

THE FREE MARKET MODEL VERSUS GOVERNMENT: A REPLY TO NOZICK*

JOHN T. SANDERS

Department of Philosophy, Rochester Institute of Technology

Two objections have recently been made to the model of the free market without government. These objections suggest that the model may be self-defeating, in at least two different ways. The problems about to be discussed have been raised by Robert Nozick in his recent *Anarchy, State, and Utopia*, and have been used by him to argue against the model, and on behalf of what he calls the "minimal state".

The two objections are these: first, that the model is unstable — that it will inevitably lead back to the state; second, that without a certain "redistributive" proviso, the model is unjust. If either of these things is the case, the model defeats itself, for its justification purports to be that it provides a morally acceptable *alternative* to government (and therefore to the state).

Nozick's arguments represent the only serious attention that has been paid the free market model of societal organization in recent mainstream philosophy, and it is clear that Nozick knows the model well. His arguments are tough and somewhat complex. If the model can survive the criticisms of a thinker of Nozick's calibre, it will have passed a crucial test.

Nozick does not consider himself to be a statist. He does not believe that governments have any rights that individuals, singly or in combination, have not explicitly granted them⁽¹⁾. In economics, for example, the government ought to keep its hands off the affairs of its citizens. In general, Nozick is a firm opponent of paternalism. His concern with the free market model has to do only with the business of protecting the rights of individuals.

Attention is focused, therefore, upon the arrangement of private protection associations (or agencies) in the free market model. Nozick begins by outlining the arrangement, and then sketches the *apparent* differences between such a scheme, on the one hand, and a state, on the other. Since this contrast gives a fairly clear picture of what Nozick conceives to be at least *necessary* conditions for a state, it is worthwhile to quote him at some considerable length:

There are at least two ways in which the scheme of private protective associations might be thought to differ from a minimal state, might fail to satisfy a minimal conception of a state: (1) it appears to allow some people to enforce their own rights, and (2) it appears not to protect all individuals within its domain. (*Anarchy, State, and Utopia*, pp. 22-23).

For our purposes here we need focus only upon a necessary condition that the system of private protective agencies (or any component agency within it) apparently does not satisfy. A state claims a monopoly on deciding who may use force when; it says that only it may decide who may use force and under what conditions; it reserves to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries; furthermore it claims the right to punish all those who violate its claimed monopoly. (p. 23.)

We may proceed, for our purposes, by saying that a necessary condition for the existence of a state is that it (some person or organization) announce that, to the best of its ability (taking into account costs of doing so, the feasibility, the more important alternative things it should be doing, and so forth), it will punish everyone whom it discovers to have used force without its express permission. (This permission may be a particular permission or may be granted via some general regulation or authorization.) This still won't quite do: the state may reserve the right to forgive someone, *ex post facto*; in order to punish they may have not only to discover the 'unauthorized' use of force but also prove via a certain specified procedure of proof that it occurred, and so forth. But it enables us to proceed. The protective agencies, it seems, do not make such an announcement, either individually or collectively. *Nor does it seem morally legitimate for them to do so.* So the system of private protective associations, if they perform no morally illegitimate action, appears to lack any monopoly element and so

*This article is adapted from John T. Sanders, "The Ethical Argument Against Government" (doctoral dissertation in philosophy, Boston University, 1977).

appears not to constitute or contain a state. (p. 24.)

The second reason for thinking the system described is not a state is that, under it (apart from spillover effects) only those paying for protection get protected; furthermore differing degrees of protection may be purchased. External economies again to the side, no one pays for the protection of others except as they choose to; no one is required to purchase or contribute to the purchasing of protection for others. Protection and enforcement of people's rights is treated as an economic good to be provided by the market, as are other important goods such as food and clothing. However, under the usual conception of a state, each person living within (or even sometimes traveling outside) its geographical boundaries gets (or at least, is entitled to get) its protection. Unless some private party donated sufficient funds to cover the costs of such protection (to pay for detectives, police to bring criminals into custody, courts, and prisons), or unless the state found some service it could charge for that would cover these costs, one would expect that a state which offered protection so broadly would be redistributive. It would be a state in which some persons paid more so that others could be protected. And indeed the most minimal state seriously discussed by the mainstream of political theorists, the night-watchman state of classical liberal theory, appears to be redistributive in this fashion. Yet how can a protection agency, a business, charge some to provide its product to others? (p. 24-25.)

