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# ROBERT NOZICK'S DERIVATION OF THE MINIMAL STATE

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In Part I of *Anarchy, State, and Utopia*,<sup>1</sup> Robert Nozick undertakes to demonstrate, on the basis of what would ordinarily be considered libertarian anarchist moral and metaphysical assumptions, that a de jure legitimate state could come into existence by a sequence of steps, no one of which violated any person's rights; that such a state would satisfy a plausible definition of the state of the sort Max Weber enunciated; that it could function as a state without violating anyone's rights; and that such a state would be a genuine minimal, or nightwatchman, state. In Part II, Nozick goes on to argue that a state so conceived could be no more than a minimal state without violating someone's rights.

In this Article, I propose to subject the argument of Part I of *Anarchy, State, and Utopia* to examination and criticism. After a brief summary of Nozick's argument, intended to bring into view the elements of it which are especially important for my analysis, I shall develop my critique in three stages, beginning with purely internal considerations of the consistency of Nozick's argument, given his premises, and proceeding to more and more "external" considerations. My conclusions will be that Nozick's argument is internally unsuccessful; that a number of the background assumptions of his argument are wrong, in ways which vitiate his theory; that his entire mode, or style, of doing political philosophy is inappropriate to its subject matter; and finally, that the peculiar tone of *Anarchy, State, and Utopia* serves as a clue to what is awry with it philosophically, as a piece of political theory.

## NOZICK'S ARGUMENT

Nozick begins with a group of individuals in a Lockean state of

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1. R. NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974).

nature.<sup>2</sup> He simply assumes that there is a clear, objective, rationally knowable moral law which determines the absolute and inviolable rights possessed by those individuals and the duties each owes to others. The individuals, on the whole, are not so righteous as to ensure that they will always act as the moral law commands, but they are sufficiently righteous so that rights-violations, while a genuine social problem are nonetheless a marginal rather than a central fact of life in the state of nature. The individuals have conflicting interests, but they can benefit from far-reaching, systematic exchange, interaction, contract, and cooperation. What is more, it makes coherent sense to speak of them *as* individuals, in abstraction from or independently of their social origins and inheritance.

The moral law, as Nozick invokes it, has rather blurry outlines, although the author appears to have a penetratingly clear intuition of it. However, certain of its key provisions emerge in his discussion. Rights are *inviolable*; hence they function as absolute, not merely as *prima facie*, constraints on the actions of others. Political philosophy "is concerned only with *certain* ways that persons may not use others; primarily, physically aggressing against them."<sup>3</sup> Oddly, but not surprisingly, Nozick construes the attachment of one's property as an act of physical aggression, and hence as fit subject matter for political philosophy. Each individual has the right to punish others for their aggressions against him, although he does not have the right to punish them unless they *have* aggressed against him, nor may he punish them inappropriately.<sup>4</sup> Most important of all, any person, *A*, has a right to punish any other person, *B*, for *B*'s violation of the rights of a third person, *C*. This claim is merely asserted by Nozick without proof, but it is the foundation stone of the entire edifice (however minimal) of the legitimate state.

With this set of assumptions, Nozick proceeds to develop his argument fairly rapidly in four steps:

1. Individuals in a state of nature have a right to band together, through contractual agreement, for purposes of mutual protection.<sup>5</sup>
2. Those individuals have the right, collectively, to assign to employees or agents such rights of self protection, punishment, and so forth as they possess individually and have pooled contractually.<sup>6</sup>

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2. *Id.* at 9; see J. LOCKE, TWO TREATISES OF GOVERNMENT 309-23 (Laslett ed. 1963) (Second Treatise).

3. R. NOZICK, *supra* note 1, at 32.

4. *Id.* at 10-11. Moral intuition appears to be the guide here.

5. *Id.* at 12-15.

6. *Id.*

3. Market forces, strategy calculations, and the like may lead to the emergence of a dominant protective association in a territory. Such an association will possess a *de facto* monopoly of physical force, which it has acquired by a series of totally permissible acts.<sup>7</sup>

4. The monopoly protective association, or "ultra-minimal state," will have an obligation to compensate nonclients, if there are any, for the disadvantage they suffer in their dealings with clients backed by so powerful a protective association. Hence it will have a right, indeed, it will have a duty, to "tax" its clients for the money to buy some sort of protection for the disadvantaged non-clients. This apparent "re-distribution" constitutes it a nightwatchman state, in the traditional sense.<sup>8</sup>

In Part II, Nozick elaborates a neo-Lockean theory of property, the "entitlement" theory, for the purpose of denying any further claims that may be made against the nightwatchman state—claims of the sort that usually go under the banner of "social justice." Since the rights dealt with in Part I are all property rights, given Locke's view that each of us owns, or has sole property in, his own body; and inasmuch as the argument of Part I is couched entirely in terms of boundary crossings, disadvantages, compensations, and the like; it is clear that the theory of property is really presupposed from the beginning, or at least it is presupposed that this theory must be developed as a part of the derivation of the minimal state. Nevertheless, I shall follow Nozick's lead, and ignore the entitlement theory in this analysis of the arguments for a *de jure* legitimate state.<sup>9</sup>

7. *Id.* at 15-22.

