

# interpretation

A JOURNAL OF POLITICAL PHILOSOPHY

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# interpretation

Volume 12 numbers 2 & 3

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Annual subscription rates individual \$13; institutional \$16; student (3-year limit) \$7. INTERPRETATION appears three times a year.

Address for correspondence INTERPRETATION, Queens College, Flushing, N.Y. 11367, U.S.A.

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# Libertarianism and Political Philosophy

## A Critique of Robert Nozick's *Anarchy, State, and Utopia*

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Robert Nozick's *Anarchy, State, and Utopia*, published in 1974, constitutes what is probably the philosophically most interesting treatise yet produced or inspired by the increasingly influential "libertarian" movement.<sup>1</sup> The significance of the book was highlighted by the fact that it appeared only three years after the publication by Nozick's Harvard colleague, John Rawls, of the widely acclaimed *A Theory of Justice*.<sup>2</sup> At the time, academic debate over the merits of Rawls's argument was at its peak. To many readers, Nozick's thoroughgoing critique and rejection of the reasoning employed by Rawls to justify a policy of redistributing "primary goods" among individuals for the sake of achieving a greater degree of equality has seemed to establish *Anarchy, State, and Utopia* along with *A Theory of Justice* as one of the two fundamental alternative sources of philosophic guidance for the contemporary liberal polity. A critical study of Nozick's book thus recommends itself in at least two respects: first, as an occasion to assess the goals and principles of the libertarian movement; and second, as a means of evaluating a characteristic present-day understanding of political philosophy (one held in common, I shall argue, by Rawls and Nozick).

I have undertaken the present study in the belief that the understanding of justice that Nozick sets forth is seriously defective, and that the root of its deficiencies is to be found in the conception of the philosophic enterprise that Nozick shares with Rawls.<sup>3</sup> While the immediate aim of this study is to uncover certain defects in the libertarian position as exemplified by Nozick's exposition of it, my more fundamental purpose is to suggest the inadequacy of contemporary academic political philosophy, as typified by Nozick's work, by contrast with the great tradition of substantive Western political philosophy from Plato to Nietzsche. Although a number of particular arguments that Nozick makes—including, especially, his critique of Rawls—are sound and insightful, his overall approach, I shall argue, suffers the defects of being at once excessively ab-

The present article is a revised version of a paper that was presented at the 1980 annual meeting of the Southern Political Science Association in Atlanta. The preparation of this study was supported by a grant from the Institute for Educational Affairs. The author also wishes to acknowledge the assistance he received in preparing this article for publication from the painstaking analysis that an anonymous referee for *Interpretation* provided of a previous draft.

1. (New York: Basic Books, 1974). All parenthetical page citations in the text refer to this book.
2. (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1971).
3. I have set forth a thematic critique of Rawls's enterprise and methodology in *Justice or Tyranny? A Critique of John Rawls's "A Theory of Justice"* (Port Washington, N.Y.: Kennikat Press, 1979).

stract and time-bound, and thus prevents him from articulating a theory of liberty that can serve as an adequate alternative to Rawls's admittedly deficient one. Since I believe that the underlying methodological defects of Nozick's approach inform Rawls's work as well, I shall intersperse in this critique a number of comparisons between *Anarchy, State, and Utopia* and *A Theory of Justice*.

## I

Nozick opens his book with an abrupt and sweeping statement of the moral test that any government must meet in order to be legitimate:

Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state? (p. ix).<sup>4</sup>

Nozick's starting-point reflects an assumption, which he states a few pages later, about the purpose of political philosophy: the "fundamental question" it must seek to answer, before engaging in any inquiry about "how the state should be organized," is "whether there should be any state at all," as opposed to "anarchy." "Since anarchist theory, if tenable," would undercut "the whole subject of *political philosophy*" (p. 4; emphasis in original), it is necessary to refute the anarchist position before there can be any point to engaging in political philosophy at all. Hence "it is appropriate to begin political philosophy with an examination of its major theoretical alternative," anarchism (p. 4).<sup>5</sup>

Nozick's initial attribution of rights to individuals, as well as his proposition that the study of politics should begin with the consideration of anarchy, appears

4. Compare Rawls's equally sweeping and uncompromising beginning: "Justice is the first virtue of social institutions . . . [L]aws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (*A Theory of Justice*, p. 3).

5. It should be noted that Nozick's reasoning does not go nearly so far to justify his starting-point as he appears to believe. Even if it could be demonstrated that the anarchist position is in some sense ultimately correct, this would not make political philosophy a practically irrelevant enterprise, unless one had good reason to expect the *imminent* replacement of all polities by a superior anarchic alternative. So long as we expect men to continue to live under governments, there would be good reason for continuing to investigate how those governments might be improved, or at least prevented from getting worse. It should also be noted how Nozick's conception of political philosophy departs from the original (and literal) understanding of that enterprise as a (never-ending) *pursuit* of wisdom—that is, as a perpetual quest for the illumination of issues that by their very nature can never be settled beyond doubt. From that older perspective, not even a seeming proof of the superiority of one form of government (or of nongovernment) would deprive the continued study of political philosophy of its intrinsic *theoretical* value. Despite the admittedly "abstract and metatheoretical" character of parts of his reasoning (p. 3), Nozick, by contrast, appears to view political philosophy as a species of practical problem-solving, the success of which in attaining its goal would "undercut" the very need for its continued pursuit. (Cf. Ludwig Wittgenstein, *Philosophical Investigations* [New York: Macmillan, 1953], secs. 133, 255).

to place him within the modern, social contract tradition of liberal political philosophy that was initiated by Thomas Hobbes. Nozick expressly rejects such “awful descriptions” of the prepolitical state of nature as Hobbes provided, however, on the ground that they “rarely convince,” since “[t]he subjects of psychology and sociology are far too feeble to support generalizing so pessimistically across all societies and persons. . . .” Moreover, the argument inferring the need for government from such fearsome accounts of the alternative is inconsistent, “since the argument depends upon *not* making *such* pessimistic assumptions about how the *state* operates” (p. 4; emphasis in original). It would be more useful and persuasive, Nozick contends, “to focus upon a nonstate situation in which people generally satisfy moral constraints and generally act as they ought.” Only “if one could show that the state would be superior even to this most favored situation of anarchy, the best that realistically can be hoped for, or would arise [from it] by a process involving no morally impermissible steps” could one truly claim to “justify the state” (p. 5).

The foregoing argument constitutes Nozick’s rationale for the lengthy, and quite novel, account of the state of nature, and the genesis of a state out of it, to which he devotes most of Part I of his book. This account will help one to determine whether governments are truly necessary, and if so, “whether all the actions persons must do to set up and operate a state are themselves morally permissible.” Nozick’s “starting point then, though nonpolitical, is by intention far from nonmoral,” since he believes that “[m]oral philosophy sets the background for, and boundaries of, political philosophy”: the state’s coercive power is legitimate only insofar as it conforms to “moral prohibitions [that] it is permissible to enforce” (p. 6). But this inquiry into the state of nature has a purely theoretical point as well. Only if one can derive “the political realm” from nonpolitical phenomena, Nozick believes, can one claim to possess “a *fundamental* explanation of it” (p. 6; emphasis in original).

By identifying a fundamental explanation of the political as one that derives from the nonpolitical, Nozick confirms his acceptance of the modern, liberal doctrine that views politics as essentially artificial and derivative—in contrast to the Aristotelian understanding of it as natural and irreducible. Although Nozick does not indicate his reason for assuming the validity of this perspective, he does describe the particular notion of explanation he will employ: it derives from the writings of such contemporary scholars as Carl Hempel on the philosophy of science. Nozick cites Hempel’s concept of “potential explanation” as a precedent for the particular approach he will adopt in describing the genesis of politics. According to this view, “[a] theory of a state of nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons why some persons in any society would violate these moral constraints,” may thereby offer an adequate “explanation” of the origins of the state, “*even if no actual state ever arose that way*” (p. 7; emphasis in original).

The rationale for employing the concept of potential explanation in physical

science is manifest, in that the physical scientist often, if not always, has no choice but to do so. Observing only a certain measurable pattern of behavior in the phenomena he studies, without yet knowing what causes that pattern, he is compelled to formulate and make use of hypothetical explanations, the validity of which is then tested by their capacity to predict the future behavior of the phenomena. But it is not at all obvious why one should adopt such an approach in dealing with human and political things. Here, after all, the causes of behavior, or at least some of them, are *not* totally hidden from us: as a human being, the political scientist inevitably shares in the motives that impel the political conduct of men in general.<sup>6</sup> Moreover, historical records that serve to explain major political events, including the founding of political societies (albeit, of course, not the first ones), are readily available to us. Why, then, should a student of political philosophy prefer to settle for a “potential” explanation of the origin of the state, rather than the one that was actually operative?<sup>7</sup>

Nozick’s justification for this procedure, it would appear, is contained in his previously quoted remarks concerning the proper relation between moral and political philosophy. If, as he contends, moral philosophy, understood (contrary to Aristotle’s view of it) in contradistinction to political philosophy, is to set the boundaries of the latter discipline,<sup>8</sup> then historical inquiries into how governments actually arose, or conjectures drawn from the observation of men’s motives and behavior into the likely character of a state of nature, are of merely secondary importance, or even beside the point. The problem is that such inquiries or conjectures, no matter how well grounded (or precisely because they are grounded) in fact, cannot be relied on to provide a sufficiently “moral” account of the foundations of government.<sup>9</sup> In other words, the motives that commonly im-

6. Cf. Hobbes, *Leviathan*, ed. C. B. Macpherson (Baltimore: Penguin Books, 1968), “The Introduction,” pp. 2–3.

7. Both Sheldon Wolin and Milton Himmelfarb, in reviewing *Anarchy, State, and Utopia*, noted the absence of substantive historical or political reference in it: Wolin, book review, *New York Times Book Review*, May 11, 1975, p. 32; Himmelfarb, “Liberals and Libertarians,” *Commentary*, vol. 59, no. 6 (June, 1975), pp. 67–8.

8. Contrast Aristotle’s description of ethics as a “kind of” political science, and his view that the virtues to be inculcated in citizens as children must be determined with reference to the particular sort of regime in which they live. *Nicomachean Ethics*, 1094<sup>b</sup>10–11; *Politics*, 1260<sup>b</sup>12–17, 1337<sup>a</sup>12–16.

9. Compare Rawls’s dichotomy between “social theory,” which attempts to explain human behavior by starting with “assumptions about the actual tendencies at work,” and “moral theory,” which aims to select principles that “are acceptable from a moral point of view”: *A Theory of Justice*, p. 120. What might be thought to constitute the original precedent for the approach adopted by Nozick and Rawls is Locke’s remark, in his discussion of the origins of political society, that “an Argument from what has been, to what should of right be, has no great force” (*Second Treatise*, Chap. VIII, sec. 103, ll. 14–15). (All references to the *Second Treatise* are based on Peter Laslett’s edition of the *Two Treatises* [Revised edition, New York: New American Library, 1965]). To be sure, Locke plays fast and loose with “historical” evidence in ostensible support of his doctrine (see Richard H. Cox, *Locke on War and Peace* [Oxford: Clarendon Press, 1960], Chap. 2). The considerable difference between Locke’s approach and that of Rawls and Nozick—the fact that Locke endeavors to derive the principles of political right from man’s nature, rather than from supposed “moral” institutions—will, however, be emphasized later in this essay.

pel men's political conduct, and that are likely therefore to have moved them in a prepolitical condition, may be far different, and produce far different results, from those that moral philosophy (as Nozick understands it) would recommend and even demand.

All of this points to a complex of problems meriting serious investigation: (1) What is in fact the proper relation between political philosophy and moral philosophy? (2) To what extent are the research methods and assumptions of natural science adequate for the analysis of the human or political realm? (3) How far may a legitimate moral code safely diverge from the common manner of human conduct?