Thus it appears that [even] the dominant protective agency in a territory not only lacks the requisite monopoly over the use of force, but also fails to provide protection for all in its territory; and so the dominant agency appears to fall short of being a state. But these appearances are deceptive (p. 25).

It might appear, from these passages, that Nozick's specification of the necessary condition for the existence of a state includes *both* a claim by some person or organization of a monopoly over the use of force in a specified geographic area *and* a provision of protection, by that person or organization, to all in that area. If this were so, then his necessary condition would be compatible with, but stronger than, what we believe to be the only necessary condition of government: that for a person or organization to be a government, it must assume the right to coerce its own clients (or subjects). It would seem that Nozick's monopoly condition is roughly equivalent to this postulate, and that his redistribution condition, if it is to be included among the necessary conditions for states, is an *additional* necessary condition.

It would be a peculiar addition, however. It would make it inappropriate to call any organization that satisfied the monopoly condition, but failed to redistribute protective services, a state.

A ruling clique that claimed (and had) a monopoly on the use of force, but which protected only its own members (against, perhaps, the unprotected and exploited masses) would fail to constitute a government, and the entire community, including the clique, would not be a state. That seems to exclude far too much. It is likely that the clique would be an *unjust* government, and the state an *unjust* state, but that is clearly quite different.

Nozick seems to be aware of this. In spite of appearances, it seems that the monopoly condition is the only necessary condition for the existence of a state that he discusses. His language is therefore in conformity with that of the present essay. The redistribution condition is, at most, a necessary condition for a *just* state (in his view), rather than for a state.

This becomes clear in the course of Nozick's discussion of the distinction between what he calls the "minimal state" and the "ultraminimal state". The former satisfies both the monopoly condition and the redistribution condition, while the latter satisfies only the monopoly condition (pp. 26-28). He regards both as states, although they differ in that the ultraminimal state is unjust, while the minimal state is just (as will become clear). *Since* he thinks of both as states, it is apparent that the redistribution condition is not a necessary condition for the existence of a state.

The passages quoted above do a fairly complete job of outlining the entire program for the first section of *Anarchy, State, and Utopia*. Nozick begins with private protection agencies, notes how they *seem* to differ from states (the passages are loaded with carefully placed qualifications such as "might be thought", "appears", "apparently", and the like), and thereby specifies a necessary condition for a state. He goes through all of this in some detail, but warns his reader, at the end, that "these appearances are deceptive". It is clear how the argument that follows is supposed to go. Nozick intends to show that the "scheme of private protective associations" does not really differ from states in the ways they may at first "seem" to.

In particular, Nozick will argue that an "invisible-hand" process (one which shows "...

how some overall pattern or design, which one would have thought had to be produced by an individual's or group's successful attempt to realize the pattern, instead was produced and maintained by a process that in no way had the overall pattern "in mind" (p. 18)) might (and perhaps would) lead to a smooth transition from a private protection scheme to the ultraminimal state, without violating anyone's rights. Thus the private protection scheme is unstable.

But since the ultraminimal state will turn out to be (in Nozick's view) unjust, it will be *morally* obligatory to make the transition from the ultraminimal to the minimal state.

The free market scheme is therefore unstable, and tends toward equilibrium at the ultraminimal state. The process by which the transition is made violates no one's rights, and is in that respect morally unobjectionable. But that rest state is morally objectionable for independent reasons, and an ideal equilibrium is achievable by making a further transition (which, of course, must itself violate no one's rights) to the minimal state.

It is now possible to proceed to an examination of the details of Nozick's argument.

Nozick begins with a Lockean "State of Nature"; at the outset, he imagines that each individual person is responsible for protecting himself and his property against violations by others.

There are certain problems that seem likely to arise, however, from such a situation. For one thing, a system of private and personal protection and enforcement is likely to be biased: "...men who judge in their own case will always give themselves the benefit of the doubt and assume [in conflicts with others] that they are in the right. They will overestimate the amount of harm or damage they have suffered, and passions will lead them to attempt to punish others more than proportionately and to exact excessive compensation" (p. 11). Thus the dictates of "calm reason and conscience" are abandoned, and long-standing feuds seem to be the likely result.

