowledging the absolute right of each to judge how or even if others will affect him.

In this light, his account of America is readily understood. Its equality is entirely positive, not fundamental. He presents America under the title, "Demoktesis," a neologism compounded of the Greek, *demos* and *ketesis*, meaning roughly "property in or of the people." Nozick calls it "democratic tyranny." Through a fanciful account, he creates a picture of people selling themselves, bit by bit, one to another. The day arrives when each owns a portion of every other as well as himself. At this point, he maintains, the people have finally alienated their rights⁸ – in a brutal paraphrase of Lincoln, Nozick writes,

Their social theorists agree that their system of demoktesis, ownership of the people, by the people, and for the people, is the highest form of social life, one that must not be allowed to perish from the earth. (290)

So, it seems, I was early in deriving the administrative tyranny as the object of the hunt for the state beyond the minimal state. In Nozick's eyes, that hunt is completed in the account of America!

Nonetheless, the idea of an administrative tyranny did present itself earlier – perhaps prematurely. Perhaps there is not a contradiction. The account of the United States was done as a fanciful history – not as genuine history. Whatever he thought of America, the account here may be relevant in its own terms.

The fanciful history notwithstanding, that account may be the real portrait of the emergence of the super state from the minimal state. To launch that kind of governmental activity, men need not sell parts of themselves. They need only sell parts of the many things to which they have alienable rights. Ultimately, they would create the identical complex interdependence Nozick describes: necessary moves toward consolidation for greater efficiency and, most importantly, assurance of self-preservation. Thus would they free themselves from the distracting annoyances of the state of nature and from that complex interdependence in which each is simply spread too thin and occasion for fraud greatly enhanced. (284)

Nozick's elimination of the political element in distributive justice attempts to reduce the individual's claim to himself to the identical level of his claim to property. Indeed, the right to property is simply derived, if indirectly, from the right to one's body as opposed to a right to life. Thus, one's body or self is but so much matter, alienable matter, just like any other property. The entitlement principles are the true source of the super state.

Why did Nozick undertake this project? We cannot expect truly to know. But the text suggests – to this point – that the answer is to be found in the perfection of political life. (Anarchy recedes further still!) The opening of Part III makes an appeal to the political elements – courage, nobility – that Nozick had previously discarded. But how can this be consistent with the attack on politics? The answer, I believe, lies in the peculiar character of Nozick's "utopia."

The character of that regime is revealed in and through Nozick's rejection of two essential tenets of political philosophy as such. First, he insists that the notion of political goodness is questionable and perhaps even irrelevant, unless philosopher-kings rule. (note, 298) Since there is no possibility of rule by philosopher-kings, the question of political goodness (plagued by irremediable disorder in human values) must be replaced by a notion of the "best principles of institutional design." But without some notion of political goodness or "the best society possible," the search for the best institutions would seem pointless.

Unless . . . true and comprehensive generalizations as to human values can be made, no enduring generalizations concerning social causality seem possible.⁹

That is, what is the point of the "best institutions?" – best for what? Apart from the restoration of political claims about goodness, that question cannot be adequately answered.

The second tenet of political philosophy as such, that Nozick rejects, supplies the answer to the question raised by rejection of the first tenet. Nozick repeatedly, and with emphasis, describes reflection on political possibilities with the expression, "imagine a best possible world." The following is an example:

The world, of all those I can imagine, which I would most prefer to live in...
(298)

To see the difficulty, we need only imagine what he might have said instead – what philosophers have frequently if not always said. “Our subject here, however, is the best” way of life for human beings as such. There is a difference in those expressions both as to their objects and their *intentions*. Yet, both arise from a concern with the same fact: the necessity of human beings to choose a way of life. The best possible world that I should prefer to live in may well respond to some fancy or necessity which is wholly unconcerned with politics or morality as such. The question Nozick asks does not commit its author to any particular concern with human life: it is apolitical.