Nozick does not explicitly address any of these problems. Had he considered them more thoroughly than he appears to have done, his investigation into the state of nature might have taken a different turn. As things stand, I shall argue, a serious doubt must arise regarding the adequacy of his account of that condition, and consequently about the soundness of the political principles he derives from it.

## II

As we have seen, Nozick rejects such "awful" descriptions of the state of nature as Hobbes's on the ground that they are inherently implausible and are insufficiently supported by the findings of social science. He does not himself attempt, however, to construct a more likely account of the prepolitical condition on the basis of an independent inquiry into human nature. Rather, he chooses to follow "the respectable tradition of Locke," whose account of the state of nature evidently is more acceptable than Hobbes's inasmuch as it makes that condition appear less violent and terrible than Hobbes's did.<sup>10</sup> Using Locke's account of the state of nature as his point of departure, Nozick disclaims at the outset any ambition of providing a "completely accurate statement of the moral background" of the argument that is to follow, a task that he fears might require a lifetime for its execution. He is to some extent comforted, however, by knowing that Locke himself "does not provide anything resembling a satisfactory explanation of the status and basis of the law of nature in his *Second Treatise*" (p. 9).

A considerable body of Locke scholarship confirms Nozick's judgment concerning the inadequacy of the explanation and grounding of the law of nature in the *Second Treatise*. In recent decades, however, a number of scholars, beginning with Leo Strauss, have suggested that this inadequacy is the product of an intention rather than a failing on Locke's part, and reflects the heavily rhetorical character of his overall initial account of the state of nature.<sup>11</sup> Several of these

10. Nozick's preference echoes that of Rawls: see *A Theory of Justice*, p. 11; Schaefer, *Justice or Tyranny?*, pp. 39–40.

11. See Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), Chap. V, Part B, pp. 202–51; *idem*, "Locke's Doctrine of Natural Law," in *What Is Political Philos-*

scholars, including Strauss himself, have persuasively argued that the difference between Locke's state of nature and Hobbes's is far more apparent than real: if one pursues the logic of Locke's argument with care and juxtaposes his sometimes contradictory statements with one another, one discovers that Locke was really expressing the same fundamental view of human nature that Hobbes did, albeit in a more prudent fashion.<sup>12</sup> In short, there is reason to doubt that the sanitized, de-Hobbesified version of Locke's state-of-nature teaching that Nozick chooses as his starting point is at all faithful to Locke's own thought. At most, it may represent Locke's popular doctrine, as distinguished from his truly philosophic argument.

What is at stake here is more than a mere matter of textual interpretation. In taking at face value Locke's initial, surface account of the state of nature, including the notion of an "understood natural law" that restrains men's actions in that state (p. 11), Nozick—despite noting the inadequacy of Locke's doctrine—presupposes that the surface teaching of the *Second Treatise* constitutes an adequate starting point for understanding the foundations of politics. But if, as Locke himself understood the matter, the "law of nature" has no capacity by itself to restrain men's self-interested actions; if the content of that "law," properly analyzed, proves to command nothing more than the dictates of selfish inclination itself; and if the net effects of men's operating according to it, without "a common superior" to ameliorate or control its consequences, are indistinguishable from Hobbes's state of nature, then Nozick himself, by adopting a "moral" interpretation of the Lockean law of nature, is basing his theory on a very weak reed (and read).<sup>13</sup> What is at issue is not merely the empirical correctness of Nozick's account of the state of nature—a property that, as we have seen, he

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ophy? (New York: Free Press, 1959), pp. 197–220; Robert Goldwin, "John Locke," in Leo Strauss and Joseph Cropsey (eds.), *History of Political Philosophy* (second edition, Chicago: Rand McNally, 1972), pp. 452–60; Cox, *op. cit.*; Michael Zuckert, "The Recent Literature on Locke's Political Philosophy," *The Political Science Reviewer*, vol. 5 (1975), pp. 271–304; *idem*, "An Introduction to Locke's First Treatise," *Interpretation*, vol. 8, no. 1 (January, 1979), pp. 58–74. In the second chapter of the *Second Treatise*, Locke describes it as being "besides my present purpose, to enter here into the particulars of the Law of Nature, or its measures of punishment" (sec. 12, ll. 10–12 [emph. in original]); one of his editors comments that it appears to have been "always 'beside his present purpose' for Locke to demonstrate the existence and content of natural law," in any of his works (Laslett, "Introduction" to the *Two Treatises*, p. 95.)

12. The central section of the *Second Treatise*, no. 123, constitutes the most dramatic and obvious evidence for this point. See also, in addition to the references in the preceding note, Jason Aronson, "Critical Note: Shaftesbury on Locke," *American Political Science Review*, vol. 53, no. 4 (December, 1959), pp. 1101–4, which discusses the view of an intimate of Locke's that that thinker was in fact a Hobbesist. Cf. also, on the relation between the state of nature and the state of war in Locke's teaching, Nathan Tarcov, "Locke's *Second Treatise* and 'The Best Fence Against Rebellion,'" *Review of Politics*, vol. 43, no. 2 (April, 1981), pp. 203–4.

13. Cf. Locke's argument in *An Essay Concerning Human Understanding*, I, ii, against the belief that there are "innate" moral principles implanted in human nature; and his remark, in sec. 9 of that chapter, that "Robberies, murders, rapes, are the sports of men set at liberty from punishment and censure."

avoids claiming for it—but whether it is *meaningful*, or *logically coherent*, to speak of a *morally* operative law of nature existing in a prepolitical condition.

Having outlined what I believe are the fundamental difficulties involved in Nozick's claim to base his account of the state of nature on Locke, I must postpone a further development of this point in order to survey the details of Nozick's own portrayal of the prepolitical condition, and of his derivation of government from that condition. Following Locke, Nozick presupposes that all men, being by nature free, possess an inherent right to direct their lives and use their property as they individually see fit; are bound, by the law of nature, to respect the equivalent right possessed by all other individuals, and thus are prohibited from violating any other person's life, liberty, or property; and are endowed, by that same law, with a right to enforce the prohibition by punishing its violators to a degree proportionate to their crime. But whereas Locke, having noted the "inconveniences" of this situation—the facts that, in Nozick's words, "the understood natural law may not provide for every contingency in a proper fashion," and that men who are judges in their own case cannot be relied on to enforce the law of nature in an equitable manner—directly inferred the necessity to institute a government in order to remedy these inconveniences, Nozick stresses the need, before making such a jump, to "consider what arrangements might be made within a state of nature to deal with these inconveniences." Only after evaluating the voluntary arrangements individuals might make *within* a prepolitical condition to ameliorate its defects can we judge how far a government having coercive authority is truly needed, or whether (as a lengthy quotation from Proudhon suggests), "the remedy is worse than the disease" (pp. 10–11).

The alternative remedy which Nozick considers in great detail is a system of voluntarily-organized "mutual-protection associations" that serve to render more secure the rights of the individuals joining them. Operating much like the early American fire protection societies, these organizations are, however, more economically sophisticated, offering "[d]ifferent sorts of protective policies . . . at different prices, for those who may desire more extensive or elaborate protection" (pp. 12–13). Although at the outset each territory would have a multitude of such associations, such factors as "division of labor, market pressures, economies of scale, and rational self-interest" would tend in the long run to produce a situation in which one "dominant protective agency" came to possess "a virtual monopoly" in each geographic "market" (pp. 16–17). Each agency will protect its members against violations of their rights by nonmembers, but will institute an orderly procedure for determining "who is in the right" in such quarrels, in order "to avoid constant and costly involvement" in quarrels which a member has unjustly instigated. Similarly, it will arbitrate disputes among its members so as to provide a peaceful and just settlement (p. 13). At the same time, an agency may be deterred from becoming "openly aggressive" itself by the fact that it would thereby deprive itself of voluntary cooperation from people who "would view themselves simply as its victims rather than as its citizens" (p. 17).

In assuming the functions both of protecting its clients against external aggression and of arbitrating their internal disputes, the dominant protective agency comes to resemble a “minimal” state. Two features seem at first, however, to distinguish it from a state: (1) it does not claim “a monopoly on deciding who may use force when,” but must allow individuals “who refuse to join any protective society” to judge for themselves whether their rights have been violated, and to enforce their rights “by punishing and/or exacting compensation from those who infringed them,” even if the violators are clients of the protective agency; and (2) it provides protection only to those who have paid for it, and allows “differing degrees of protection” to be purchased, without obliging anyone “to purchase or contribute to the purchasing of protection for others” (pp. 23–4). To legitimate the existence of the state against the anarchist’s objection to it, one must show how a government possessing the two key powers that the dominant protective agency appears to lack would arise through a series of “morally permissible” steps “that violates no one’s rights” (pp. 51–2).

Nozick’s method of providing a moral derivation of the state from a dominant protective agency is as follows. First, he argues that since an agency that is dominant in its area will necessarily acquire, by virtue of its dominance, “a *de facto* monopoly” over the exercise of force against its clients—allowing outsiders (“independents”) to punish its clients only on occasions, for reasons, and by methods that it deems appropriate—the distinction between it and a “state” in this regard is inevitably blurred, or practically eliminated. Second, however, he contends that because its monopoly imposes a disadvantage on outsiders, whose natural right to execute the laws of nature against its clients has effectively been rendered nugatory, the dominant agency is morally obliged to compensate the outsiders for this disadvantage. “The least expensive way” for it to provide such compensation to independents is “to *supply* them with protective services to cover situations of conflict” with its clients, without claiming the right to charge them for this service (pp. 108–10; emphasis in original). The agency has little reason to fear that the availability of protective services on an unpaid basis will stimulate an excessive number of people to become “free riders,” since compensatory protection is provided *only* against injuries committed by the agency’s clients, not by other outsiders; and the protection is equivalent only to that which an “unfancy policy” would provide. At the same time, the anarchist’s objection to the redistributive character of the state—taxpayers being obliged to provide protection to those who refuse to pay for it—is quelled, since Nozick has demonstrated how, starting from the anarchist’s own premises, the dominant agency would be morally compelled to provide such protection (pp. 111–13).

Nozick himself admits the “somewhat fuzzy” character of the principle of compensation on which his argument rests, noting that its “details have not been worked out fully” (p. 87). A more obvious difficulty is that it is simply not clear why, given Nozick’s assumption (at least for the purpose of describing the derivation of the state) “that generally people will do what they are morally required

to do" (p. 119), and his refusal to question the anarchist's premise that there is a set of moral principles, knowable "by all men of good will," which is clear enough to settle all disputes (p. 141), the dominant protective agency cannot be trusted to allow "independents" to exact *their own* punishments against agency clients who have unjustly injured them, so long as the independents use "reliable and fair" procedures (p. 108)—thus releasing itself from the obligation to compensate them for denying them the right to punish. Only on the supposition that the dominant agency would exercise its *de facto* monopoly to the disadvantage of outsiders would compensation clearly be required; but this premise contradicts the benign assumptions about the operation of the law of nature that Nozick has presupposed.<sup>14</sup>

Even aside from this difficulty, it is questionable to what extent the institution that Nozick has professed to legitimate properly deserves the label of a state. As he concedes, this organization is still obliged to grant anyone who wishes it the right to opt out of paying taxes to it, while it continues to provide him with a minimal level of protection. Moreover, the organization expressly refrains from intervening in disputes among independents occurring within (as well as outside) its territory (except, presumably, so far as is necessary to protect innocent bystanders who are its clients). The fact adduced by Nozick that within existing bodies recognized as states some groups, like the Mafia, may exercise violence without the government's authorization, and that others, revolutionaries or pacifists, may refuse to recognize the legitimacy of the state's monopoly of force (p. 23), does not refute the proposition that the *claim* to such a monopoly, and the effort to actualize it as fully as possible, are essential to the state's existence. Yet Nozick's protective-agency state is expressly prohibited from claiming or enforcing such a monopoly in the cases cited involving independents. He can hardly be said to have resolved this difficulty by proposing "occasionally [to] refer to the dominant protective agency as 'a statelike agency' instead of simply as 'a state'" (p. 118).