Furthermore, there are likely to be differences in "station" between different people, and these may be great enough to make it practically

impossible for some people adequately to protect themselves.

Especially in the light of this last possibility, but perhaps also because of the first, *groups* of people may get together to form mutual-protection associations, wherein all members commit themselves to answering the distress calls of any single member.

There are at least two obvious inconveniences to this solution of the problem. In the first place, everyone is always on call to come to the aid of members in distress, and this may make excessive demands on the time of members (especially if the group is a large one). Some arrangement must be made for rotating responsibilities, perhaps, such that appropriate, rather than excessive, responses are made. Perhaps the *modus operandi* of contemporary volunteer fire departments might provide some clues about how to overcome this inconvenience.

In the second place, however, there is a danger that *some* members might cry "wolf", dragging everybody out of bed at odd hours on false alarms. Or others may wish to use the association in aggressing on non-members, making false claims against their prospective victims. Or some members may get into squabbles with one another, *both* calling out the guard, raising some rather difficult problems for the protectors (rather like NATO's problem in the recent conflict between Greece and Turkey over Cyprus).

Either of these inconveniences may lead the members to decide to hire specialists to take charge of the protective function — might lead, that is, to the formation of private protection *agencies* (p. 13).

Nozick then asks "What will occur when there is a conflict between clients of different agencies?" (p. 15). There really is no problem if the two agencies happen to come to the same conclusion about the proper disposition of the case. But what if they differ? Nozick suggests three alternate possibilities:

- (1) The two agencies do battle. One agency always wins. This leads to a general tendency for clients to abandon the losing agency, and to take their business to the winner.
- (2) Each agency has a geographic power center. Each wins battles fought close to its own center. People living in the hazy border areas move closer to one

or another of the centers.

- (3) The two agencies are well balanced. Either battles often occur, or battles are avoided (because of the cost of battling) and some principle of arbitration is agreed to by the agencies. This yields a sort of unified "federal system" under which clients of *both* agencies now live. Such a federation agreement is a likely end state for any type (3) situation.

In all three cases, Nozick argues, people wind up with a single common system within their geographic area. This system makes judgments about whom to protect and when, and it enforces its judgments (pp. 15-16). Especially in the light of Nozick's third alternative, it may be crucial to consider the issue: what happens on the free market in the event of a potential "monopolization" of the defense industry?

Now, it is not clear that Nozick has managed to list all of the reasonable possibilities. He thinks that only these three are worth considering (p. 16), but it is difficult to see why. It may be that Nozick has limited the likely possibilities by envisioning only a *pair* of agencies in competition with one another, within the geographic area in question. It is not obvious that he has done this, but why doesn't he consider:

- (4) Agencies *A*, *B*, and *C* frequently squabble. Each agency has customers spread out fairly evenly throughout the area. *A* always beats *B*, *B* always beats *C*, and *C* always beats *A* (something like this was going on among Muhammed Ali, George Foreman, and Joe Frazier a couple of years ago)?

Will the three agencies make some sort of mutual arrangement about adjudicating disputes? Or will they keep on battling? If they decide to submit to some arbitration principle or another, will it be a single principle that all agree to? Or will *A* make one deal with *B*, and another with *C*? Why should *A* deal with *B* at all? Or *B* with *C*? Even if some complex arrangement is agreed to by all, why should it be thought of as a single unified judicial system, much less a single unified *federal* judicial system?⁽²⁾ These problems may be compounded considerably if the number of agencies is large.

The answers to these questions do not just flow smoothly from the mere consideration of (4). And if there is a possibility that some relatively stable arrangement could result that could *not* plausibly be described as a single common system within the given geographic area, then

the invisible-hand argument that Nozick is in the process of sketching will be somewhat weaker than it might otherwise be. It will not show that a state *must* arise from the anarchic situation — only that it *could* thus arise. Not that the free market model is unstable — only that it *might* be.

This is not a particularly damaging point against Nozick, however, since all that is necessary, to overcome anarchist moral objections to the state, is to show that the state *could* arise from anarchy without violating anyone's rights.

It is necessary, therefore, to follow the argument further.

