

## Nozick and the Individualist Anarchist

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Robert Nozick, in *Anarchy, State, and Utopia*<sup>1</sup> presented his by-now-famous view that "a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified."<sup>2</sup> He went on to say that only such a state is justified. Since then, the view has been frequently presented that a more extensive state than the one proposed by Nozick is warranted<sup>3</sup>—as has the view that only a *less* extensive state,<sup>4</sup> or no state at all, is morally permissible. When such an antistatist, or anarchist, view is presented, however, rarely has its advocate also been an advocate of capitalism, i.e., an individualist anarchist. But occasionally that does happen. In this paper I propose to criticize Nozick from the individualist anarchist point of view and show that although he has challenged the classical arguments of the individualist anarchist, the anarchist has a reply.

Nozick and the individualist anarchist believe in a set of moral principles. I shall refer to them as, respectively, the Libertarian Principle, the Kantian Principle and the Lockean proviso. The Libertarian Principle requires that we shall never initiate force, or be guilty of fraud, theft, the violation of contracts, or other infringements on private property rights. The Kantian Principle requires that we never use individuals as mere means, but always as ends. Nozick's Lockean proviso requires that whatever economic exchanges occur between individuals, none are left worse off than he was before the exchanges were made. Thus, all exchanges must be, to use Nozick's word, "productive." That is, both sides must benefit, or, at least, not be harmed by the exchange.

The individualist anarchist point, simply put, is that no state can satisfy these moral principles, as all states arise through processes that violate them; hence, no state is justified. To see this, we must understand how the term *state* is used. The term is used in the way recommended by Max Weber. For Weber, the state is the sole rightful authorizer of physical violence in a geographical area. It is this monopoly character of the state that makes it, from the individualist anarchist point of view, immoral.

The moral legitimacy of the state will depend on the moral legitimacy of any agency that claims to have a monopoly on coercion in a particular area and that initiates force against any actual or potential competition, inasmuch as the state is just such an agency. Another such agency is Nozick's "dominant protective association." A dominant protective association is a self-defense league that has a de facto monopoly on the use of violence in a particular territory. As we shall see, if I can show the illegitimacy of the dominant protective association, I will have shown the moral illegitimacy of the state. Now, the individualist anarchist has no objections to a self-defense league, as long as it follows the Libertarian Principle, the Kantian Principle, and the Lockean proviso. Nozick, in his book, argues that such a self-defense league could evolve into a state without violating any of these principles. I will not rehearse all of his arguments here. But I will look at the following scenario.

Let us call the de facto monopoly, firm A. Now, suppose a group of independents either contract with each other or with another party to form protection agency B. What can A do? According to Nozick,<sup>5</sup> it can reserve the right to pass judgment on firm B's guarantees of due process. These would be the methods that the firm uses to determine when to deter or punish the actions of a moral agent. If A finds the means by which B enforces rights to be unreliable or unfair, A can (i.e., possesses the power to) prohibit B from forming. It can likewise prohibit B's clients from using self-help enforcement of rights even if there is simply a *risk* of this enforcement being injurious to its clients.

At this point, Nozick's argument looks very much like the traditional archist's.<sup>6</sup> Acting out of self-defense, the archist argues, the individuals in a region can organize into an association with the power to protect their rights. This protection will include the assumption of monopoly powers, as that is the best way to exercise this power of self-defense.

But the individualist anarchist's reply is as follows. Acting on his behalf, I ask, What has happened if A prohibits competition? On my view:

- (1) The independents' right of self-defense has been violated.
- (2) Free exchanges have been repressed, namely, those between the independents and firm B.
- (3) The monopoly has coercively restrained the free exercise of the right of contract. Thus, it has violated the Libertarian Principle, which permits all voluntary exchanges.
- (4) The Kantian Principle has also been violated, as the independents are not being treated as ends. If they were, I should think, they could not be stripped of their right of self-defense. They are being treated solely as means to the security of firm A's customers.

Thus, A has secured its status as a state (for surely, that is what it is) by morally impermissible steps, and the state is thus immoral.