### III

Regardless of the difficulties involved in Nozick's purported derivation of the state, it is understandable that—given the realities of human life, which are recognized by everyone except the stray anarchist—most of the discussion of *Anarchy, State, and Utopia* has centered on Nozick's teaching regarding the *limits* of

14. For an anarchist critique of Nozick's derivation of the state, on a different but partly related ground, see Robert L. Holmes, "Nozick on Anarchism," *Political Theory*, vol. 5, no. 2 (May, 1977), pp. 247–56, especially 250. Nozick's inability to provide a convincing derivation of the state, owing to his benign assumptions about life in a prepolitical condition, recalls Rawls's similar failure to demonstrate the need for men to establish government, given his sanguine view of human nature (see Schaefer, *Justice or Tyranny?*, pp. 40–41).

the legitimate state's authority, in Part II of the book. Yet, as I shall emphasize, the deficiencies of the latter are ultimately traceable to the unrealism of the former.

Nozick's treatment of the issues involved in determining the state's authority reveals that his perspective, even more than Rawls's, is limited by the horizons of present-day political debate. For both Rawls and Nozick, the fundamental issue of justice involves striking a proper balance between the contemporary liberal goals of individual liberty, on the one hand, and equality (especially in the economic realm), on the other. But *A Theory of Justice* does at least contain a discussion of the views of Aristotle and Nietzsche (albeit a brief and unsympathetic discussion, which treats both thinkers as adherents of a doctrine labeled "perfectionism"), and deals with (if only to dismiss dogmatically) religious claims that oppose the liberal view.<sup>15</sup> By contrast, in *Anarchy, State, and Utopia*, Nozick simply disregards the possibility that the true purpose of politics is neither liberty nor equality, but consists rather in virtue, salvation, or national glory. (He does consider the place of such goals in the *nonpolitical* realm in his concluding chapter, which will be discussed subsequently).

Nozick begins Part II with a concise and direct answer to the question he had posed in the Preface of "[h]ow much room . . . individual rights leave for the state." Having previously defined the minimal state as "the night-watchman state of classical liberal theory, limited to the functions of protecting all its citizens against violence, theft, and fraud, and to the enforcement of contracts, and so on" (p. 26), he now asserts that this minimal state "is the most extensive state that can be justified. Any state more extensive violates people's rights."<sup>16</sup> Recognizing that "many persons have put forth reasons purporting to justify a more extensive state," but finding it "impossible within the compass of this book to examine all [these] reasons," Nozick proposes to demonstrate the failings of "those generally acknowledged to be most weighty and influential" (p. 149).<sup>17</sup>

15. *A Theory of Justice*, pp. 205–9, 325–32; cf. Schaefer, *Justice or Tyranny?*, pp. 37–8, 48–51, 89.

16. We observe, in passing, that Nozick's "and so on," as well as his generalized reference to "classical liberal theory," may raise greater difficulties than the author acknowledges; but both phrases are in harmony with Nozick's overall approach, which aims to focus attention on the issues that the author finds most interesting or significant, without getting caught up in what he sees as tangential problems. (See his exposition of "the entitlement theory" of justice, discussed in Section III, *infra*.) In compensation for such omissions, Nozick does raise a number of questions that perhaps have not received their due consideration from within the tradition of political philosophy: for instance, the problem of whether it is morally permissible for "[i]nnocent persons strapped onto the front of the tanks of aggressors so that the tanks cannot be hit without also hitting them" to "fight back in self-defense" against those who are counterattacking the tanks and thereby risking injury to the tanks' "innocent shields" (p. 35).

17. Compare Rawls's reliance on the "admittedly . . . unsatisfactory," "rough and ready" method of validating his proposed principles of justice by weighing them against "a short list of traditional conceptions of justice, . . . together with a few other possibilities suggested" by the principles (*A Theory of Justice*, pp. 122–3)

The keystone of Nozick's endeavor to set limits to the state's authority is what he calls the entitlement theory of justice. According to this theory, a person is entitled to a "holding" or possession if, and only if, he acquired that holding in accordance with the principles of "justice in acquisition" or of "justice in transfer," or through some combination thereof. In addition, if a person's present holdings derive directly or indirectly from the commission of past acts of injustice, a "principle of rectification of injustice" comes into play to remedy the wrong (pp. 151-4).

One of the most remarkable features of *Anarchy, State, and Utopia* is that Nozick, by his own admission (p. 153), makes practically no effort to spell out the "details" or, consequently, the precise meaning of his three principles, except for provisionally adopting certain elements of what he believes to be "Locke's . . . theory of appropriation" (p. 178). His strategy, instead, is largely negative. He distinguishes between his "historical" account of justice, with its exclusive emphasis on the *process* by which a holding was acquired, and what he calls "end-result," "end-state," or "current time-slice principle[s]," which "judg[e] the justice of a distribution" purely by "who ends up with what" (pp. 154-5). The entitlement theory is also distinguished from another subclass of historical principles, called "patterned," which judge a distribution to be just only insofar as it rewards some particular personal attributes, such as moral merit or social utility (pp. 155-6). Nozick's theory, by contrast, is unpatterned, in that "[t]here is no one natural dimension" or sum of such dimensions that yields the distribution it sanctions. This theory is indifferent, in other words, to whether a person acquired his holdings from work, gambling, gifts, a return on investment, or reliance on his spouse (p. 157): except for acquisitions that interfere with other people's possession and enjoyment of their legitimately acquired holdings (most obviously, theft), all modes of acquisition are equally legitimate.

Nozick's defense of such an unpatterned distribution bears some similarity, as he notes, to that of the economist Friedrich Hayek, who holds that any attempt to impose a particular pattern of distribution on society is an unjust interference with individual freedom. Nozick criticizes even Hayek, however, for defending the free society by arguing that in such a society "there will be distribution . . . in accordance with the perceived value of a person's actions and services to others," as determined by the market. The problem with Hayek's argument, according to Nozick, is that it "leav[es] room for the complaint that a free society does not realize exactly this pattern" (because some acquisitions in such a society arise from "inheritance, gifts for arbitrary reasons, charity, and so on"; and more generally because the argument fails to justify the initial pattern of holdings with which a society began [p. 158]). For Nozick, nothing can, or should, be said in positive justification of the workings of a system of almost unlimited economic freedom, except that it is the only economic system compatible with (what he understands to be) the individual's fundamental rights. Yet it must be emphasized

that Nozick makes practically no attempt to explain why the rights specified by the entitlement theory should be acknowledged *as* rights.<sup>18</sup>

Rather than endeavoring to elaborate the ground on which his theory rests, Nozick immediately turns to the attack, challenging “those holding alternative conceptions of distributive justice” to discover a rationale for rejecting the entitlement theory (p. 160). The core of his argument against all patterned principles is contained in a section entitled “How Liberty Upsets Patterns.” In that section he uses the example of the former basketball star Wilt Chamberlain to illustrate the impossibility of maintaining any given pattern of distribution while properly respecting human freedom. Let it be assumed at the outset that some distribution of holdings has been established that strictly conforms to a favored pattern of some kind. If people whose holdings have been determined by that pattern should expend some portion of their holdings by paying to see Chamberlain play, the inevitable result is that Chamberlain will become wealthier, both absolutely and relatively to others, than he was before, thus upsetting the initial distribution. The only way to prevent such an outcome would be to prevent holders of property from spending their money as they wish, or else to confiscate and redistribute the result of such transfers as soon as they are made. In sum, “no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people’s lives”—a level of interference that presumably none but the most fanatical advocates of “distributive justice” would seriously advocate (pp. 161–3). Among the consequences of the commitment to maintaining a fixed distribution at all costs is that people would be allowed to expend their properties only on themselves, not on others (since all transfers interfere with the pattern); and that the maintenance of the family would be endangered, since the acts of redistribution that take place within it (parental gifts, inheritances) must be forbidden (p. 167).

The moderate advocate of distributive justice may reasonably reply that he never demanded that the pattern of economic holdings be absolutely fixed to one precise level, but merely that a government set some general limits to the *degree*

18. Michael Zuckert has pointed out that the central notion of the entitlement theory derives its plausibility from its similarity to the ordinary legal treatment of property rights: in applying the law, a judge does not ordinarily investigate whether the possessor of a holding “deserves” it, in the sense that his possession of it is more conducive to the common good than the transfer of the holding to someone else would be; the law is concerned only with whether property was acquired in a proper (legal) way from its previous owner (“Distributive Justice and Rights: Nozick’s Case for the Market” [unpublished paper, Carleton College], pp. 9–10; cf. H. L. A. Hart, “Between Utility and Rights,” *Columbia Law Review*, vol. 79, no. 5 [June, 1979], p. 834). But since Nozick denies the legitimacy of many of the conditions that are ordinarily attached to the acquisition and transfer of property (such as redistributive taxation), he can hardly rely on conventional practice to support his theory. Nozick seems, indeed, to presuppose some variant of the “labor” theory of acquisition to which Locke appears to adhere in Chapter 5 of the *Second Treatise*; but his own analysis of that theory emphasizes its incompleteness (174–8).

of inequality that can arise among the citizenry.<sup>19</sup> Surely the setting of such limits would not in itself require anything like the extreme consequences that Nozick describes. Yet in the context of much of contemporary political thought, particularly that which is carried on in academic environments, Nozick's emphasis on the tension between liberty and equality, and his reminder of the practical difficulty of actualizing any particular, abstract pattern of distributive justice, is not without value.<sup>20</sup> Unfortunately, Nozick himself deprives his warning of much of its utility by proceeding to infer from it a set of implications so extreme, in the opposite direction, as to make the case for freedom appear either laughable or outrageous. Among these inferences are the following:

(1) "Taxation of earnings from labor is on a par with forced labor" (p. 169). (Hence to impose such taxation for any "redistributive" purpose—or indeed, it appears, for any purpose other than the protection of those individuals who have voluntarily agreed to pay for it [along with the protection of those "free riders" who are entitled to it by the previous argument]—is illegitimate [pp. 168–73]).

(2) If one person among a group inhabiting a desert takes "special precautions" to prevent his water hole from drying up when all the other water holes do, he has no moral obligation to make water which he himself does not need available to others in order to save their lives, except on such terms, and at whatever price, he chooses to demand (pp. 180, 180n).

(3) More generally, it is an open question whether even the avoidance of "catastrophic moral horror" could justify any abridgment of an individual's rights as Nozick has defined them (p. 30n.).

(4) Acceptance of the entitlement theory ought to prevent anyone from feeling resentment at occupying a subordinate position to someone else, since the theory reassures him by stressing that there is no essential connection between the attainment of superior position and the possession of superior qualities (or the performance of worthwhile deeds), and hence there is no reason for the subordinate individual to esteem himself less for being in that situation (pp. 246–7).

19. See, e.g., Alan H. Goldman, "The Entitlement Theory of Distributive Justice," *Journal of Philosophy*, vol. 73, no. 21 (December 2, 1976), pp. 834–5.

20. Consider, for example, Hal R. Varian's proposal, in the name of "fairness," for the total confiscation of every individual's property by the state upon his death; and R. A. Musgrave's recommendation of a "lump sum tax" on people's "natural assets," in order to compel "recluses, saints, and (nonconsulting) scholars who earn but little to allocate more of their time to income earning activities in order to contribute more to redistribution," an idea that Varian also takes far too seriously. (Varian, "Distributive Justice, Welfare Economics, and the Theory of Fairness," *Philosophy and Public Affairs*, vol. 4, no. 3 [Spring, 1975], pp. 223–47; Musgrave, "Maximin, Uncertainty, and the Leisure Trade-Off," *Quarterly Journal of Economics*, vol. 88, no. 4 [November, 1974], p. 632.) Nozick's observation of the hostility towards the family, as well as towards liberty, that is implicit in radical egalitarian thought (p. 167), is well taken, as these examples demonstrate. For a more thorough exploration and critique of the moral implications and effects of redistributive policies, however, see Bertrand de Jouvenel, *The Ethics of Redistribution* (Cambridge, England: Cambridge University Press, 1951).