Nozick's contention is that a representative geographic area would (or could) wind up with a single common system which has clear superiority in settling disputes. For simplicity, he calls this common system the "Dominant Protective Association", or DPA, of the area. It must be kept in mind, however, that the system *may* be a "federation" of several protection agencies.

The DPA is not yet a state. Or at least, Nozick has not yet shown that it satisfies his monopoly criterion. For that criterion was stated in this way: "a necessary condition for the existence of a state is that it (some person or organization) announce that, to the best of its ability...it will punish everyone whom it discovers to have used force without its express permission" (p. 24). All that Nozick has so far is a system that has evolved through *ad hoc* enforcements of claims in two-party disputes. No "announcement" of the kind needed to satisfy the monopoly requirement has been made by the DPA, "*Nor does it seem morally legitimate for [it] to do so.*"⁽³⁾

Now Nozick begins to argue that this is mere appearance.

Under the scheme as outlined so far, every individual retains the right to protect person and property from violations by others. Some people have hired professional agencies to take care of this matter for them. In the course of time, one system, the DPA, comes to dominate the territory. But there still may remain a number of "independents", who have never contracted with the DPA. There may also be small mutual-

protection associations, and possibly a few tiny agencies here and there, too small to attract the wrath of the DPA. For simplicity, call every person or group not affiliated with the DPA an "independent".

These independents live within the area of the DPA. They defend themselves, jointly or individually, against everyone else, *including* clients of the DPA. "The geographical territory covered by the protection association then might resemble a slice of Swiss cheese, with internal as well as external boundaries" (p. 54).

Given any "violation", every protector, whether individual, association, or agency, will have some procedure that it uses to determine who has committed the violation, and to determine what action should be taken. Consider, as an example, a case of stolen property.

Joe Bock comes home one day to discover that his valuable porcelain rocking chair has been stolen. Either Joe sets out to recover it himself, or he turns the matter over to his protection agency.

Assume that Joe is an independent. He has what he takes to be a perfectly reliable procedure for discovering who it was that stole the rocker: he reads tea leaves. Other people (or agencies) have different procedures that they take to be reliable — the Robert Nozick Agency, down the street from Joe, goes through all kinds of painful investigation, lengthy court procedures, and even then gives the accused the benefit of the doubt. Joe takes the Nozickian system to be quite pathetic. All that work to support a superstition! True, Nozick's clients really do believe in the Nozickian procedure, but it's obvious to Joe that tea leaves *know*.

Now, Joe would be perfectly content to leave the Nozick agency and its clients to its own silly procedure, if it weren't for the danger that it might, by chance, someday pick Joe out as being guilty of some crime or another. That is a risk, after all: several times Joe has, just for the fun of it, checked the findings of the Nozick procedure against the tea leaves, and most of the time the agency procedure was way off. It is really quite a dangerous business, living around people who use such an unreliable procedure for determining guilt.

Consider, now, the DPA. It, like all protectors, has its procedures. And for it, as for all protectors and protectees, there are *some* possible procedures — other than its own, of course — which pose serious risks of punishing the wrong person. This may pose risks, in particular, upon the clients of the DPA. How might the agency and its clients deal with independents who use unreliable procedures of justice?

The DPA, like any protection agency, has the obligation to protect its clients from harm, where it can. It may not violate the rights of independents to make the world safer for its clients, but short of that, it will try to *prevent* harm to clients rather than mop up after a violation has been committed. It would be bad for business to let too many clients get hurt.

What about independents who use unreliable procedures for determining guilt? May the DPA (or any agency) prevent these independents from using their unreliable procedures upon the clients of the agency?

Nozick argues that they may. He has two arguments to support this conclusion,¹⁴ and is not sure which is the one that is correct, but one of them, he *is* sure, does the job (p. 107).

Either people have "procedural rights" — the right that, before they are punished for some alleged violation, their guilt be determined by some just procedure — or they do not. If they have such rights, then the DPA is acting within *its* rights (these are nothing more, after all, than the rights of the clients transferred) in defending its clients against those trying to violate this procedural right.