8. *Id.* at 24-25.

9. I cannot resist calling attention to one rather curious historical point concerning Nozick's theory of property, however, particularly since it reinforces the general conclusion of this Article. Nozick presents a recursive theory of entitlement, according to which repeated acts of just acquisition or transfer of property necessarily result in a just set of individual holdings, regardless of its pattern. Although Nozick never enunciates a principle of justice in acquisition (a fatal flaw, one might have thought, in a recursive theory), and explicitly rejects Locke's attempt to ground just acquisition in the notion of mixing one's labor with a bit of unheld property, he does invoke, as an essential element of his "theory," a well-known qualification in the chapter on property in the *Second Treatise* that Nozick labels "the Lockean Proviso." The passage reads:

"Whatsoever, then [man] removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property . . . . For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others."

J. LOCKE, *supra* note 2, at 329 (emphasis added). The italicized words are the "Proviso." Nozick construes this as claiming that property is initially private and individual, so that society, or the state, can assert no claim to the holdings of an individual that he does not freely warrant—so long as the Proviso has been satisfied. But a careful look at the remainder of Locke's discussion of property makes it clear that his view is the very opposite of Nozick's! According to Locke, God acquires title to the universe by creating it. Since he creates it *ex nihilo*, its entire value is value added—there being

Before we subject Nozick's argument to analysis and criticism, there are several questions of a general sort that might be worth raising about the logical status of that argument, and its precise purpose. One might imagine, from the way Nozick talks, that the argument is intended as a straightforward deduction, or derivation, from a set of assumed premises taken over from moral philosophy. However, so much of the argument depends, at crucial points, on specific interpretations and elaborations of that moral theory, with little or no proof of the interpretations adduced, that after a while it seems that Nozick is providing us with nothing more than a reconstruction or systematization of a set of moral intuitions. Roughly speaking, we might say that his argument is a rational reconstruction of a libertarian moral consciousness. If I disagree with one of Nozick's claims about morality, for example with regard to when, where, to whom, and to what extent I am obligated to pay compensation, what sorts of arguments would he consider it relevant for me to offer? I confess that I cannot tell.

Nozick talks repeatedly of developing a "theory" of this or a "theory" of that. Does he mean a rational reconstruction of our moral intuitions? Whose intuitions? Does he mean, rather, a derivation of normative principles from a set of premises? In this regard, his opening methodological remarks about types of explanation are seriously misleading. Nozick's task is to show that under certain circumstances, a state of a certain sort can be *justified*, not that it, or its appearance, can be *explained*. For this purpose, fact-, law-, and process-defects are irrelevant.

Finally, it should be noted that despite the contrary impression created by some of his language, Nozick is attempting to show that a de jure legitimate minimal state *could* come into existence by a series of morally permissible steps, not that it *would* come into existence under any particular set of social circumstances. In short, the purpose of Part I of *Anarchy, State, and Utopia* is to establish the *possibility* of a de jure

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no raw materials. He pays nothing to primary producers, and since by that creative act He also creates the space which the universe occupies, he need not even pay rent. God, out of His infinite Goodness, then gives (*i.e.*, in Nozick's terms, transfers) the earth to mankind *in common*. At the same time, He lays down the conditions under which an individual may rightfully remove a piece of property *from the common holding*, and appropriate it for himself. If we secularize this theory, it is not difficult to see that it is really based on the supposition that property is originally *social* or *collective*, and that individual rights to property are granted by—and hence can be limited or taken away by—society. The opposite view, that property is originally individual, is completely contrary to Locke's orientation, and also, to the facts of history and society. When Nozick points out, in his attack on Rawls, that commodities come into the world already loaded down with individual entitlements, he forgets that by his own theory, such entitlements arise in the first instance only from just acts of transfer (of labor-power and the other factors of production), and hence presuppose some adequate grounding in just acts of acquisition.

legitimate state. Let us turn now to an examination of Nozick's argument for that claim.