(5) A truly free society will protect an individual's right "to sell himself into slavery" (p. 331).

A cavalcade of critics of *Anarchy, State, and Utopia* has jumped on these points, and rightly so. Income taxation cannot be equated with forced labor, it is pointed out, since the former allows the individual a choice regarding both whether to work and at what trade to work.<sup>21</sup> Being aware that one's superior has done nothing to merit his position will not make subordination to him easier to bear; quite the contrary.<sup>22</sup> And Nozick's defense of the individual's "moral" right to ignore his fellows' suffering is a travesty of the Kantian principle of regarding men only as ends, to which Nozick pays lip service.<sup>23</sup> Such a doctrine is indeed—as Nozick remarks of his redistributionist opponents, in another context (and with almost as much reason)—"individualism with a vengeance" (p. 167).

How can one explain Nozick's advocacy of such seemingly farfetched consequences? There is nothing in *Anarchy, State, and Utopia* to suggest that its author is himself a man indifferent to the sufferings of others (indeed, he goes out of his way to endorse vegetarianism on moral grounds [p. 38]). Nozick himself recognizes that the views he has adopted will be widely viewed as "apparently callous," and fears that they will put him "in some bad company" (pp. ix–x). He justifies these views, however, as the necessary consequence of a theory that takes the primacy of individual freedom seriously. But is it really supportive of the cause of freedom to demonstrate that it entails consequences that are repellent to the moral sensibilities of the vast majority of human beings?

A survey of the leading critical responses to *Anarchy, State, and Utopia* from scholars more favorably disposed than Nozick to the redistributive state would reveal that few, if any, among them have been moved by his argument towards a greater appreciation of the virtues of the "libertarian" position—despite the telling criticisms that Nozick sets forth of the justification for redistribution as espoused by Rawls. More significantly, however, *Nozick himself* undermines, through his principle of rectification, the support that his first two principles seemed to give to individual freedom. As he acknowledges, those two principles serve to legitimate existing holdings *only* on the (wholly implausible) supposition that the history from which such holdings derive did not in itself involve significant violations of the principles. In the absence of such a legitimate derivation for existing holdings, the *first* requisite of justice on Nozick's account is to organize society so as to rectify the effects of the previous injustices. Such injustices might well be so great, Nozick acknowledges, as to require "in the short run" the establishment of "a more extensive state in order to rectify them." An

21. Goldman, "The Entitlement Theory," p. 829. But Goldman surely goes too far in contending that "the abridgment of freedom involved in redistributive taxation is no more a violation of rights than is that involved in the prohibition against stealing" (p. 834).

22. Virginia Held. "John Locke on Robert Nozick." *Social Research*, vol. 43, no. 1 (Spring, 1976), pp. 192–3.

23. *Ibid.*, p. 179; Nozick, p. 32.

appropriate policy for such a state to follow, he suggests, might be “to maximize the position” of the “least well-off” group in the society. on the supposition that they “have the highest probabilities of being the (descendants of) victims of the most serious injustice who are owed compensation by those who benefited from the injustices” (231). Thus the “libertarian” Nozick ends up justifying precisely those policies sanctioned by Rawls’s “difference principle,” the redistributive import of which he purports to have been opposing!<sup>24</sup>

One critic of Nozick’s argument has quite plausibly taken him to task for supposing that the needed rectification could be accomplished adequately “in the short run,” in view, for instance, of the enormous injustices perpetrated against Blacks and Indians in the course of American history.<sup>25</sup> A “conservative” defender of property rights, recognizing the same difficulty, concluded that the rectification principle constituted the sole flaw in Nozick’s theory, and recommended that it should simply be eliminated.<sup>26</sup> But this recommendation is misguided, inasmuch as it overlooks the *inseparability* of the rectification principle from Nozick’s entire entitlement doctrine. That doctrine establishes the history of a set of holdings as the *sole* criterion of its justness. If the history is unjust, none of its fruits can be just. The conservative amendment of Nozick’s doctrine is groundless: if one asserts that the history of a holding constitutes the sole and sufficient basis of its justness, no part of that history may legitimately be ignored.

Of course, it is quite impossible to acquire the information necessary to establish the “historical” legitimacy, or lack thereof, of any present holding. From what we know of the history of political societies, however, it is most unlikely that *any* existing holding derives from a wholly unblemished origin. Under these circumstances, it turns out that Nozick’s theory provides *no* support for individ-

24. See Rawls, *A Theory of Justice*, pp. 75–80, 302; on Rawls’s own Indian-giving (in the opposite direction), Schaefer, *Justice or Tyranny?*, pp. 56–7. The compounding of past injustices to which Nozick’s proposed application of the rectification principle is likely to lead is indicated by his own admission that the group that is presently “worst off,” and hence is owed compensation under the principle, may include past “perpetrators” of “the most serious injustice,” or their descendants. One imagines that Nozick would not have had to look far in order to notice that the ethnic group which has suffered “the most serious injustice” in the twentieth century, if not in all of human history, ranks statistically among the “better off,” and hence, according to his proposed formula for applying the rectification principle, now owes “compensation” to others. One would also have expected Nozick, of all people, to have appreciated the fact that in a liberal-capitalist regime like that of the United States (where his book is most widely read and hence most likely to have influence), the connection between a person’s own achievements and the treatment his ancestors received is likely to be most tenuous. (See *Anarchy, State, and Utopia*, p. 216; George Gilder, *Wealth and Poverty* [New York: Basic Books, 1981], pp. 55–9.) While such a connection may still limit the prospects of members of some groups (largely to the extent that those groups have *not* imbibed, or were obstructed from imbibing, the “middle class” or work-oriented spirit of the regime), it would hardly seem reliable enough to serve as the kind of guide to “rectifying” past injustices that Nozick proposes. Is the proposal intended simply to distance its author from “bad company” (p. x)?

25. David E. Lyons, “Rights Against Humanity,” *Philosophical Review*, vol. 85, no. 2 (April, 1976), p. 214.

26. Arthur Shenfield, “An Heir to Adam Smith,” *Intercollegiate Review*, vol. 11, no. 2 (Winter–Spring, 1976), pp. 116–17.

ual property rights, and it is as plausible to infer from it, as one scholar argues, the need for “a strictly egalitarian distribution of entitlements,” as to claim that it justifies any particular pattern of inequality.<sup>27</sup>

The proper conclusion to be drawn from the foregoing facts is not, I think, that the right of individuals to earn differential rewards from their labor, to spend their income in accordance with their personal wishes, and to pass their wealth on to their heirs, should be wholly subordinated to the alleged right of the “disadvantaged” to “rectification” of their situation. Nozick himself provides an incisive critique of the degrading sort of sociological determinism on which this Rawlsian position rests (pp. 213–16). The problem, rather, is to understand why Nozick’s earnest endeavor to defend liberty issues in a consequence so contrary to the author’s fundamental intent. To answer this question is to discover that Nozick, like Rawls, has approached the problem of justice—and the entire subject of political philosophy—from the wrong end. In the following section of this essay and in the final one, I shall endeavor to explain and justify the proposition just stated.

#### IV

In view of the anecdotal character of much of Nozick’s argument for his theory, we may best uncover the central problems in that argument by critically examining a couple of the examples he uses to illustrate the supposed inviolability of a person’s right to control over his holdings. Let us begin with the already discussed case of Wilt Chamberlain. Nozick’s argument regarding Chamberlain hinged on the proposition that since each individual within a given ideal pattern of justice was entitled, *ex hypothesi*, to the holdings he possessed, there could be no valid objection to any *alteration* of this pattern that came about as a result of individuals’ spending the resources they owned as they saw fit. Hence, Nozick concluded, the maintenance of any sort of pattern is incompatible with a respect for individuals’ rights.

27. Robert E. Litan, “On Rectification in Nozick’s Minimal State,” *Political Theory*, vol. 5, no. 2 (May, 1977), p. 233. Going beyond the economic issue, one should bear in mind Machiavelli’s intimation that every regime depends for its successful establishment on some initial act of “unjust” violence: justice depends on a foundation of injustice (see *The Prince*, Chaps. 3, 6–8; *Discourses on Livy*, 1.3, 9, 16). Consider in this regard Nozick’s sensible warning against accepting “any principle that would condemn morally the very sort of process that brought us to be, a principle that therefore would undercut the legitimacy of our very existing” (226n.); and cf. Himmelfarb, “Liberals and Libertarians,” pp. 67–8.

Both Virginia Held and Michael Zuckert have pointed out that Nozick’s putative reliance on “history” to validate existing holdings makes him, ironically, the heir of the patriarchal theorist Robert Filmer (the ostensible object of Locke’s attack in the *Two Treatises*) rather than of Locke himself; the result of such “historical” arguments in both cases, as Zuckert points out, is to leave entitlements far more up for grabs than they would be on the principles that Filmer and Nozick respectively oppose (Held, “John Locke,” pp. 170–71; Zuckert, “Distributive Justice,” p. 10 and n. 14.)

The most obvious flaw in this argument, as a number of commentators have perceived, lies in Nozick's equation of an individual's ownership of some sort of property with an *absolute* right to use and dispose of the property as he sees fit (so long as he does not violate the equal rights over their property possessed by others). That equation passes over the issue of whether in acquiring and owning a piece of property, a person does not *necessarily* acquire obligations towards the community in which he resides, whose laws are the precondition of any sort of ownership.

Nozick is not entirely blind to this issue; and to uncover the more fundamental problem in his argument, we must pursue his reasoning farther than most of his critics have done. He explicitly concedes "that we partially are 'social products' in that we benefit from current patterns and forms created by the multitudinous actions of a long string of long-forgotten people, forms which include institutions, ways of doing things, and language." He denies, however, that that fact "create[s] in us a general floating debt which the current society can collect and use as it will," so that an individual who benefits from "a just, mutually advantageous cooperative venture" characterized by "rules" (such as one might conceive a decent civil society as a whole to constitute) is thereby bound to conform his conduct to whatever rules the organizers of the system have instituted for the common benefit. In order to refute that claim, Nozick cites a hypothetical instance in which the inhabitants of a neighborhood have established "a system of public entertainment" over a public address system, each local resident being expected to take his turn in entertaining the others. Even if an individual has enjoyed the entertainment offered by his neighbors, Nozick asks, how can he be required to participate when his scheduled time comes if he thinks the benefits he has received from the system are outweighed by the costs of participating in it? (pp. 90–95).

One might well agree with Nozick that the person in this hypothetical situation is not morally bound to support his neighborhood's public entertainment system, without however agreeing with his inference that the individual has no general floating debt to the civil society to which he belongs.<sup>28</sup> The manifest difference between the two cases is this: a rational individual might well decide that the benefits of a public entertainment system are not worth the costs it entails. But *no* rational and realistic individual can sensibly argue that the benefits of living in a decent and orderly *civil society* are insufficient to outweigh *its* costs. The reason is that the true alternative to such a situation is a Hobbesian state of

28. As A. John Simmons points out, Nozick's public entertainment example "favors his conclusions largely because of the negligible value of the benefits received" in this case (*Moral Principles and Political Obligations* [Princeton, N.J.: Princeton University Press, 1979], p. 119.) Simmons offers a lengthy critique and refinement of Nozick's argument on this point, without ultimately disagreeing with him, however, regarding the extent of the individual's civic obligation arising out of his membership in a political community (*ibid.*, pp. 118–42; cf. 191–201). Compare Rawls's denial that there is any "political obligation, strictly speaking, for citizens generally" (*A Theory of Justice*, p. 114); cf. Schaefer, *Justice or Tyranny?*, pp. 62–3.

nature—a condition in which no one's life, liberty, or property have any security, and in which the life of all men is therefore "solitary, poor, nasty, brutish, and short."