But even if people don't have procedural rights (they're awfully difficult to spell out adequately, whether people have them or not (p. 96)), then Nozick argues that the DPA may *still* stop independents who use unreliable procedures against its clients. It is true, he says, that *anyone* has a right to punish a wrongdoer — including independents. This is not some right reserved only to the DPA. But it is also true that anyone who punishes another without knowing that that other person is guilty of doing wrong, himself does wrong. For example, if *A* doesn't know that *B* is a thief, and *A* steals

from *B* or otherwise "punishes" *B*, it would appear that *A* has done wrong (assuming that *A* is not punishing *B* for something else *B* has done wrong). Now, users of unreliable procedures do not know that the people their procedures pick out as guilty have really done wrong (since the procedures are unreliable). Thus they, like *A*, have themselves done wrong (if they punish those picked out by their procedures), although they, like everyone else, have a right to punish¹⁵.

It is thus wrong, according to Nozick, to use unreliable procedures of justice, independently of whether, in some particular case, they happen to come up with the correct result, and it is permissible to punish users of such procedures.

So the conclusion is the same, whether people have procedural rights or not, says Nozick: in either case, "...a protective agency [like anyone else] may punish a wielder of unreliable or unfair procedure who (against the client's will) has punished one of its clients, independently of whether or not its client actually is guilty and therefore even if its client is guilty" (pp. 107-08).

What is more, anyone — and therefore the DPA, too — has a right to resist someone who is applying an unknown procedure against him. That is, if it is not known whether the procedure is unreliable or not, anyone has a right to resist the use of the procedure, at least until information about its reliability is provided (p. 102).

Now, since the DPA has the right to stop an independent from applying an unknown procedure, and to punish an independent who uses a procedure known to be unreliable, on any client of the DPA, it may announce that it *will* do these things if the occasion arises. Anyone could. But since the DPA is dominant in the territory, it can do what no other protector, whether individual or group, can do: it can act without fear of *itself* being punished by someone else for using an unreliable procedure. The DPA

will act freely on its own understanding of the situation, whereas no one else will be able to do so with impunity ... But when it sees itself as acting against actually defective procedures, others may see it as acting against what it thinks are defective procedures. It alone will act freely against what it thinks are defective procedures, whatever anyone else thinks. As the most powerful applier of principles which it grants

everyone the right to apply *correctly*, it enforces its will, which, from the inside, it thinks is correct. From its strength stems its actual position as the ultimate enforcer and the ultimate judge with regard to its own clients. Claiming only the universal right to act *correctly*, it acts correctly by its own lights. It alone is in a position to act solely by its own lights (pp. 108-09).

The DPA constitutes a *de facto* monopoly on the exercise of the right to stop others from using unreliable procedures against its clients. Or so Nozick says (p. 109).

But in fact, that's not quite correct. Not only is it true that *not* only the DPA has the right in question (for everyone has this right as the DPA admits), it is also the case that *not* only the DPA can (practically) exercise that right.

Nozick says "It is not merely that it *happens* to be the only exerciser of the right it grants that all possess; the nature of the right is such that once a dominant power emerges, it alone will actually exercise that right. For the right includes the right to stop others from wrongfully exercising the right, and only the dominant power will be able to exercise this right against all others" (p. 109).

This is a rather odd argument. Just because a DPA would be the only power that could exercise the right in question against *all* others, it doesn't follow that it alone will actually exercise the right. In fact, it doesn't even *happen* that the DPA will be the only exerciser of the right. Independents, in conflicts among themselves, can and (one would think) would exercise the right.

The rights of the DPA extend only to conflicts in which its clients are involved (with the exception of the right that everyone has to intervene to aid an unwilling victim whose rights are threatened — *if* the unwilling victim is willing to accept the aid). The DPA must allow people to enforce their own rights, if either (1) the conflict does not involve a client of the DPA, or (2) the people in question use a procedure that the DPA knows to be reliable (that is, an independent who uses the same procedure as the DPA must be allowed to wreak his vengeance *even on a client*, if it is known to the DPA that the procedure is the same)⁶¹. So the DPA does not even have a *de facto* monopoly on the exercise of the right to defend

against unreliable procedures, let alone a monopoly on the use of force.

Nozick notes that "Since no claim is made that there is some right which it and only it has [and it would be illegitimate for the DPA to make such a claim], no monopoly is claimed" (p. 108). The DPA does *not* say that only it may decide who may use force and under what conditions; it does *not* reserve to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries; it does *not* claim the right to punish all those who violate its claimed monopoly. It does *none* of these things because, as Nozick sees, "The dominant protective agency's domain does *not* extend to quarrels of non-clients *among themselves*" (p. 109). The DPA *claims* no monopoly, and it *has* no monopoly, as was argued in the preceding paragraph.