In a definite advance in the debate between the individualist anarchist and the archivist, Nozick argues that criticisms such as mine are too quick. He admits firm A has transgressed against the independent's rights. But he asks:

*Are others forbidden to perform actions that transgress the boundary [i.e., violate individual rights]. or encroach upon the circumscribed area, or are they permitted to perform such actions provided that they compensate the person whose boundary has been crossed [i.e., whose rights have been violated]?"*<sup>7</sup>

Nozick's answer is that, yes, they are, under certain circumstances. But let us pause and reflect upon the term, *compensation*. Nozick defines it in the following way: "Something fully compensates a person for a loss if and only if it makes him no worse off than he otherwise would have been; it compensates person X for person Y's action A if X is no worse off receiving it if Y had not done A. (In the terminology of economists, something compensates X for Y's act if receiving it leaves X on at least as high an indifference curve as he would have been on, without it, had Y not so acted.)"<sup>8</sup>

I take the following to be an example of compensation. (This example of compensation is mine and not Nozick's.) Jones contracts with Smith to work for him. Jones knows the job is dangerous, so he offers Smith a certain amount of money as insurance, to be paid if certain kinds of injuries occur. Smith, taking into consideration the benefits of having the job versus not having the job, the pay Jones is offering him, etc., decides that he prefers \$*n*, the amount Jones is prepared to insure him for, to the alternatives, i.e., not working, not having a salary, etc. The next day, Smith reports to work, and his ears get caught in a mechanical rice picker and are seriously injured. He collects \$*n* from Jones. All things considered, for Jones \$*n* is at least as good as (i.e., equivalent in utility to) uninjured ears, and uninjured ears are at least as good as \$*n*. That is, Jones is as high on an indifference curve with mangled ears and \$*n* as with uninjured ears and no compensatory payment. Moreover, the transfer of money from Jones to Smith was a result of payment both sides agreed to.

Compensation should not be confused with a transfer of economic goods I shall call "restitution." An example of restitution is as follows. Frank slips and breaks his neck. But he is on Howard's property. Frank sues Howard. Howard does not agree to pay at first, but some third party (characteristically, but not necessarily, the state) forces him. However, the payment is not what Frank or Howard would have agreed upon had they negotiated the matter beforehand. Restitution can be characterized as follows: (1) the parties did not agree to \$*n* as the amount of the payment, or (2) one party did not wish to pay it, or the other receive it. There are perhaps endless variations on restitution as well as on compensation. For brevity's sake, I shall not go into them. But in all cases, what is present in restitution is that at least one party to it is forced into a transaction against his preferences. The economic goods that changed hands, in short, did so through force and not

by trade. Nozick ignores this distinction between compensation and restitution. It will play an important role in my reply to him.

Nozick justifies the transition from the competitive, i.e., stateless, protection market—the market the individualist anarchist is content with—to the state by invoking the principle of compensation, which is stated in this way:

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.<sup>9</sup>

More important, under certain restricted conditions, compensation will justify or at least excuse the violations of the individual's rights involved in any disadvantaging deprivation of his liberty or property. In particular, under certain conditions, a firm or agency may violate rights (and the Libertarian Principle, the Kantian Principle, and the Lockean proviso) and in so doing form a state if it compensates the individuals whose rights are violated for their losses.

We shall recall that firm A has (1) stripped the independents of their right of self-help enforcement, and (2) initiated force, in violation of the Libertarian and the Kantian Principles, to prevent their exercise of the right to freely contract with firm B. Even Nozick admits that a border-crossing (as he so delicately puts it) has occurred.

But firm A will compensate the independents for their losses. For the deprivation of their liberty, firm A offers them what seems to it the equivalent in value, namely, protection at a lower cost or no cost at all. If they do not accept this service, firm A reserves the right, in order to protect its clients, to coerce the independents into acquiescence. But this initiation of force is no longer enough to make the formation of a state intrinsically immoral, according to Nozick,<sup>10</sup> as the independents have been compensated for the rights violation.