Nozick, we recall, dismissed the Hobbesian account of the state of nature as unpersuasive, in view of the insufficiently developed character of the social scientific knowledge necessary to support such a "pessimistic" generalization. But if Nozick had freed himself of the unsupported assumption that "science" in the contemporary sense is the only or most fundamental source of knowledge of human things, he might have recognized that Hobbes's argument is in fact powerfully persuasive—ininitely more so than Nozick's own entirely hypothetical treatment of the state of nature.

Hobbes called his account of the natural human condition an "inference, made from the passions" of civil man as we know him. It is important to note that Hobbes did not himself think of his account of human nature as a bleak or pessimistic one: "The desires, and other passions of man, are in themselves no sin." Rather, the passions that throw men into natural conflict with one another—need, greed, fear, and glory—are simply *there*, and make us what we are. The problem is not to lament or combat such passions, but to devise institutions that will channel them into beneficial, or at least nonharmful, directions. That such institutions—notably, law and government—are necessary, Hobbes demonstrates to his readers by asking them a simple question: does not the fact that they, living *under* governments, find it necessary to take precautions to protect their lives and properties, prove that they themselves believe that life and liberty would be totally insecure if no government whatsoever existed to protect them?<sup>29</sup>

Nozick, of course, has sought to explain how the necessary amount of security could be provided to men by a system of protective agencies falling short of the absoluteness of Hobbes's sovereign. Insofar as he admits to the need for such agencies in the state of nature, Nozick does not thereby present a view of human nature any less pessimistic than Hobbes's. What truly distinguishes Nozick's

29. *Leviathan*, Chap. 13, pp. 186–7. Hobbes does indeed remark, in response to the charge that a condition of subordination to government "is very miserable," that "the estate of Man can never be without some incommodity or other" (Chap. 18, p. 238). But such a response will appear "pessimistic" only by comparison with the utopian premise that it is possible to liberate mankind from all inconveniences—surely a premise for which no historical or social-scientific evidence provides significant support. (Compare Nozick's lament at "the pangs of being limited to the possible" [p. 308]).

Just as Nozick is wrong to claim that Hobbes's doctrine is the result of a peculiarly pessimistic view of man, he errs in asserting that the Hobbesian argument for government inconsistently presupposes a less pessimistic assumption "about how the *state* operates" (4: *emph.* in original). For Hobbes as well as Locke, what should lead government to serve the people's interest rather than oppress them is not any particular benignity on the sovereign's part, but rather a set of institutions that make it in the *interest* of office holders to benefit the citizenry (along with the enlightenment of both the rulers and the populace regarding the proper rights and duties of government, and the harmony of interest between rulers and ruled). See especially Hobbes's argument in favor of monarchy, *Leviathan*, Chap. 19, pp. 241–5; *ibid.*, Chaps. 24, 30; Locke *Second Treatise*, Chaps. 13–14, 18.

state of nature from Hobbes's—and what renders the former a poor foundation on which to build the principles of political right—is the assumed existence in it of institutions like property, contracts, economic competition, and the enforcement of a law limiting men's pursuit of their rights.

As Hobbes put it: “where there is no Common-wealth, there nothing is Unjust.”<sup>30</sup> It is simply meaningless to speak of justice, morality, keeping one's contract, or particular rights in state of nature, since when an individual has no reason to expect that other men's pursuit of their survival will be restrained by consideration of his needs, he can have no obligation in turn to avoid taking what is “theirs,” in pursuit of his needs. Indeed, it makes no sense to speak of “mine,” “yours,” and “theirs” in such a situation: the “natural” right of man is an unlimited “Right to every thing; even to one another's body,” which he may find useful in pursuit of his preservation.<sup>31</sup>

By constructing an account of the state of nature that by design is purely hypothetical (that is, one that is not founded, as Hobbes's is, on an inquiry into the nature of man), with a view to meeting the anarchist's objection to the state, Nozick has endeavored to avoid such sticky questions as are presented for the anarchist *or* libertarian position by Hobbes's account. He has further attempted to transcend the Hobbesian difficulty by relying on Locke's, rather than Hobbes's, account of the “law of nature.” But a careful consideration of Locke's teaching about the law of nature would reveal that it establishes no more meaningful limit to the individual's pursuit of his interest than Hobbes's does (an individual is obliged “to preserve the rest of mankind” only “when his own preservation comes not in competition”).<sup>32</sup> And Locke's account of the natural human condition, “full of fears and continual dangers,”<sup>33</sup> leads no less inexorably than Hobbes's to the conclusion of the need to establish a government (hence the absence of consideration by Locke, as remarked by Nozick, of alternative “arrangements” for settling conflict within the state of nature: for Locke as for Hobbes, no such arrangements are possible without the security afforded by a human sovereign and positive laws).<sup>34</sup>

Nozick's refusal to consider in a realistic manner what a state of nature would be like, or to recognize the meaninglessness (to say nothing of the ineffectuality) of law in such a state, leads in turn to his radical underestimation of the need men have for government, and consequently of the debt that an individual living

30. *Leviathan*, Chap. 15, p. 202.

31. *Ibid.*, Chap. 14, p. 190.

32. Locke, *Second Treatise*, Chap. II, sec. 6, ll. 23–5.

33. *Ibid.*, Chap. IX, sec. 123, ll. 14–15.

34. Cf. *ibid.*, Chap. XIX, sec. 219, where Locke observes that in the absence of government, “the People become a confused Multitude, without Order or Connexion,” and that the lack of enforced, man-made laws is “inconsistent with humane Society” (ll. 11–12, 19–20); also sec. 220, ll. 5–9, where he remarks that society cannot be preserved without “a settled Legislature, and a fair and impartial execution of the Laws made by it.” For an illuminating discussion of the relation between “society” and government in Locke's teaching, see Tarcov, *op. cit.*, pp. 204–13.

within a decent political society owes to that society. It was because of his recognition of these things that Hobbes insisted that the individual, upon entering society, must give up his “universal” right to all things, acquiring in return that “propriety” by which his life, and the goods he acquires *in conformity with* the positive law, are secured to him.<sup>35</sup> For the same reason Locke, while attempting to justify a transpolitical right of the individual to acquire property, did not maintain that such a right lay beyond the authority of a legitimate civil sovereign to restrain or limit on behalf of the common good.<sup>36</sup> Similarly, Locke—unlike Nozick—attempts to justify the right of unlimited acquisition by demonstrating its conduciveness to the common good (a position similar to that which Nozick criticizes Hayek for maintaining), rather than asserting such a right *a priori*.<sup>37</sup>

The fear underlying Nozick’s refusal to follow Hobbes and Locke is that any subordination of the exercise of men’s natural rights to the good of civil society is likely to culminate in the position of Rawls and other collectivists: that no one possesses any inherent right to enjoy the fruits of his labor, or to convey them to others (for instance, his heirs) as he chooses; but that the talents of those better endowed, or more industrious and “rational” (in the Lockean sense) are a collective asset to be carved up by the government for the benefit of those on whom it chooses to confer its largesse (according to Rawls’s proposal, “the least advantaged”). Nozick rightly criticizes the Rawlsian view, stressing that it treats economic goods as if they fell like manna from heaven, rather than being produced by the labor of particular individuals; and that to treat the endowments and accomplishments of those better endowed or more industrious as a collective asset directly violates Rawls’s own professed wish to “take seriously the distinction between persons” and respect their dignity as individuals (pp. 198–9; 228). But surely—as the examples of Aristotle on the one hand, and Locke and the American founders on the other, demonstrate—there is a wide range of plausible positions regarding the relation of individual property rights and communal duties

35. *Leviathan*, Chap. 15, p. 202. One should contrast Hobbes’s emphasis on the need for obedience to law as the only security for rights with Nozick’s assertion that “if an institutional structure diverges from the individual rights embodied in the moral side constraints” he has specified, one should “not be willing to let it continue to operate” (p. 294). It might appear that Nozick is agreeing with the Lockean assertion of a “right of resistance” to regimes that violate men’s rights; but the more sweeping, abstract, and absolute character of the rights that Nozick supposes (as compared with Locke’s doctrine) makes it much less likely that his teaching could furnish a basis for a stable regime of ordered liberty. In a subsequent passage, Nozick himself shrinks from asserting “that it is possible or desirable to create major institutions *de novo*” (p. 298n.); but neither the earlier remark nor his doctrine as a whole reflects this caution.

36. Cf. Chap. VIII, sec. 120 of the *Second Treatise* (II. 7–8), where Locke describes the end of men’s entry into civil society as being “the securing *and regulating* of Property” (emphasis added); *ibid.*, Chap. XI, sec. 138. Held, “John Locke,” pp. 173–4, cites two chapters from the *First Treatise* that seem to go even further in the direction of a limitation on property rights, implying that they are conditioned on the satisfaction of the obligation to charity; but these passages must be qualified by a reading of I, iv, sec. 43, and II, v, sec. 50; cf. Strauss, *Natural Right and History*, pp. 242–8.

37. See Chap. V of the *Second Treatise*, especially secs. 36–7, 41–6; cf. Strauss, *Natural Right and History*, pp. 242–3.

between the extremes represented by Nozick and Rawls. Any such position will be more reasonable than either Nozick's or Rawls's insofar as it begins by recognizing the *dual* character of all economic activity and hence of desert: (1) economic activities are carried on by particular individuals, who thereby acquire *some sort* of claim to the fruits of their labor or investment that is greater than that of others who had no direct share in producing them; (2) all such activities occur within a political-legal-social framework, such that no one can legitimately assert himself to be the sole producer of an economic good, and hence to be exempt from all claims to a share in "his" property that are put forth in the name of the common good of the citizenry as a whole.

The recognition of this dual provenance will not, of course, give rise to any clear and uniform rule regarding the proper level of taxation, economic regulation, or "redistribution" in a society. But then—as the consequences of his "principle of rectification" make evident—neither does Nozick's approach.<sup>38</sup> We will, however, be led by the outlook I have suggested to ask the right sort of *question* about the policies that are appropriate to a liberal society: how, in a society fundamentally committed to protecting and promoting individual freedom, may the consent of the governed to such a system be fostered, and ways of life that are conducive to freedom be promoted?