Yet that means that Nozick's own "necessary condition" for the existence of a state, quoted early in the present article, is not met. That condition was: to be a state, some person or organization must announce that, to the best of its ability, it will punish everyone whom it discovers to have used force without its express permission. The DPA may not legitimately do that. If it did, it would be threatening to violate the rights of others, and acting upon the threat would be a violation. And Nozick's intent is clearly to establish that the transition from anarchy to ultraminimal state can be made without violating anyone's rights.

If the DPA makes such an announcement, it violates rights. If it stays within its rights, it fails to meet Nozick's own necessary condition for statehood. So earlier appearances were not so deceiving after all: state and protective agencies seemed to be different — and they are.

So even if one can agree with Nozick's entire argument regarding the rights that the DPA in fact has,¹⁷ one will be disappointed in the end. For things still "seem" the same as when Nozick began his argument: he has not justified even an ultraminimal *state* by his "invisible-hand" argument from voluntary protection associations. The only thing that a DPA has a "monopoly" on — even on Nozick's terms — is the ability to exercise the right of punishing (or resisting) unreliable punishers, against all who use

unreliable procedures of justice (or threaten to use them) *against its own clients*. Which is merely to say that it's the DPA.

Nozick recognizes most of this, apparently, and it seems that he is unsure as to what he should do about it. What he finally decides to do is somewhat peculiar. He abandons the "necessary" condition that he so carefully set out at the beginning of the argument. Thus he fails to do what he set out to do, and tacitly admits this failure.

Nozick abandons the necessary condition in favor of a comparison between anthropological descriptions of the state, on the one hand, and the characteristics of the territory we have been exploring, with its DPA, on the other⁽⁸⁾. He reveals his mixed feelings about the result in the following passage:

We therefore conclude that the protective association dominant in a territory, as described, *is* a state. However, to remind the reader of our slight weakening of the [earlier] condition, we occasionally shall refer to the dominant protective agency as 'a statelike entity', instead of simply as 'a state'. (p. 118.)

So the argument that the state can evolve from the state of nature, without violating the rights of anyone, by an invisible-hand process, does not hurt the free-market model, since it turns out that the Nozickian argument survives only if the term "state" is used in a sense different from that set out at the beginning of his argument. It was necessary to discuss Nozick's argument, however, since it seemed at first that he was going to try to make his case using roughly the same characterization of the state that has been used in this paper. But it is clear that Nozick's argument is no serious threat to the free-market model; the purely contractual free-market society is *not* unstable, in the sense of leading ultimately to what it was designed to replace. It doesn't (and can't) do that, without violating people's "rights".

But is the situation so far portrayed, in which a dominant protection association evolves, with a right to punish independents who use unreliable procedures of justice against the association's clients, a *just* one? It may be that the DPA, while not being a state in the present sense, is unjust in its own special way. Nozick's second objection may still work against the free-market model, even though his first one didn't.

The second objection corresponds to the second feature of what Nozick thinks of as the illusion that the scheme of private protective associations differs from a minimal state. That is, it appears that the DPA would not protect all individuals within its domain. It was noted earlier that Nozick is probably not making the claim that "redistribution" of justice is a necessary condition for a state, but rather that justice demands that such redistribution be made. It is now possible to understand his argument for that conclusion.

The DPA prohibits the use, by independents, of unreliable procedures of justice *against its clients*. The determination that a given procedure is unreliable, in such cases, will be made by the DPA itself. What the independent thinks of the procedure does not make any difference.

So what happens if a client of the DPA commits some offense against an independent? The independent has his own procedure of determining guilt and deciding what to do about it, but if the DPA regards his procedure as unreliable, he will not be able to use it. For even if his procedure happens, in this case, to make the same determination that the DPA's own procedure makes, he is punishable, according to the DPA, simply because he uses the procedure.

So he won't use the procedure. Or if he tries, he will be stopped. Or even if he manages to punish the client, he will himself be punished by the DPA.