At the beginning of this chapter, Nozick states that we will investigate the end of political philosophy. (298) From his formulation, we may conclude that the end of political philosophy is to amplify the preferences of individuals. Political philosophy is concerned with possible worlds, in that view. But the possible worlds are imagined by someone or anyone. “World” is short-hand for “world view.” A world is ordered (imaginatively) in the light of some unique view of human life – and this produces an “association” in (informed by) that world view. (299) The objective of Nozick’s account of political life has been to set forth a defense of political life understood as the voluntary association of like-minded individuals in arbitrarily determined world views.

Politics is no longer the subject of political philosophy, in this view, because politics (the problematic) is to be replaced with complete agreement. The “utopian” state emerges and grows. In it the posture of doubt about the best world is preserved –not out of concern for truth – but as the only empirical evidence that all citizens are loyal (if they remain, they agree!). This rational posture replaces piety, reverence, shame, etc. (302) But, in fact, the arbitrariness of the references is not opposed to the emergence of piety, reverence, and shame.[†] They are, therefore, prohibited by a “moral side constraint.”

Thou shalt not imagine a world whose inhabitants identify rationality with obedience to your will or the will of any man or thing. (303) We began by acknowledging the impossibility of genuinely authoritative human beings. (There can be no philosopher-kings, we said.) We end by interdicting them. The arbitrary preferences must be codified – made morally necessary – in order to preserve the theory. The code is enforced. “There is the framework of utopia, and there are the particular communities (associations) within the framework.” This is the democratic-republic (he finally accepts majority rule, 323, and consent, 324) and its independent though subordinate cliques.

It is a system of organized tolerance, from one view; it is a system of administrative tyranny, from another view. It is a system in which right is protected but nothing is right. Hence, men guarantee to themselves not their moral responsibility but a nominal capacity to do as they will. The closing sentence of the book is ecstatic:

How *dare* any state or group of individuals do more. Or less. (334)

And both endings are appropriate! A polity may do more by way of providing moral guidance. It may do less by way of not facilitating the pursuit of arbitrary preferences. Hence, the two closing questions or criticisms reduce to a single criticism: *How dare* anyone or anything restrain the march of human passions? How *dare* legislation oppose to our inclinations principles of civilization and goodness?

[†] The rationality constraint has nothing to do with reason, being confined to the task of testing loyalty.

Now I contend that there is an appropriate answer to that question, consistent with liberty. Hence, I argue that the position indicated in the question defends not liberty but anarchy – and the worst form of anarchy, the organized and systematic pursuit of in principle irrational preferences. To see why this result could flow from an attempt to defend liberty, thereby to see what liberty’s defense truly requires, let us conclude with a survey of the refutation of anarchy.

In this case, let us begin at the end. Nozick claims to have refuted the anarchist on a specific basis.

The moral objections of the individualist anarchist to the minimal state are overcome. It is not an unjust imposition of a monopoly: the *de facto* monopoly grows by an invisible-hand process and *by morally permissible means*. (115)

That is the extent of the argument. On its own terms, it commits us to review the beginning of the *growth* of the monopoly power. It requires explanation of an “invisible-hand” and of “morally permissible means.” We will undertake those explanations, but first, let us consider why we consider these in particular.

Nozick begins the book with the assertion that “our starting point” is non-political but “far from nonmoral.” By that he means, first, that his analysis focuses on men independent of political life – in the state of nature – but also, secondly, that the task of political philosophy is to give a fundamentally non-political, universal account of political life. The reason for this, he argues, is that the order of human relationships is fundamentally determined by pre-political factors. Hence, the task of politics is to confirm the limits men experience *vis-à-vis* one another in nature. (6)

Whatever moral limits are imposed on men in nature are the foundation of the state’s “coercive” authority. And the nature of coercive authority is that it governs non-voluntary associations. Hence, it follows that the state, if it comes into being, will do so specifically to force men to do the things they fail to do left on their own. Fundamental coercive power operates on non-consenting beings and is, therefore, based on non-equality. Because of the limits imposed in the definition, it follows that the rights possessed by the state are but the sum of the rights of individuals. It also follows that, where individuals voluntarily engage themselves to perform some duty, there is no room for state activity. That is the groundwork.