To pose the issue this way might well lead one to conclude that such moderate welfare state policies as are decried by extreme libertarians (Social Security, properly regulated welfare programs, unemployment compensation) are essential elements of, rather than obstacles to, the maintenance of free regimes in the modern world, inasmuch as they give the poor and less fortunate the feeling that they have a "stake" in the preservation of such a regime, despite the fact that they "do" less well in it than others: that *their* contributions to it—working, obeying the laws, standing ready to defend the country in time of need, endeavoring to provide a righteous upbringing to their children—are "rewarded."<sup>39</sup> Posing this question will also compel the defender of liberal capitalism to confront another issue that Nozick seeks to avoid: the problem of the perceived correlation, or lack thereof, between economic success and moral desert. Liberal society faces an enormous difficulty if the belief should become pervasive that economic success

38. Nor, I have stressed elsewhere, does Rawls's: *Justice or Tyranny?*, pp. 56–60, 86–91.

39. The emphasis that has been placed here on the fact of common *citizenship* will also enable one to answer Nozick's question of why it is considered proper to allow people to emigrate from a country, while forbidding them to remain and yet "opt out of the compulsory scheme of social provision" (p. 173). The issue is not whether compelling individuals to contribute to the relief of their less fortunate fellow citizens' distress "tends to produce fraternal feelings between the aided and the aider" (p. 174), but whether the country as a whole has a right to demand fraternal *behavior* of its citizens. Once again there is a parallelism between Nozick and Rawls, whose argument for redistribution does not rest on any clear conception of the common good of a political community, thus inviting the kind of *reductio ad absurdum* that Nozick offers in response ("Would [the argument for governmentally mandated relief for the needy] support, to some extent, the kidnapping of persons living in a place without compulsory social provision, who could be forced to make a contribution to the needy in your community?" [pp. 173–4]): see Schaefer, *Justice or Tyranny?*, pp. 86–91.

within such a system is as likely (or more so) to be the product of sheer luck, or of morally blameworthy activities (such as false advertising, prostitution, loan sharking, or the production of pornographic films), as of honest and earnest labors that produce socially beneficial goods. The more that this belief attains currency, the less the economic and social inequalities that liberty generates will retain political legitimacy.<sup>40</sup> As Irving Kristol has forcefully argued, the greatest challenge facing liberal capitalism today may not be socialism—which a substantial and steadily growing body of evidence suggests to be a system unjust as well as inefficient in practice—but moral nihilism: the belief, trumpeted by Nozick, that individual holdings under capitalism have no moral justification except each individual's alleged right to do as he pleases with what belongs to him, whatever the consequences.<sup>41</sup> Kristol has pointed out that the stress laid by contemporary defenders of capitalism on the moral legitimacy of the "profit motive" considered as an end in itself represents an enormous falling away from the understanding of that system's earlier advocates.<sup>42</sup> Nozick, responding to such difficulties, suggests that the human need to see a social order as just could be met by the justice of its "underlying generating principles," rather than their "resulting pattern" (pp. 158–9). But he has given no reason why the "underlying generating principles" he has described *should* be regarded as just—other than the essentially circular claim that they are the only principles that properly respect men's "rights" as he has defined them.<sup>43</sup> If, as Kristol suggests, the liberal order will remain viable only to the degree that its overall results are perceived to be substantively good and just, its supporters must examine critically not only the (now unfashionable) doctrine of inviolable economic rights, but also such (fashionable) doctrines as that which regards each person as the sole "owner" of his or her body, or that which demands that "victimless" crimes be stricken off the books. In sum,

40. This is not to say that nonliberal systems would be more egalitarian in practice; but that the more rigid inequalities that characterize some such systems (traditional monarchies and aristocracies) would be easier to justify in the popular mind than purely arbitrary and variable ones, since their greater fixity makes them seem more natural.

41. Kristol, "Capitalism, Socialism, and Nihilism," in *Two Cheers for Capitalism* (New York: Basic Books, 1978), pp. 55–70; also, "'When Virtue Loses All Her Loveliness'—Some Reflections on Capitalism and the 'Free Society,'" *ibid.*, pp. 255–70.

42. Kristol, "Horatio Alger and Profits," *Two Cheers for Capitalism*, pp. 84–9. Cf. Joseph Cropsey, *Polity and Economy: An Interpretation of the Principles of Adam Smith* (The Hague: Nijhoff, 1957), pp. ix–xi, 98, and *passim*.

43. In addressing this problem at p. 159n., Nozick also appeals, somewhat inconsistently, to the kind of justification he had criticized Hayek for relying on, to the effect that capitalism benefits everyone because "great economic incentives operate to get others to spend much time and energy to figure out how to serve us by providing things we will want to pay for." He properly adds that it is not necessary, in order to defend capitalism, to believe that businessmen are "the finest human types." But surely the survival of a commercial republic depends on a widespread public perception that the character types that flourish in it are at least respectable. The critical question raised by Kristol, but overlooked by Nozick, is whether a policy of extreme libertarianism, in politics or in ethics, dangerously threatens such a perception.

the goodness of liberty cannot be judged in utter abstraction from the uses to which it tends to be put; freedom, as a sound traditional view emphasized, must be accompanied by moral restraint.<sup>44</sup>

## V

Following the direction of Nozick's own emphasis, I have thus far concentrated my analysis on the economic aspect of his libertarianism. However, in the concluding chapter of this book, entitled "A Framework for Utopia," Nozick transcends the economic issue in order to address the nature of the best social order in a comprehensive sense. Here he endeavors to demonstrate that the minimal state he has sought to justify, although not in itself a "utopia," constitutes the proper basis for an "ideal or good society"—one that would "be worth speaking eloquently about" (pp. 297, 332). Let us now examine this claim.

Nozick contends that the minimal state provides a "framework for utopia" in that it facilitates the institution of an indefinite number of voluntarily organized, "nonimperialistic" communities *within* it, each tailored to conform to the particular desires or "vision" of its members. Such an indirect "approach" to utopia is preferable to direct attempts at specifying the best social order, not only because of the difficulty or impossibility of knowing *a priori* the nature of such an order, but also because the vast differences among individuals make it extremely unlikely that *any* one social order is best for all of them. In support of the latter point, Nozick rhetorically asks the reader whether there is "really *one* kind of life which is best" for each of the personages on a long list he supplies, ranging from Moses to Hugh Hefner (*sic*), and including Socrates, Yogi Berra, Baba Ram Dass, and the reader's own self and parents (p. 310; emphasis in original).

Let us first note how the latter argument begs the question: (1) it implies that the best way of life for a person must be the one he desires or values [p. 309]; (2) it implies that no particular model of the good society can allow for an adequate diversity of ways of life within such a society to accommodate the natural differences among men;<sup>45</sup> and (3) it emphasizes the differences of belief and inclination among people who have *already been formed* by their respective societies, thus overlooking the possibility that Hugh Hefner (to take an extreme example) would have chosen to pursue a different way of life from the one he did—and

44. Consider, in this connection, the moral effects of the increasingly popular state-run lotteries. Is not the government, by advertising these institutions, saying to the individual: why be a sucker, and work/save for your future, when you could "make a killing" by gambling? Is it not thereby undermining the moral foundations of a liberal-capitalist regime?

45. Nozick acknowledges that "[n]o utopian author has everyone in his society leading exactly the same kind of life," but infers from this fact that no single kind of community can be best for all men, either (p. 311). Yet the contrary inference would seem to follow just as easily, or more so.

one much less opposed to Moses's—had he been reared in a community that was governed according to the Mosaic law.

It almost goes without saying that such a question-begging approach cannot excuse Nozick's casual dismissal of the teachings of the major philosophers and religious teachers who thought it to be possible to articulate an objectively valid account of the one best way of life.<sup>46</sup> At the same time, Nozick's own alternative account of a utopia-building "process" is open to grave objections, both moral and practical.

In the first place, Nozick follows a dangerous path (blazed by John Dewey and Oliver Wendell Holmes, Jr.) when he treats the building of the good society as a problem in quasi-scientific "experimentation," in which nothing can be known to be good or bad, right or wrong, without first having been "tried out" in practice (and even if it was tried before and failed, it should still be "retried" to see whether it can be made to work under different conditions) (pp. 315–17).<sup>47</sup> Even "crackpots" and "maniacs" should be given the chance to try out their schemes (p. 316); who are we to say what sanity is? Nozick himself, as noted previously, is prepared to carry this principle to the extent of guaranteeing an individual's right "to sell himself into slavery" (p. 331). It is not entirely clear why he does not go further and sanction the retrial of some of the more terrifying social "experiments" of this century. To be sure, not all the participants or objects of such experimentation participated voluntarily, as Nozick insists they must in a legitimate system; but if *no* political truths can be fixed without having been "proved" through social experimentation, how do we know that freedom itself has such merit as Nozick attributes to it? Once the principle of scientific experimentation is given primacy over the belief in an objective morality, consistency dictates that no holds should be barred.

46. In the index to *Anarchy, State, and Utopia*, Plato is listed once; Aristotle and Nietzsche not at all. Nozick's main authority for dismissing all nonliberal views of the good society, it would appear, is the writings of J. L. Talmon on "totalitarian democracy" and "political messianism" (p. 351, n. 6).

47. See Dewey, *The Public and its Problems* (New York: Henry Holt, 1927); for Holmes's experimentalism, his dissenting opinions in *Abrams v. United States*, 150 U.S. 616 (1919), and in *Gillow v. New York*, 268 U.S. 652 (1925), stressing the need for a "free" society to remain open to the possible triumph of "proletarian dictatorship"; and especially his opinion in *Buck v. Bell*, 274 U.S. 200 (1927), sanctioning another sort of experimentation to enable society to "prevent those who are manifestly unfit from continuing their kind." See also Walter F. Berns, "Buck v. Bell: Due Process of Law?", *Western Political Quarterly*, vol. 6, no. 4 (December, 1953), pp. 762–5. Holmes was also no less steadfast than Nozick in defending men's right to sell themselves into slavery; see his dissenting opinion in *Bailey v. Alabama*, 219 U.S. 219 (1911).

One of Nozick's critics asserts an antilibertarian position that is in full conformity with the principle of experimentalism as Dewey articulated it: "there can be no final answer" determining "[t]he boundary between private and public," since "the meaning of rights and injuries will always be determined by the shifting passions and interests of humanity" (Jethro K. Lieberman, "The Relativity of Injury," *Philosophy and Public Affairs*, vol. 7, no. 1 [Fall, 1977], p. 73; cf. Dewey, *op. cit.*, pp. 73–4). But how can such experimentalism possibly be reconciled with Nozick's previous emphasis on the absoluteness of moral "side constraints"?

These problems aside, however, it is not at all clear how Nozick's account of the utopia-building process can be reconciled with his previous defense of the minimal state. His identification of the minimal state with the "framework for utopia" depends critically on a distinction he draws "between a face-to-face community and a nation" (p. 322). According to this distinction,

. . . though there is great liberty to choose among communities, many particular communities internally may have many restrictions unjustifiable on libertarian grounds: that is, restrictions which libertarians would condemn if they were enforced by a central state apparatus. For example, paternalistic intervention into people's lives, restrictions on the range of books which may circulate in the community, limitations on the kinds of sexual behavior, and so on. But this is merely another way of pointing out that in a free society people may contract into various restrictions which the government may not legitimately impose on them. Though the framework is libertarian and *laissez-faire*, *individual communities within it need not be*; and perhaps no community within it will choose to be so (p. 320; emphasis in original).

The main ground of this distinction between the legitimate spheres of state and communal authority is that "[i]n a nation, one knows that there are nonconforming individuals, but one need not be directly confronted by these individuals, or by the fact of their nonconformity," whereas "in a face-to-face community one cannot avoid being directly confronted with what one finds to be offensive." Additionally, "[a] face-to-face community can exist on land jointly owned by its members, whereas the land of a nation is not so held." For both these reasons, a community is free to regulate the ways in which its members live, in a manner that Nozick's principles forbid to the nation as a whole (p. 322). But how far can this distinction hold, and how adequately can it serve to reconcile the competing demands of liberty and community?

We note, to begin with, that Nozick's distinction can apply only to nations large enough to have a number of face-to-face communities within them. It would not apply to a polity that was coextensive with one such community, that is, something like the ancient *polis*. Apparently, the members of a polity so organized are free to restrict liberty in an indefinite variety of ways, including interference with what Nozick had previously seemed to represent as nigh-absolute individual property rights. Nor does the criterion of joint ownership of land appear to add anything: since no present property-holders can demonstrate their possession of an unblemished title to their land deriving from its first owners (present patterns of ownership originate in all probability out of some previous historical conquest), there is an important sense in which the property of *every* political community is "jointly held" by its citizenry, if it belongs to anyone at all. All private land titles, in other words, are subordinate to, and derivative from, the collective one.

We must next ask how far Nozick's nation-community distinction actually serves to protect liberty, even within those polities to which it applies. On the

surface, it appears to offer very great protection: individuals are free to institute whatever sorts of community they desire, and no one is subjected to restrictions to which he personally has not chosen to submit. But this seeming liberty operates fully only at the time when communities are originally founded: Nozick denies that an already existent community is obliged to accommodate an individual who wishes to reside there but who wishes to “opt out” of its practices. Ultimately, once communities have been formed throughout the nation or the world, presumably choosing to occupy the most desirable land, the nonconforming individual may have few, or no, real options:

Even if almost everyone wished to live in a communist community, so that there weren't any viable noncommunist communities, no particular community need also (though it is to be hoped that one would) allow a resident individual to opt out of their sharing arrangement. The recalcitrant individual has no alternative but to conform. Still, the others do not force him to conform, and his rights are not violated. *He has no right* that the others cooperate in making his nonconformity feasible (p. 322; emphasis added).