How, then, is the independent to defend himself, or to see that justice is done if someone violates his rights? He has the right to seek justice from those who have done him wrong, but the DPA seems to be standing in the way of his exercising that right. This situation seems to be unjust, for it appears to leave independents (at least those who are inclined to use procedures deemed unreliable by the DPA) effectively helpless against offenses committed by clients of the DPA:

Since the prohibition makes it impossible for the independents credibly to threaten to punish clients who violate their rights, it makes them unable to protect themselves from harm and seriously disadvantages the independents in their daily activities and life. Yet it is perfectly possible that the independents' activities including self-help enforcement could proceed without anyone's rights being violated (leaving aside the question of procedural rights). (p. 110.)

Nozick argues that the resolution of this dilemma is to be found in his "Principle of Compensation":

...those who are *disadvantaged* by being forbidden to do actions that only *might* harm others must be compensated for these disadvantages foisted upon them in order to provide security for the others. (pp. 82-83.)

The principle relies itself upon Nozick's contention that "the dilemma, 'either you have a right to forbid it so you needn't compensate, or you don't have a right to forbid it so you should stop', is too short" (p. 83). There is a middle ground, which allows us to go between the horns of the dilemma; there are *some* actions which people have a right to forbid, provided that they compensate those to whom the actions are forbidden. The use of unreliable procedures of justice by independents falls into this category, and a likely form of "compensation" in this case would be the provision, by the DPA, of protection services to those prohibited from protecting themselves.

It would appear that Nozick is correct at least in thinking that dealing with risk provides important problems for the model presently under discussion. It is not so clear, however, that Nozick's own solution is the right one.

One possible source of doubt is his emphasis, in the argument that leads up to the Principle of Compensation, upon response-policies — policies that guide the response of a protector *after* a violation has occurred — rather than upon prevention-policies — policies that guide the behavior of a protector in advance of violations. It is not that Nozick *ignores* prevention-policies; in fact, the Principle of Compensation itself evolves as a prevention-policy. But the trend of the discussion seems to play down the possibility that the DPA, for example, might efficiently protect its clients by way of armed guards, strong locks, and the like. It is not clear that *this* sort of prevention policy might not lower the risk of violations enough to avoid the necessity of forbidding the *risky* actions of others, since it keeps its attention focused on actual violations. It ought at least to have been more fully discussed.

Another possible problem is the link that Nozick seems to see between prohibition of an act, on the one hand, and punishment above and

beyond mere restitution if the act is performed, on the other. It might be thought that restitution is all that it is *ever* legitimate to require of someone who has violated the rights of another. It would seem that any counter-argument would have to make use of some sort of deterrence theory, and it is never clear that Nozick is himself comfortable with deterrence as a justification for punishment (pp. 59–63).

Finally, there is the problem, which Nozick notes, of spelling out just what sorts of things constitute the relevant sorts of “disadvantages”. In particular, there is a rather nasty problem of definite description involved with deciding which actions, if prohibited, would disadvantage people (p. 82). There is also, of course, the problem of specifying what “disadvantage” amounts to. Nozick doesn’t have a theory of disadvantage, and the lack of it is a source of trouble for the Principle of Compensation (pp. 81–83).

It is not necessary for present purposes, however, to quarrel with Nozick about these points. What is important to note here is that, even if the whole argument for the Principle of Compensation goes through, the Principle does not have quite the effect one might think.

The present problem is the possibility that the protection agency scheme might be unjust. In the first place, if the Principle of Compensation is correct, then it may require a “redistribution” of protection services that would turn the DPA into a state.

There are two points to be made here.

First, the compensation required is not redistributive, as Nozick himself points out:

We...see that such provision need not be redistributive since it can be justified on other than redistributive grounds, namely, those provided in the principle of compensation (p. 114).

The point is that to call an institution or practice “redistributive” implies something about the *reasons* for establishing the institution or practice — reasons different from those Nozick uses in arguing for an obligation on the part of those who prohibit unreliable procedures of justice to compensate those who are prohibited.