After laying this groundwork Nozick should start us from the state of nature. But instead he provides an explanation of the method used – of political theory. The state of nature is a theoretical construct that provides a universally applicable account of human life. It does this – and this is the defense – by avoiding a political account of the political things. Political accounts as such are uninteresting – even if they exhaust the range of true explanations. (8)

Now, I too must digress. This approach that Nozick defends requires a defense. It requires a defense because, although it resembles a long tradition in modern philosophy, it is not identical with that tradition. State of nature theory commences with Hobbes. But with Hobbes the theory was not merely hypothetical; it was actual. Similarly, with Hobbes the theory explained not only the substratum of political things but political things themselves. So Nozick’s project is different. Hobbes, for whatever rea-

sons, proved too narrow, too political, and too parochial. True theory, on Nozick's model, must be universal.

Undeniably, Hobbes blazed the trail, though he is not being followed. Nozick cannot accept Hobbes because he, Nozick, must produce conceptions which are universally valid. At the same time, he must reject the Marxist notion of Hobbian principles as a justification of his time – 17th century England – in order to further Hobbes's own project. He seeks to further liberalism – classical liberalism – by radicalizing Hobbes's already radical critique of human nature.

To do this, it is necessary to eliminate the center of Hobbes's thought – human passion, that is, primarily, pride: the contest for great power or superiority. Hobbes had already eliminated or at least circumscribed the longing for glory. Nozick centers on what is left. He enhances what constituted for Hobbes polar boundaries to pride but was secondary in explaining the social impulse of human nature. Philosophers like Nozick treat only the struggle for modest power as capable of yielding a universally valid model of human behavior.

I can state why, in the end, Nozick offers a defense only of anarchy – if organized, systematic anarchy. He has refashioned political philosophy into a tool for the denying of every human capacity or passion that could generate political life. He has attacked politics, itself, the sources of politics, as defects of human nature requiring systematically to be purged. The statesman, to Nozick, is merely an uncontrolled intuitionist. In a universal sense, he is the sickest of the sick.

I can demonstrate the effect of this principle with the aid of an example, and then conclude with a digression. It is undeniably the case that I speak falsely – though I do not lie – when I respond to my three year old son's "Why" that he must do as I have instructed him "Because I said so." That is not a true account of the reason that he should do as told. But neither is it arbitrary – the mere assertion of my will over against his. Indeed, I know that my answer is philosophically insufficient even as I utter it. And, as should be obvious, neither is it morally sufficient as an answer to the question in itself. Whatever the true answer would be – and I may not know it – I can see with philosophic certainty the falseness of the answer I give. On the other hand, I can see with certainty why I choose to speak in this way. What is more, I can be quite certain that it were wrong to speak otherwise. For this form of speech, "Because I said so," is rooted in, required for the method and end of morality. Though I cannot philosophically encompass that moral end, I can yet discover the necessity to conform to its method. And this I *can* do philosophically. Hence, with absolute certainty, I can discover that I am philosophically bound to maintain a morally and philosophically insufficient account of a moral authority and purpose which, itself, remains in doubt. Whatever philosophic understanding may produce, by way of nihilism or other untoward circumstance, genuine philosophic doubt can only *affirm* the sufficiency of political speech, the language of morality. Genuine philosophic doubt returns men to the language of morality, if they are to learn what it is they must do. The force of this principle is readily understood. We need only consider the answer a philosopher must give to someone inquiring of him how one must live. A philosopher's answer – insisting on the strictly literal meaning of the verb, "can," – must be: "I can not tell you; the statesman can tell you." This is surely implied in Aristotle's

argument that statesmen are not intuitionists but rather appeal to reason. To accept this ultimate truth of philosophy, it is necessary to accept the sufficiency of a political life.