As an initial observation, let me point out that the compensation of a rights violation, of course, does not render morally permissible the actions involved in such a violation. If a rapist were to compensate his victim (say, with money), she would be doubly injured, and he would have compounded his crime, not excused or justified it. But more significantly, I think, is that Nozick so far has been confusing what is possible and rightful under a system of compensation with what is possible under a nonmarket system of restitution. Let me explain myself. If Jones were to ask Smith for  $x$ , a property of Smith's, and Smith accepted, provided Jones gave him  $\$n$ , we could reasonably infer that in terms of Smith's preferences,  $x$  was equal to or greater than  $\$n$  in value. We have an exchange that benefits both sides. Either one of two things has happened here. Either  $\$n$  was greater than  $x$ , and Smith was more than compensated, or  $\$n = x$ , and Smith was (merely) compensated. Let us stick to the latter case.

The nature of the exchange when firm A forces the independents to accept its suzerainty, with reimbursement  $\$n$ , is different in kind from the Smith and Jones

case; it is one of restitution. Let us imagine, for example, that the state is offering an independent, call her Joan (after Joan of Arc, a notorious independent), an economic good, namely, security and protection from the war of each against all. But Joan refuses. Firm A then offers to purchase Joan's liberty of choice in this matter for  $\$n$ . Joan again refuses. Firm A then declares that it finds unacceptably high, the risk of Joan's self-help enforcement or her contracting with a competing protection agency, given the possibility of Joan's using unreliable or unfair enforcement mechanisms. Thus, firm A prohibits Joan from defending herself, abridges her right of contract, and restrains trade. Joan's rights (and the Libertarian and Kantian Principles) have been violated. The state (for now it has become, not a firm, but a state) gives Joan  $\$n$  (or the equivalent in lower-priced or no-cost service), which was its highest offer for Joan's liberty. Has Joan been compensated?

Compensation would leave Joan at least as high on an indifference curve, given her present condition, as her prior condition. That is, compensation would make Joan indifferent as to whether she is in her present condition or in her prior condition. In other words, she would have as much utility now, as a client of firm A (a subject of the state) as she did as an independent. But obviously  $\$n$  was not compensation. Otherwise, firm A would not have had to coerce Joan. It seems sensible to suppose that if  $\$n$  would have compensated Joan for leaving the state of nature, then there would have been an amount  $\$n+x$  which would have made it rational for her to voluntarily join firm A's family of clients. There are three possibilities here.

- (1) There was no amount  $\$n+x$ . But then there could be no amount  $\$n$  (the amount of compensation).
- (2) There was an amount  $\$n+x$ , but the monopoly was unable to pay it.
- (3) There was an amount  $\$n+x$ , but the monopoly was unwilling to pay it.

In the first case, Joan has suffered a loss, as she has not been compensated. That is, she has less utility as a client (subject) of the monopoly (state) than as an independent. In cases 2 and 3, firm A could not make its services beneficial to Joan, so it forces her to accept its terms. This then is the scenario that Nozick would have us believe is morally permissible:

Firm A takes Joan's right of self-protection away from her. This is to protect A's clients from the (mere) possibility that Joan might harm them. As Joan is, by hypothesis, a free, rational, utility-maximizing agent, presumably if she would have benefited from having her rights taken away from her, she would have voluntarily surrendered them.

We must assume that Joan would prefer a state of the world where she would still have her rights unmolested. This is  $S$ . She is presently in a state of the world where she cannot realize these benefits. This is  $S'$ . So in terms of her own personal utility calculation, the worth of  $S'$  is less than the worth of  $S$ . The net loss involved, we shall label  $L$ .

Firm A then offers to protect Joan for price  $\$n$ . Joan being otherwise defenseless, due to A's initiation of force against her boundary, is compelled to accept. As Joan would not have paid  $\$n$  except under duress, in terms of her preferences  $\$n$  represents a loss to her. (Anytime Joan has to give out money for benefits she finds spurious, we may infer a loss equal to, if not greater than, the price of the spurious benefit.)