Only when the foregoing passage is put together with several other aspects of Nozick's account of the “framework for utopia” does its full significance emerge. These aspects include (1) Nozick's already cited acknowledgement of each community's right to restrict “the range of books which may circulate” within it (p. 320); (2) his inability to resolve the conflict between children's right to be informed of “the range of alternatives in the world” and their parents' possible desire to exclude such knowledge from them (p. 330); (3) his affirmation of people's “right” to sell themselves into slavery (p. 331); and (4) his hesitation even about how far the individual possesses a right to emigrate from a community, “if [he] can plausibly be viewed as *owing* something to the other members of a community he wishes to leave” (p. 330; emphasis in original). The reader is invited to consider the extent to which, when all these remarks are considered together, Nozick—starting from a “libertarian” perspective—has succeeded in offering a recipe for universal tyranny! All that a universal network of tyrannical communities would need to do in order to legitimate itself, it would appear, is to demonstrate that the original character of each community was determined by a free contract among the persons then residing in it. But after a period of some years (or centuries) had elapsed, during which an appropriate censorship of books was maintained, who would know the truth of the matter? And—from the perspective of an individual who comes on the scene after all communities have been founded, and who therefore “has no alternative but to conform”—what possible difference can it make?

We may reasonably presume that to provide a rationale for universal tyranny was the farthest thing from Nozick's mind when he wrote *Anarchy, State, and Utopia*. Nonetheless, the fact that his argument seems to culminate in such a rationale serves as a further confirmation of the insufficiency of his understanding

of freedom. Even though Nozick's reasoning on behalf of "the framework for utopia" is intended to be fully independent of his previous argument for the minimal state, with which it nonetheless ultimately "converges" (p. 333), we must note that the latter argument is not really separable from the former. The reason is that the minimal state, taken by itself, is by Nozick's own account too "pale and feeble" to command men's deepest loyalties or give adequate "luster" to their lives (p. 297). Life lived in a merely minimal state is banal and meaningless; but life in the total community that the minimal state is intended to facilitate may leave no room for freedom. Have we not gone radically astray somewhere?

Let us turn from the world of utopian theorizing to an actually existent liberal polity, the United States. Nozick's strictures about the extent of redistributive legislation notwithstanding, the example of the United States seems to demonstrate that it is in fact possible for a nation to survive and prosper while leaving its citizens free to pursue a relatively wide variety of particular ways of life, if not that of Napoleon or Mohammed (most of the individuals on Nozick's list on p. 310 were residents of this country, few of whom encountered legal obstacles to their pursuits here).<sup>48</sup> American citizens have also traditionally enjoyed a broad freedom to form communities of various sorts: religious communities, socialist communities, and so on. What fundamentally distinguishes the context of such communities from Nozick's framework, however, is that the national and state governments do *not* grant particular communities the latitude Nozick would give them to control their members' lives, or to violate what are regarded as the fundamental moral foundations of civil life. Hence all children must be granted an appropriate education; slavery is illegal, whether "voluntary" or not; polygamy is banned; and no community may prevent one of its members from departing because of what he "owes" to it. Nor can membership in a particular community excuse anyone from obeying the other laws by which citizens in general are bound, including the laws requiring him to pay taxes for the support of the common welfare and defense.

In calling for the establishment of a federation of communities that are free to experiment with the institution of various ways of life, without being subject to most of the restrictions that the American government (or any other government) imposes on them, Nozick curiously recapitulates, at a broader level, the position taken by Stephen A. Douglas in defense of the principle of "popular sovereignty" during the slavery controversy.<sup>49</sup> The very maintenance of the Union, Douglas

48. The exceptions to the latter qualification include a tax protestor (Thoreau), a militant anarchist (Emma Goldman), and a purveyor of illegal drugs (Baba Ram Dass, a.k.a. Timothy Leary).

49. Compare with Nozick's experimentalism the following remarks by Douglas:

The question . . . what are [the privileges to which negroes are entitled] . . . is a question which each State must answer for itself. We in Illinois . . . tried slavery, kept it up for twelve years, and *finding that it was not profitable, we abolished it for that reason*, and became a free State.

You in Missouri must judge for yourselves whether [emancipation] is a wise policy for you. If

argued, depended on an attitude of “indifference” regarding such purely “local” institutions as slavery. In response, Lincoln pointed out that Douglas’s understanding of freedom was self-contradictory: in legitimating the claim of some men to enslave others, it undermined the very ground on which the former group, or any group of men, might claim the right to rule themselves. It was the central theme of Lincoln’s political rhetoric that the defense of freedom presupposed a certain moral consensus among the citizenry about the meaning and purpose of freedom. Freedom, as Lincoln demonstrated, could not be grounded in a mere indifference to how one’s fellow citizens lived. It required rather to be grounded in the teaching of the Declaration of Independence, according to which all men are entitled to a certain treatment by virtue of their very nature. The right to freedom is inseparable from a respect for the dignity of all men, which entails a respect for the rights of others.<sup>50</sup>

Nozick, as we have seen, is perhaps no less fervent than Lincoln in his opposition to the enslavement of some men by others, *against the will* of the enslaved. Yet he fails to ground his concern for human freedom in anything deeper than a vulgar relativism, according to which no one is entitled to say that one way of life is objectively better than another. According to this doctrine, it would appear that the right not to be enslaved by others against one’s will stands on no higher a ground than the right to be an alcoholic. Our obligation to protect men’s “right” to dispose of their lives as they please (presumably through drug abuse or prostitution, if they choose, as well as self-enslavement) has absolute priority over any duty to guide them towards a decently human way of life. But if the ultimate rule of morality is “do [your] own thing” (p. 312), Nozick has no answer to give those who say that their preferred way of life involves enslaving or tyrannizing over their fellows. All he can say in response to this problem is “Well, you can’t satisfy everybody. . . .” (p. 320).<sup>51</sup>

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you choose to follow our example, very good; if you reject it, still well, it is your business, not ours. (Address at Alton, Illinois, October 15, 1858, in Robert W. Johanssen [ed.], *The Lincoln–Douglas Debates* [New York: Oxford University Press, 1965], pp. 299–300 [emphasis added]).

50. The issues in the debate between Lincoln and Douglas, and the fundamental principles of Lincoln’s political teaching, have been brilliantly expounded by Harry V. Jaffa in *Crisis of the House Divided* (New York: Doubleday, 1964). Also relevant to the present discussion is Jaffa’s essay “On the Nature of Civil and Religious Liberty,” in *Equality and Liberty* (New York: Oxford University Press, 1965), pp. 169–89. See also Glen E. Thurow, *Abraham Lincoln and American Political Religion* (Albany: State University of New York Press, 1976), Chap. 3; *idem*, “The Gettysburg Address and the Declaration of Independence,” in Leo Paul S. De Alvarez (ed.), *Abraham Lincoln, The Gettysburg Address, and American Constitutionalism* (Irving, Texas: University of Dallas Press, 1976), pp. 55–76.

51. Compare Rawls’s response to those who complain that his principles of justice, supposedly founded in the “moral” nature that all men share and designed to advance their good in a “fair” manner, are actually detrimental to their good, given their natures: “[H]ere one can only say: their nature is their misfortune” (*A Theory of Justice*, p. 576).

Contrary to Nozick's belief, no lasting federation or nation (as distinguished from a temporary alliance such as existed between the United States and the Soviet Union during World War II) can be built on the mere principle of allowing each community to do as it pleases. Nor can Nozick give any reason why nations, as well as persons, of an "imperialistic" bent (pp. 319–20) should not seek to impose their will on others. By radicalizing or absolutizing the gap between "liberal" and "communal" political principles—denying to nations the authority to inculcate some substantive moral consensus among their citizens, while exempting communities from the obligation to respect the fundamental rights of individuals—Nozick undermines both community and liberty.<sup>52</sup>

## VI

I have attempted to demonstrate that Nozick fails to articulate in *Anarchy, State, and Utopia* an adequate understanding of the principles of a free or liberal regime. This failure is surely not the result of any lack of mental acuity on Nozick's part, but is due rather, I believe, to the defectiveness of his starting point: the understanding of the nature, purpose, and methods of political philosophy with which he began. Four features of Nozick's approach, to which I alluded in Part I of this study, cripple from the outset his endeavor to formulate an adequate, liberal political philosophy:

(1) The dogmatic initial assertion of a doctrine of individual rights so extensive that it calls into question the very legitimacy of government;

(2) The claim that the fundamental question of political philosophy is not how the state should be organized, but whether it should exist at all;

(3) The subsumption of political philosophy under an independent "moral" philosophy; and

(4) The adoption of a "potential" explanation of the state's origin, in lieu of a derivation of it based either on actual history or on human nature.

Each of these features renders Nozick's approach abstract, in that it removes him from the actual problems that political men face. And each of them reflects a more fundamental defect that Nozick's approach shares with that of Rawls and of many contemporary Anglo-American writers on political and moral philosophy:

52. How little thought Nozick has apparently given to the problem of organizing a polity on the basis of his principles is signified by the favorable reference, in his concluding footnote, to Martin Diamond's essay on "The Federalist's View of Federalism" (p. 353). The central theme of Diamond's writings on federalism, including that essay, is that federalism was *not* an ultimate or fundamental political principle for the Founders, but largely a practical compromise necessary to secure consent to the establishment of a *national* government dedicated to the achievement of the purposes specified in the Declaration of Independence. Thus Diamond can hardly be said to provide support for Nozick's proposal of a "federation" of communities organized solely on the principle of mutual noninterference.

the disjunction of the question of what is right and just from the consideration of nature.<sup>53</sup>

The sweeping assertion of the primacy of individual rights with which Nozick opens his book suggests his agreement with the authors of the Declaration of Independence that this doctrine is self-evidently true. But unlike the authors of the Declaration, he avoids admitting at the outset that the exercise of such rights depends in practice on the institution of governments designed to secure them. And his account of such rights is commensurately unmoderated by a consideration of what sort of rights it is reasonable to expect any government to guarantee.

The doctrine of natural rights is of course not self-evident in the sense that all reasonable men throughout history have accepted its validity. Surely the original philosophic architects of this doctrine, Hobbes and Locke, did not think that a bare enunciation of the doctrine would persuade men to accept it. Rather, they endeavored to demonstrate that it is more *salutary* for men in general—more conducive to their interests—to understand politics in terms of rights rather than in the older language of duties.<sup>54</sup> In order to make this argument, they were compelled to engage in an investigation of human nature so as to demonstrate that the rights of which they spoke answer more precisely to the fundamental needs of men than do the duties that arise directly from the individual's membership in a community. In claiming—contrary to Aristotle—that the natural condition of man is a prepolitical one, they were arguing that the selfish needs of the individual, which pre-exist the establishment of civil society, are more truly intrinsic to his nature than the needs that civil society generates; and that civil society should therefore be organized expressly to satisfy the former sort of needs, rather than with a view to inculcating virtue and a concern for the common good in the individual, as Aristotle had prescribed.

Neither Hobbes nor Locke makes a dichotomy, as Nozick does, between the realms of moral and political philosophy, such that the latter could be subordinated to the former. For neither thinker (nor for Aristotle) would it make sense to articulate a moral code prior to examining the needs that actually motivate men, and that set the boundaries of what is politically attainable. To the contrary: a major advantage of the morality of rights over that of duties is supposed to be that—in conformity with the recommendation of Machiavelli—it narrows the gap between the "is" and the "ought," limiting the demands that political society makes on the individual to those that conform to his own manifest self-interest.<sup>55</sup> Thus this morality is, in a sense, "self-enforcing" (as is illustrated most

53. On Nozick's abstraction from nature and his underlying link to Rawls, see Himmelfarb, "Liberals and Libertarians," pp. 67–8; see also, on the Rawls–Nozick connection, Zuckert, "Distributive Justice and Rights," pp. 17–19.