One would almost think that Nozick accepts this account, to read the book and see only the verbs. It is replete with “forbids,” “permits,” “allows,” “constrains,” and so on. But when we look to see who or what the agency of all this righteous chastening must be, we find only “principles,” “considerations,” “foundations,” and so on. Unlike Locke, Nozick seeks to generate a public-spiritedness founded in radical individualism *without* first performing any operation to create a public. (12)

For this reason the state of nature yields up “moral side constraints” to Nozick’s principles of justice. If one would have the honor of being just, one will obey the side constraints. This is necessary, because there exist no communal or collective rights. The rights of any group are but the summed rights of so many individuals. There is no common good. There is no honor in defending the non-common good. There *is* the summation of all the values of so many individuals. But, as Nozick argues, “there is no *social entity* with a good that undergoes some sacrifice for its own good.” No, not even the Athenians, following Themistocles out of Athens and to sea, abandoning their temples and gods (which no individual could claim as his own *unless* he claimed them as belonging to Athens) – not even these are understood as securing by certain sacrifice some good for the social entity. (32-33) Still it may be thought that to deny that any individual may sacrifice himself is also to deny that individuality that does not require omniscience. (33, 47)

Under the necessity to live, accepting the constraints, men slowly emerge from the state of nature. The critical factor is instability in the state of nature. But Nozick derives no rights from this circumstance. Instead, he focuses on the actions of individuals, having to do for themselves. They soon discover the central organizing principle: protection for hire. After all else is said and done, everyone still retains an original capacity to contract. Entrepreneurial talent is generously available, and individuals have some range of choice as to who shall serve them. Indeed, not only protection need be contracted. The whole range of human needs may be subject to contracting. For obvious reasons the protective association is the dominant and interesting example.

We see in this principle the origins of the practical history of entitlements – the theory of justice developed in the central section of the book. At this point, however, the chief factor is to maintain peace within and between protective associations. We see the process growing silently and stealthily in the hands of the clients and their agents. Each improvement in peoples’ situations seems to require improvement or progress in their protective associations’ capabilities: specifically, for the reason that there is no neat and blood free method of dealing with the sundry organizations and individuals not connected with the given group. This is that invisible hand process we sought (in Hobbesian terms, the increase of power after power). With no one wanting it nor consciously undertaking it, matters evolve to the point of the minimal state.

Two factors are crucial in that development. First, even in the early association it is manifest that the client’s main concern is preserving a freedom of action while simultaneously guaranteeing safe procedures to secure his rights. (56) Indeed, the whole substance of the association’s business is procedure. This is so, even after Nozick’s ques-

tioning the status of procedural rights in state of nature theory. (96) He does that, primarily, because he doubts that procedure can be so substantial as he initially made it – a practical doubt reflected in the continual pressure to expand the association’s powers into moral determinations, judgments as to rights.

The second, and still more important, factor in the development of the minimal state is the exemption of the associations from the normal rules of commercial competition – the anti-monopoly effect. The object of attention in these *special* commercial enterprises – rendering justice between man and man, as Agrippa phrased it in 1787 – is of such a nature as to require exclusivity in judgment. However much there may be a relativity of opinions, judgment must be authoritative and practically uncontradicted. Nozick’s invisible-hand, therefore, nudges the protection association on toward the “*de facto* monopoly” and, hence, the minimal state.

According to Nozick’s response to the anarchists, this is a necessary and not a desirable development. The *de facto* monopoly is the least of government without which men cannot live. Why should this be so? The notion of morally permissible and morally impermissible actions – derived from individual voluntary exchanges – can never be given exact or effective expression by the parties involved. A third party (possessed only of power since no rational authority is available to him) can alone give force to the natural moral limits. Complete agreement on questions of right or morality, that is, is in principle not possible for men.

But that is not so difficult to understand, for even the third party, the *de facto* monopoly can only express a fundamentally arbitrary idea of morality, but backed by force. It is true that the monopoly primarily governs procedures for the adjudication of rights. But it is also true that what permits the monopoly to emerge in the first place is the fact that it must *unilaterally* determine the right procedure. Procedural justice remains the entire substance of justice in this view.