The exchange, which presumably results in benefits to A, results in loss,  $L+m+n$ , to Joan, i.e., the cost to Joan of her violated rights, the cost of the forced acceptance of the monopolist's services, and the payment she is compelled to make for these services. We thus have an unproductive exchange vis-à-vis Joan's personal utility calculation, based as it is on her preferences about alternative states of the world. This violates the Lockean proviso and the Kantian Principle.

Thus far, I have claimed in my reply to Nozick that the application of the principle of compensation in the relevant cases of nonmarket restitution is equal to the null set. Nozick's excuse for rights violations thus fails even to apply to the relevant cases. Were it possible to compensate the individual for the transgression against her rights involved in the formation of the state, no coercion would be needed. For we could simply offer the individual  $\$n+x$ , the amount of payment sufficiently greater than  $\$n$ , the amount of compensation, to make the individual prefer acceptance of firm A's offer to nonacceptance. If the firm is unable or unwilling to do this, then it claims a right prohibited by the Kantian Principle. Namely, it wishes to use the individual without treating her as an end. It does so by offering her no acceptable profit in the exchange. The exchange between the independents and firm A—the exchange that produces the state—is unproductive vis-à-vis the independents' utility calculation; it leaves them worse off than they would have been had the exchange not taken place. As they violate the Lockean proviso, the steps that lead up to the formation of a state remain immoral.

At this point, Nozick could reply that the above scenario is not the only one by which a state could form. There are two logical possibilities here. One is that a state forms against the will of independents. This is the scenario that we have been considering. And, so the response goes, we are indeed right that under this scenario, no state is justified. The other is that the state forms with unanimous consent—the state need not initiate force to get independents to accept it; for there are no independents. In the presence of unanimous consent, we need not infer that individuals are left worse off than they were before the state formed (if they were, they would presumably be independents); hence, there is no violation of the Lockean proviso. And since the state is only protecting those who want to be protected, no clear violation of the Kantian or Libertarian principles has occurred. A state that forms with unanimous consent could still be justified; our criticism does not touch it. Hence, some state is justified; the individualist anarchist, who believes that no state is justified, is wrong.

One obvious way to respond to this is that no state has ever formed in this way, nor does it seem likely that one ever will. Thus, the scenario in which the state is unjustified is in fact the only one in which states arise. Moreover, for the state to be just, the unanimous consent to the state's protection would have to be perpetual. For as soon as any one disagreed with it and became an independent, one of two things would happen. Either the state would allow that person's independence, or it would not. If it allowed the person his independence, then there would no longer be a monopoly of force in the area, for two agents would have the right to use force—the "state" and the independent. Thus, there would no longer be a state. If the state suppressed the independent, we would be right back in the situation where the state is initiating force against independents. And we have seen the illegitimacy of that kind of state. Thus, no known or future state will be legitimized.

In fact, the state is, historically, in the same moral position as a protection racket. The protection racketeer forces protection on his clients. If they refuse, then they will be physically assaulted. Even if the racketeer "compensated" his clients by giving them protection at lower cost than they might otherwise get, his actions are still immoral. Thus, if I am right, the steps that bring about the state (any state) involve violations of Nozickean moral principles and rights violations, and Nozick's principle of compensation does not justify the state. Despite Nozick's defense, the state, to the individualist anarchist, remains morally impermissible.

### NOTES

1. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).
2. *Ibid.*, p. ix.
3. One proponent of a more extensive state is John Rawls. See his *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
4. Following Nozick's usage, I am employing the term *state* in the way recommended by Max Weber. See H. H. Gerth and C. Wright Mills, trans., eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1970), p. 78.
5. Nozick, pp. 88-89.
6. I am indebted to Tibor Machan for the term *archist*, which denotes an advocate of a minimal state.
7. Nozick, p. 57. Italics in original.
8. *Ibid.*
9. Nozick, pp. 82-83. Italics in original.
10. Nozick, pp. 57-85, 88-90, 96-113.