54. On the difference between these two ways of understanding politics, see Steven G. Salkever, "Virtue, Obligation, and Politics," *American Political Science Review*, vol. 68, no. 1 (March, 1974), pp. 78–92.

55. Machiavelli, *The Prince*, Chap. 15.

graphically in the economic realm through the operation of Adam Smith's "invisible hand").<sup>56</sup>

Because Hobbes and Locke were concerned to formulate a morality that could be politically effectual, they were more realistic than Nozick in portraying the motives that would actually determine men's conduct in a state of nature, and consequently more realistic in recognizing the need to *limit* those rights in order to make political society possible (and thus to secure the rights). As a result, even though both Hobbes and Locke manifestly favored a limitation of the scope and purpose of governmental regulation of the individual—restraining his conduct only so far as the security of each man's life, liberty, and property require—neither philosopher set down any dogmatic formula limiting the steps that government may take in *pursuance* of its limited end. Hence neither Hobbes nor Locke forbade governments from setting limits to individual freedom in such critical domains as economics, religion, or speech.<sup>57</sup> And the most farsighted of the American founders, notably Hamilton, similarly appreciated the need to invest a liberal government with *broad* powers in order to achieve its end of securing men's rights. (One should note also that even the opponents of broad Federal powers in 1787, and those who most strenuously advocated a Bill of Rights, were concerned primarily to limit the national government's powers vis-à-vis those of the states—not to deny authority over such matters as economics, religion, and speech to all levels of government).<sup>58</sup>

As a passionate friend of liberty, Nozick is understandably concerned to defend the cause of individual freedom today against those who would erode it in the name of vague and illiberal doctrines of "social justice." His critique of these doctrines is well taken and deserving of a wide influence. But contrary to Nozick's belief, one cannot make liberty secure by dogmatically assuming its absolute priority to all other human ends, and denying to government the authority to

56. Nozick himself professes a taste for "invisible-hand explanations" on esthetic grounds, and represents his account of the possible genesis of a state as an attempt at such an explanation (pp. 18–19). But as noted in Section II of this study, his explanation depends on illegitimately smuggling into the "state of nature" institutions and practices that could not have existed prior to the establishment of government; Nozick underestimates the degree to which social and economic relations among men resulting from a seeming "invisible hand" presuppose the prior exercise of conscious political choice and action to make such relations possible. Cf. Harvey C. Mansfield, Jr., "The Right of Revolution," in *The Spirit of Liberalism* (Cambridge, Mass.: Harvard University Press, 1978), pp. 73–4.

57. Cf. Robert P. Kraynak, "John Locke: From Absolutism to Toleration," *American Political Science Review*, vol. 74, no. 1 (March, 1980), pp. 53–69.

58. Cf. Hamilton, Madison, and Jay, *The Federalist*, ed. Clinton P. Rossiter (New York: New American Library, 1961), no. 1, p. 35; no. 63, pp. 387–8; Harvey C. Mansfield, Jr., "Thomas Jefferson," in Morton J. Frisch and Richard G. Stevens (eds.), *American Political Thought* (New York: Scribner's, 1971), pp. 37–8, 48; Herbert J. Storing, "The Constitution and the Bill of Rights," in M. Judd Harmon (ed.), *Essays on the Constitution of the United States* (Port Washington, N.Y.: Kennikat Press, 1978), pp. 32–48; Walter Berns, *The First Amendment and the Future of American Democracy* (New York: Basic Books, 1976), especially Chaps. 1, 3.

promote those ends through policies that make liberty more secure *by* limiting it.<sup>59</sup>

Both by subordinating politics to an abstract morality, and by denigrating what one may call the common sense understanding of politics in the name of a putatively scientific orientation, Nozick is led to disregard much empirical information about politics and human nature of which any sensible citizen is aware, and which constitutes the proper starting point for any serious investigation in political philosophy. Nozick's claim that the fundamental problem of political philosophy is to legitimate the very existence of the state, in response to the anarchist's critique of it, exemplifies the abstractness of his approach. This problem may (arguably) be first in logic, but it surely is not first in practice for most men. And because life is short, and the matters with which politics deals are urgent, the serious political inquirer must begin by considering these matters. (He cannot, in other words, postpone deciding whether government is necessary until adequate social science techniques for "testing" its necessity have been developed.) Whatever the rhetorical appeal of anarchism to the "idealist," any serious, down to earth man-in-the-street is fully capable of stating adequate reasons to doubt its workability. It is noteworthy that anarchism as a doctrine flourished under regimes such as late Tsarist Russia and pre-Franco Spain, which lurched between authoritarianism and instability. Whatever the causal connection here, it does not bode well for the future of American politics when a prominent scholar such as Nozick takes seriously the claim of a Proudhon that "to be GOVERNED is to be . . . exploited, monopolized, extorted from, squeezed, hoaxed, robbed; . . . hunted down, abused, clubbed, disarmed, bound, choked . . .", etc., etc. (p. 11n.), and uses this claim to raise a doubt whether any government can be legitimate.

What connection does all of this have with Rawls? Like Nozick, Rawls begins by presupposing the validity of a set of moral beliefs (called "intuitions" by Rawls), loosely derived from the liberal tradition, without adequately questioning either their foundation or their implications. Like Nozick, Rawls purports to derive the principles of justice from a purely abstract and hypothetical account of a prepolitical condition (the "original position") without considering how men in such a condition would actually be likely to live and deliberate, or what limits these facts about human nature place on politics. And as Nozick does, Rawls subordinates politics to an abstract science of moral philosophy, which he calls "moral theory" (hence Rawls's postponement of his account of the "just" constitution to Part II of *A Theory of Justice*, and his deferral to Part III of the attempt—unsatisfactory, in my opinion—to demonstrate that his view of justice is compatible with the facts about human nature).<sup>60</sup>

59. In this connection, cf. Harry M. Clor's argument that a moderate policy of censorship of pornography may be essential to preserving the civic morality on which a liberal polity depends: *Obscenity and Public Morality* (Chicago: University of Chicago Press, 1969), Chap. 5.

60. These points are developed in Schaefer, *Justice or Tyranny?*, Chaps. 3–5.

The consequence of the abstract approach to political philosophy that Nozick and Rawls have in common is manifest in the fact that *each* thinker claims to derive sanction for his view of economic justice from the moral teaching of Immanuel Kant; yet the two doctrines (leaving aside the “rectification” issue) stand at opposite poles. Each scholar may legitimately argue that the other’s theory violates the Kantian dictum that every man should be treated as an end. As Nozick points out, Rawls’s policy of treating each man’s natural assets and their fruits as a collective good disregards the fact of men’s separateness; Rawls might reply that a theory that denies any moral obligation to help one’s fellows in need is itself insufficiently respectful of human dignity.<sup>61</sup> The two thinkers argue at cross purposes, yet draw on a common source. How may one respond to such a conundrum?

The response, I believe, should be twofold. In the first place, one must recognize that the truth, as regards the practical issue being debated, lies somewhere between the extreme positions adopted by Rawls and Nozick: a government that treats every individual as an end must be more respectful of his property rights than Rawls’s theory ordains, but more concerned with alleviating his fellow citizens’ distress than Nozick’s allows. This is to say that policies aimed at alleviating the genuine miseries of the less fortunate, and at increasing their opportunities to advance themselves, are consistent with the principle of treating each individual as an end by respecting his rights; but policies aimed at redistribution for its own sake, on the ground that the mere existence of large economic inequalities is unjust, are not.<sup>62</sup> It is also to say that voluntary, individual charity

61. On the one hand, as Goldman observes (“The Entitlement Theory of Justice,” p. 830), Kant himself interpreted the categorical imperative to oblige the individual “to help others in need”: see Immanuel Kant, *Foundations of the Metaphysic of Morals*, transl. Lewis White Beck (Indianapolis: Bobbs-Merrill, 1959), First Section, pp. 14–15; Second Section, p. 41. On the other hand, Kant denied that the mere fact of economic inequality, no matter how extensive, violates the principle of treating every man as an end, so long as each individual’s civil rights (including the right to own property and bequeath it to one’s heirs) are respected: see Kant, “On the Common Saying: ‘This May Be True in Theory. But It Does Not Apply in Practice,’” in Hans Reiss (ed.), *Kant’s Political Writings* (Cambridge, England: Cambridge University Press, 1970), pp. 74–7. The effort by Rawls and Goldman to use the categorical imperative to justify requiring governments to institute redistributive policies is thus at least as much a distortion of Kant’s teaching as is Nozick’s rejection of an individual obligation to charity.

62. Under some circumstances—those of a traditional, agrarian regime—the excessive concentration of land ownership in the hands of a few may itself serve to deprive the poor of any means of advancing themselves. In such a situation, “land reform”—the confiscation of some land owned by the rich, and its distribution to the poor—may well be mandated by justice as well as by prudence. But to the extent that an economy moves from an agrarian to a commercial and/or manufacturing base, so that ownership of fixed assets is no longer a prerequisite to individual advancement, this argument for redistribution loses its force.

An entirely different set of issues is raised by the classical arguments in favor of limiting economic inequality, such as are to be found in Plato’s *Laws* and Aristotle’s *Politics*. Those arguments depend fundamentally on considerations of prudence rather than on justice. It suffices to note here that such arguments are essentially inconsistent with the principles on which a *liberal* polity rests; and that they are even more in conflict with the goal of Rawls and other contemporary redistribution-

or liberality is objectively superior morally, even if not as a dictate of justice, to selfishness; and that liberal regimes ought therefore to seek to encourage the former attitudes. Above and beyond this immediate issue, however, the more fundamental lesson to be learned from the Rawls-Nozick debate is that complex political issues of the sort they discuss cannot be resolved by abstract theories founded on the presupposition that one's particular, initial moral "intuitions" are correct and must be enforced absolutely: such claims, like all political appeals to faith, are irreconcilable, and threaten to inspire those readers who are influenced by them towards fanaticism. Both Rawls and Nozick have endeavored to sever "moral" considerations from practical ones, making the former "prior" to the latter, in order to avoid the bugbear of a "utilitarian" attitude that would disregard all individual rights in the name of some standard of overall social utility. But as the examples of Locke and the American founders demonstrate, it is entirely possible to formulate a political doctrine that will make the protection of individual rights its primary goal, without ignoring practical political considerations; while to define individual rights without regard to their dependence, in practice or exercise, on the maintenance of a viable political community, is ultimately to undermine both. The severance of the study of politics from that of morals is unworkable and pernicious, whether it is undertaken with a view to insuring the independence of the former (as was intended by the positivists), or with a view to subordinating the former to the latter (as attempted by Rawls and Nozick).<sup>63</sup> The great political philosophers of the Western tradition understood this fact. It is of the greatest urgency that present-day philosophical scholars should relearn it.

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ists and socialists of increasing the total stock of material goods possessed by the "less advantaged." See Milton and Rose Friedman, *Free to Choose* (New York: Avon Books, 1980), pp. 136–9; De Jouvenel, Chap. 1; Schaefer, *Justice or Tyranny?*, pp. 57–60.

63. It is not accidental that Max Weber, the most influential exponent of the "fact-value" distinction in social science, conceived and perhaps even desired as the necessary outcome of recognizing the alleged impossibility of rationally deciding conflicts among ultimate "values," a bitter and uncompromising struggle among the adherents of different ideals. See Weber, "Politics As a Vocation," in Hans Gerth and C. Wright Mills (eds.), *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1958), pp. 123–8; "Science As a Vocation," *ibid.*, pp. 147–56; Strauss, *Natural Right and History*, pp. 64–74.