### AN INTERNAL CRITIQUE OF THE ARGUMENT

The first difficulty we encounter when we examine Part I is that Nozick, by his own admission, has not proved what he set out to prove, even if his argument is sound. The "state-like entity" whose generation by morally permissible or morally obligatory steps Nozick sketches is not, in his own words, the "sole authorizer of violence."<sup>10</sup> It has a right to interfere in disputes between two nonclients, but no special right beyond that which any person possesses. This entity has no right to stop one or another of those nonclients from forcibly but rightfully exacting compensation from the other nonclient for a wrong suffered. In other words, Nozick's "state-like entity" has no right to prevent nonclients from taking the moral law into their own hands in their dealings with other nonclients.

Nozick deprecates the importance of this inferential shortfall, quoting at length from an anthropological account of the state to support his claim that the state-like entity is near to a full-fledged state.<sup>11</sup> Now, for the pure theory of the state, the gap between state and state-like entity is exceedingly important. One might as plausibly respond to Kenneth Arrow's General Possibility Theorem,<sup>12</sup> as an acquaintance of mine once did, by pointing out that majority rule only rarely produces an inconsistent social preference order!

Leaving pure theory to one side, the significance of the limitations on Nozick's "state" will depend on certain matters of fact about which he is silent. His language encourages us to imagine a society in which no more than a handful of individuals choose not to sign up with the dominant protective association. But suppose as many as a sixth or a fifth of the residents of a territory are nonclients. Suppose, further, that they are geographically scattered and not easily identifiable by dress, manner, or occupation.<sup>13</sup> How will the minions of the state-like entity be able to tell who is and who is not a client, as they walk street patrol or rush into a barroom to break up a brawl? Will the state-like entity be forced to conclude that, for all practical purposes, it *must* claim to be the sole authorizer of violence (with due compensations paid, of course)?

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10. R. NOZICK, *supra* note 1, at 117.

11. *Id.* at 116-17, quoting L. KRADER, *FORMATION OF THE STATE* 21-22 (1968).

12. See K. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (2d ed. 1963).

13. They are, we may imagine, all that remains of the great anarchist movement that overthrew the more than minimal state and created the conditions out of which the dominant protective association emerged.

Will the state-like entity claim for its employees—its private police—special rights in their role as representatives of the total clientele of the association, over and above their rights as individuals? Will the state require its employees to be clients as well? (Premiums could be conveniently withheld from one's paycheck.) If a nonclient resists a private policeman who mistakenly interferes in what he thought was a fight between clients, will the issue between him and the nonclient be an issue between two individuals, or an issue between an individual and the state-like protective association as represented by its agent, the private policeman? If  $n$  individuals can, through  $n$  acts of contractual agreement, transfer their individual rights to a single protective association, can that association, by a single contractual agreement, transfer those aggregated rights to its agent, the policeman? If so—and Nozick can hardly say no—then will that policeman, in his personal on-duty encounters with others, whether clients or nonclients, have rights quite different from those possessed by the individuals he encounters? Also will that effectively deprive ordinary nonclients of their rights vis-à-vis the policemen?

In short, Nozick's argument will not do as a justification of the state. The plain fact is that states claim *de jure* legitimacy, and it is such claims, not assemblages or aggregations of transferred individual rights, that ground the further claims made by the state on behalf of its agents, its policemen, its courts, and its executioners.

The second difficulty with Nozick's argument is that it does not, in its own terms, establish its intended conclusion. Since he begins from the libertarian side of the debate, Nozick feels very little need to argue the claim that a dominant protective association can legitimately come into existence without violating anyone's rights. For him, as for all libertarians, the real problem is how to show that the protective association has a right (or indeed, a duty) to tax its clients in order to "redistribute" income to those who cannot or will not buy protection contracts and thereby become clients. In short, for Nozick the real nub of the issue is: What obligation have the rich to buy protection for the poor? His answer—and the linchpin of the entire construction—is the *principle of compensation*. The sequence of Nozick's exposition of the principle, somewhat obscured by his tendency to follow up interesting side-issues, is as follows:

a. After sketching the notion of an area in moral space around an individual that contains his rights, Nozick asks: "*Are others forbidden to perform actions that transgress the boundary 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?"*<sup>14</sup>

b. A principle of compensation is suggested: "[T]hose 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>15</sup>

c. The principle is reiterated with a charmingly ingenuous acknowledgment of its shaky logical status.<sup>16</sup>

d. Finally, the principle of compensation is flatly invoked as *the* justification for "redistribution," in the form of supplying protection for nonclients, which traditional libertarians decry as an invasion of the rights of those taxed.<sup>17</sup> Three pages later, Nozick announces that his argument is complete.<sup>18</sup>