Nozick’s claim that no new rights and powers arise in the association of individuals is refuted. The association, become a monopoly, does by right what no individual may do. Further, it alone, with a view to its own preservation, may determine the basis of membership in the association. (118 & chapter 6) Thus the attack on consent of the governed – designed to undermine democratic tyranny – in turn establishes the basis of administrative tyranny: government without appeal to moral or political principles: regulated anarchy.

Consent, reduced to mere preferences, leaves no possibility for consent as a function of authoritative morality. It is true that the collective body, in this sense, has no rights – preferences – but the sum of individual rights or preferences. But this very fact conveys to the agency a right of action – not of preference – in questions of conflicting preferences. (80; 133) The dependence on mere preferences leads to what Kendall and Carey have described as the “intensity problem.”¹⁰ That is, the problem of both counting and weighing (or judging) preferences at the same time. The problem arises because the citizen is not understood as consulting (weighing) principles which may oblige him apart from his preferences. In consent theories, the citizen’s express preference may be counted alone, precisely because he is understood to have weighted and taken into account preferences other than his own.

We repeat. No principle of choice informs the emerging state. (Cf. 108, 115, 117) Its emergence is invisible. Its power extends only so far as the principles *and* history of voluntary exchange permit. When it becomes the state itself, its power becomes strictly coercive. (108)

From its strength stems its actual position as the ultimate enforcer and judge with regard to its own clients. Claiming only the *universal* right [which no individual may claim!] to act correctly, it acts correctly by its own lights. (109)

And the monopoly state achieves this without creating a single political office – unless people are thought to pray to the chairman of the board.

This monopoly state includes a surprise, also, for students of politics. Though it has no political office, it has a full-blown administrative or regulatory apparatus, “with full-time specialized personnel...” (117) For *this* reason, Nozick calls it a “statelike entity” rather than a state, *per se*. (118) It in fact rules, but it has no moral authority. It is a giant H.E.W.[‡] in the state of nature, or General Motors if you prefer. But I think H.E.W. is more accurate, since General Motors does not possess the moral freedom the *de facto* monopoly possesses. The monopoly state is composed entirely of bureaucracy – lacking legislative or deliberative force as such. Since all questions are judged to be settled on the basis of contracts, explicit or implicit, only administration is required.

It should now be clear why I argue that the apparently polar opposites, Rawls and Nozick, are in fact identical. Any attempt to eliminate, rather than to ignore the political problem must end up in the same place, whatever the political predilections of the author. Nozick concludes at this point that he has demonstrated the rightful emergence of the state from the state of nature. He has shown how “the self-interested and rational actions” of Lockean individuals will lead to such a state. And, remarkably, in this state no one will view himself as a citizen. Each remains radically detached, in principle, from every other person. These “persons view themselves” as merely engaging in transactions with other persons. It is controlled anarchy, if politics is by definition conscious association in virtue, friendship, or the common good.

Hence, the invisible-hand is nothing other than administrative tyranny *sotto voce*, because it obscures explicit discussion of political principle as such. This invisible state even co-opts new citizens without their realizing they have become citizens. The new, welfare members, are not especially desired as citizens, but extending citizenship to them is the means to minimize their depredations and antagonisms. And another perennial political problem is solved, in the dark.[§]

It may be thought that one can not call this state an anarchy and a tyranny in the same breath. The answer is ready to hand. That is the traditional account liberal democracy offers. On Lockean principles those illegitimate regimes – tyrannies – were not true states. They were in fact in a state of war – hence, still in the state of nature – with their subjects. Thus, no political bonds connected the citizen or subject to the despot. As between them, anarchy reigned. And until the citizens should assert their liberty in the only legitimate fashion – through a social contract – anarchy reigned among the citizens, how-

[‡] Department of Health, Education, and Welfare.