Second, and most important, the provision of protective services by the DPA is far from

universal in the area it dominates. Once again, attention is directed to the passages quoted at the beginning of the chapter: “...under the usual conception of a state, each person living within (or even sometimes traveling outside) its geographical boundaries gets (or at least, is entitled to get) its protection” (pp. 24–25). The Principle of Compensation requires nowhere near such broad coverage. It requires only that *those independents* who are inclined to use unreliable procedures of justice, and who are therefore prohibited from using them *against clients of the DPA*, must be themselves provided protection services by the DPA in squabbles *with clients*. The DPA need not provide protection to independents in disputes with other independents. Neither must it provide protection to independents who use reliable procedures. The only people protected by the DPA are its own clients and a certain class *among* the independents.

So the redistributive condition for statehood is not met by the DPA any more than the monopoly condition is. Even if every point in Nozick’s chain of arguments be granted him, therefore, it *still* appears

that the dominant protective agency in a territory not only lacks the requisite monopoly over the use of force, but also fails to provide protection for all in its territory; and so the dominant agency appears to fall short of being a state (p. 25).

Neither instability nor injustice lead to the collapse of the free market model of social organization. It has survived Nozick’s criticisms.

NOTES

1. Although “A combination of individuals may have the right to do some action *C*, which no individual alone had the right to do, if *C* is identical to *D* and *E*, and persons who individually have the right to do *D* and the right to do *E* combine” (p. 89). “...the legitimate powers of a protective association are merely the *sum* of the individual rights that its members or clients transfer to the association” (p. 89).
2. I am indebted to David B. Suits for this last question.
3. Nor is it obvious even that it *could* do so. Under Nozick’s third alternative, the DPA may very well be a rather elaborate network of agencies, linked by agreements regarding decision procedures for settling disputes. It is not at all clear that such a situation would involve *any* policy, whether it be one of making announcements or one of enforcing “rights”, that would be common throughout the DPA. This complicates matters somewhat, since (1) the third alternative is

- the most likely one; (2) it is not clear that the DPA would not suffer from internal jockeying for position among component agencies, which might make any agreements among them quite unstable; and (3) Nozick's argument seems to depend upon some common DPA policy. In spite of these problems, it will be fruitful to evaluate Nozick's argument without raising them in the text. It is assumed, then, that the DPA can and will have some common policy toward others.
4. There are other arguments, such as an argument from fear, that lend partial support to the same conclusion. These others are not sufficient, however, to establish the ultraminimal state. The main line of argument from state of nature (private protection agency scheme) to ultraminimal state is the one traced here in the text.
 5. There seem to be reasons to have doubts about *both* of Nozick's arguments for the permissibility of punishing users of unreliable procedures. Procedural rights seem to be hopelessly vague, and it is not at all clear that the second argument is on the right track. If *A* thinks that *B* has done wrong, and is right, and he punishes *B* for doing wrong without over-doing it, it doesn't seem obvious that *A* should later be punished himself if it turns out that his procedure for determining guilt was faulty. Is it possible that distinguishing, among cases where *B* has done wrong, but *A* doesn't know it, between cases where *A* *thinks* that *B* has done wrong, on the one hand, and cases where *A* is simply aggressing, on the other, might clear up this source of confusion in Nozick's argument? If so, then what makes *A* culpable in some cases, innocent in others, may *not* have anything to do with his ignorance, and Nozick's case for punishing users of unreliable procedures may be spoiled.
 6. Roy A. Childs, in a paper delivered before the Third Libertarian Scholars Conference ("The Invisible Hand Strikes Back", Third Libertarian Scholars Conference, New York City, 24-26 October, 1975), has suggested, on the basis of this point, that the Nozickian ultraminimal state is highly unstable. Childs argues that the clients of the DPA will be financially motivated to take their business to agencies which use precisely the same procedure as the DPA, but which are *not* obliged to cover certain costs that only the DPA will have. These special costs are related to Nozick's contention, to be discussed later, that the DPA has an obligation to finance protection for non-clients. But if Childs is correct, then no DPA will be able to maintain dominance for long. It will lose business simply *because* it is the DPA.
 7. Three possible sources of controversy have been noted above: (1) it is still not clear that there is no relatively stable arrangement for dealing with inter-agency disputes that could *not* plausibly be described as a single common system within the given geographic area; (2) neither of Nozick's arguments for the permissibility of punishing users of unreliable procedures seem adequate; and (3) it is not obvious that the DPA would be able to have *any* unified and stable policy.
 8. In fact, it's not at all clear that the DPA is any more similar to a state on the anthropological condition than it was on the earlier one.