As this survey indicates, Nozick nowhere argues for his principle, but even if we grant it to him, we must still raise objections to his employment of it. The clients of the dominant protective association are obliged to compensate nonclients for their loss of the ability to enforce their rights against clients. But presumably, only the loss of the ability to enforce their rights *properly* need be compensated. The associated clients are under no obligation to compensate nonclients for the loss of their ability to enforce their rights improperly, or to enforce false rights claims.<sup>19</sup> If I may, I will employ a Nozick-style pair of examples: First, if some madman proposes to enforce his property rights by going out into the world, when he has suffered a robbery, and randomly torturing people to death until he obtains a believable confession, I am not required, should I stop him from doing so, to compensate him for depriving him of the method of rights-enforcement he has chosen; nor am I obliged to compensate a different madman, should I deprive *him* of the ability to enforce the absurd claim that he, as the first-born of God, has a right to all the movable goods in the human world.

Thus, the clients of the dominant protective association are only

14. R. Nozick, *supra* note 1, at 57.

15. *Id.* at 82-83.

16. *Id.* at 87.

17. *See id.* at 110-11. The phrase "[a]ccording to our principle of compensation given in Chapter 4," *id.* at 110, makes it clear that by this point in the text, Nozick is taking the principle as having been established, not merely suggested. *See id.* at 115.

18. *Id.* at 114.

19. Since Nozick seems to interpret his own principles ad hoc, to suit his argumentative purposes, I am at a disadvantage in attempting to determine what inferences can and cannot be drawn from them, a disadvantage for which, presumably, I ought to be compensated by being held to a somewhat less stringent standard of proof.



obliged to compensate nonclients for depriving them of their ability to enforce their *true* rights *properly* against clients. By hypothesis, however, the protective agency employs methods that it considers proper, and only prohibits methods it considers improper. So from *its* point of view, no *disadvantage* has been suffered by the nonclients. Hence, again from its point of view, it has no obligation that it can see to pay compensation, and consequently no right to tax its clients in order to pay for such compensation. If this suggests Catch-22 or Big Brother, I can only reply that it does indeed. Nozick's dominant protective association looks very much like the traditional state, with the velvet glove of legitimacy removed from the iron fist of enforcement.

Let us examine the notion of compensation more closely, since Nozick rests so much of his argument upon it. It will be seen that in this topic, many of the most important lines of his argument come together. Nozick starts with a very strong version of the classical liberal conception of the individual. This conception assumes a sharp and clear distinction between what is inner, internal, private, or one's own, and what is outer, external, public, or someone else's. Nozick captures this conception quite nicely in his metaphor of the "moral space" of each individual, circumscribed by "a line (or hyper-plane)."<sup>20</sup> After introducing the image of a boundary of one's moral space, he thereafter frequently refers to rights-violations as boundary-crossings. When speaking of actions that threaten to violate the rights of others, or that run the risk of violating the rights of others, he speaks of individuals who come dangerously close to the boundaries of others, and so forth. We are encouraged by such language to conjure up either of two images whenever Nozick speaks of actual or threatened rights-violations. The first is the image of the body. Its surface is the "boundary," and an invasion of its surface is a violation of a person's rights in his own person. It is in light of this image that we can understand the remark that political philosophy is primarily concerned with physical aggression. The second image is that of a piece of "real property," of *land*, whose boundaries may be crossed only with the permission of the owner. Nozick's examples as often suggest this image of "boundary-crossings."

There is a very considerable difference between the physical invasion of my body (or its forcible manipulation by others) and an act of trespass on my property. The frequent talk about "fear," and so on, which we will attend to presently, makes sense only in respect to the threat of physical aggression. The examples of rights violations, however, are clearly couched in terms of the rights in real property. What

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20. R. Nozick, *supra* note 1, at 57.

is more, many violations of property rights cannot plausibly be understood either on the model of physical aggression or on the model of trespass. When I infringe your copyright, or steal your car from the public street in front of your house, I am neither invading your body space nor trespassing on your land.

Speaking somewhat more abstractly, Nozick's metaphor assumes that in moral space, my rights constitute, topologically, a compact closed set, the boundary of which is contained in the set. It follows that there cannot be any points in *my* rights space entirely surrounded by points in *your* rights space, although—whatever this means—my rights space might be entirely surrounded by yours. As Marx says, each of us, in this liberal model, finds in each other the barrier, not the realization, of his liberty.<sup>21</sup> But suppose that our rights are not so neatly partitioned into compact subspaces of the moral space. Suppose, indeed, that in moving from right to right in the interior, and not just at the boundary, of my rights space, I must cross the rights of innumerable other persons. In that event, the notion of a boundary-crossing will dissolve. Nothing in Nozick's discussion provides any support for his account of the structure of the moral space of individual rights.