[§] This phenomenon will one day come to be called “paternalistic libertarianism.”

ever orderly their behavior. Nozick radicalizes this anarchy by making it the work of tyranny to hide itself from the subjects while, at the same time, preserving an infinite diversity of opinions about the conditions of human happiness among the would-be citizens.

He was right after all. No state beyond the minimal state will emerge – not the *demoktesis* (does not the agency have a stake in what happens to peoples' shares in themselves?) and not the super state utopia. The minimal monopoly state is the super state, in which a perfect anarchy of moral sentiment reigns.

Or is it perfect? What is it that Nozick omits – as do Rawls and all of those who attempt to incarnate political morality in the lifeless body of theory? It is this. Whatever forms of political regime men have known, they may know again. We sit smugly here – as perhaps, we imagine Nozick in his study – secure in the reflection that our thoughts are the vanguard of our liberty. But may we not be enslaved? What is to be done if, suddenly, there bursts upon this assembly an armed band demanding that we accompany them in silence?

We are taken, I suppose, to some isolated plantation. We are watched – guarded – by the minute. We are in chains for the five or six hours in which we are not forced to labor. We cannot relieve ourselves. What is to be done but to await the sources of assistance upon which we have come to depend? Do they not always come – the armed symbols of the polity's determination that no man shall be enslaved? They are the source of our hope, because they bear within their own breasts our determination to wrest from brute nature the control of human life – of life among friends.

But the preservation of that determination within the breasts of any given people is the supreme objective of civilization – of political life. We may seek to replace that gentle thought with others, but we do not know if others offer the same prospect of confidence. We do not know if, then, we should await our liberation in blind ignorance that there are no liberators. Someone might know of our plight at Washington. Someone might know at Sacramento. And someone surely will know here in Claremont. But among them all may be unconcerned. At a stroke our world view may be changed. We will then live or die under new modes and orders. That is the implicit meaning of Soviet dissident Vladimir Bukovsky's statement,

Perhaps it's difficult for you Americans to understand all this. Freedom here is simply like air – you breathe it and you take it for granted.

The parasympathetic nervous system, which permits us to breathe without reflection, has no parallel in the political realm. Our political opinions – our political morality must always be moved by voluntary nerves

We may conclude that the problem of the relationship between morality or politics and philosophy was revealed in the simultaneous agreement and disagreement in the epigrams to this essay: each discloses opposite philosophical reasons for doing the right thing.

ENDNOTES

¹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974). [Citations from the text will be indicated parenthetically in the body of this essay.]

² See David Schaefer's "Moral Theory Versus Political Philosophy: Two Approaches to Justice." A paper delivered at the Annual Meeting of the Southern Political Science Association, New Orleans, Nov. 1974, especially at p. 15. Also consider Michael Zuckert, "Justice Deserted or What is Really Wrong with Rawls," the first lecture in this series, delivered April 19, 1977. This essay contains an excellent bibliography of criticism of Rawls's *A Theory of Justice*.

³ See "A Faith for Modern Regimes," *National Review*, April 12, 1974, p. 440, a review of "Montesquieu's Philosophy of Liberalism" by Thomas Pangle.

⁴ Charles King, "Why the Entitlement Theory: A Defense of Nozick's Theory of Justice," a paper delivered at the Annual Meeting of the Midwest Political Science Association, April, 1976, p. 13. Emphasis added.

⁵ *Ibid.*, pp. 15 & 16.

⁶ Harry V. Jaffa, "The Case Against Political Theory," in *Equality and Liberty* (New York: Oxford University Press, 1965), p. 210.

⁷ Contrast this result with the results of the reasoning produced in *Federalist Papers*, #23.

⁸ In Nozick's system, all rights are alienable. Else, how could any meaningful account of justice be traced through a history of transactions?

⁹ Jaffa, *Op. Cit.*, p. 216.

¹⁰ Willmoore Kendall and George Carey, "The 'Intensity' Problem and Democratic Theory," *The American Political Science Review*, vol. LXII, no. 12, March, 1968, pp. 5-24.