But this talk of moral topology has about it the air of a *jeu d'esprit*. There are other problems with the account of disadvantage and compensation that cut more deeply into the heart of Nozick's argument. The moral presuppositions of *Anarchy, State, and Utopia*, as we have observed, are radically individualist. They depend on a very sharp distinction between an inner sphere, where society in general and other persons in particular have not even a legitimate concern and an outer or public arena of interpersonal interactions, in which alone the question of the claims of others against me can appropriately arise.

Nozick, in the language and style of his argumentation, leans heavily on such notions as utility maximization, compensation payments, indifference curves, and the like, which presuppose the abandonment of that sharp public versus private distinction. The fear or anxiety I may suffer, on account of my anticipation of a possible violation of my rights, is fair game for an expected utility calculation. But a Locke-Mill theory of the private and the public would rule out such considerations as irrelevant to any moral deliberation concerning rights and duties. If Christian proselytizers set out, sincerely, to convert Jews to their faith, they may thereby generate anxiety in the Jewish community over the survival of Judaism. Would this anxiety count as a disadvantage to the

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21. See K. MARX, ON THE JEWISH QUESTION 163, in 3 K. MARX & F. ENGELS, COLLECTED WORKS 146-74 (1975).

remaining Jews, for which—with suitable adjustments and qualifications—they would have a right to be compensated? On Nozick's view, the answer is presumably yes. However, neither Locke, nor Mill, nor any of the classic theorists of rights and border-crossings would agree. Ironically, Nozick has adopted a model that was developed as a theoretical elaboration of utilitarianism, and a moral theory antithetical to the intrusive paternalism of utilitarianism.

In general, the argumentation of Part I assumes a situation of choice under risk rather than choice under either certainty or uncertainty. All the talk about increased and lowered probabilities, the explicit assumption of measurement of utility on an interval scale,<sup>22</sup> and the calculations of expected utility, assume choice under risk. Now, in itself, this assumption need not be fatal; it is an idealization of reality, and all theoretical analysis requires some such idealizations. However, there are at least three serious difficulties with this assumption in the context of Nozick's argument.

First, the underlying assumption of the derivation of the minimal state is that individuals, fearful for their lives and property, will band together into protective associations for security. Leaving to one side Nozick's bizarre example of the arm-breaking machine, it is clear that the fear that fuels the drive for security is a product of *uncertainty*, not of *risk*. Even if we ignore the inner versus outer problem raised above, and admit this fear into our moral calculus, we must recognize that it is a product precisely of situations which *lack* the structure required for the probability estimates and expected utility calculations on which the theory of compensation rests.

Second, as Hobbes and many others have noted, fearful, isolated, uncertain individuals in a state of nature band together precisely to achieve that security and predictability that will, for the first time, make rational calculation possible.<sup>23</sup> One might say, anachronistically and somewhat facetiously, that one of the purposes of a social contract is to transform situations of choice under uncertainty into situations of choice under risk. One of the arguments that can be advanced in support of a state-enforced system of laws—especially in the area of property law—is that it reduces uncertainty and thereby facilitates rationally self-interested economic activity. Such a formulation makes Nozick's analysis of the formation, growth, and stabilization of a dominant protective association circular, for it assumes the prior existence of the very state of affairs it is supposed to produce.

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22. R. NOZICK, *supra* note 1, at 58.

23. See T. HOBBS, *LEVIATHAN* 189-201 (MacPherson ed. 1968).

Finally—a point to which we shall return—the elaborate calculations implied by Nozick's theory of compensation presuppose an extremely advanced stage of social, economic, and political integration. To take a relatively simple example, consider the degree of bureaucratization of medicine that must come into being in order to generate usable statistics on the relationship between heart disease and air pollution. One cannot even raise the question of "compensating" someone for having inflicted on him an increased risk of heart disease unless one has data of this sort, and the collection of such data requires a very advanced stage of social integration. The invasion of privacy, *de jure* or *de facto*, required by that stage of social integration, is precisely the evil that Nozick seeks to rule out. Merely in order to calculate what it owed in compensation to nonclients, the dominant protective association would have to do most of the snooping and prying and standardizing and regulating that is now carried on by the modern welfare state. The only difference between the two, so far as I can see, is that after inflicting itself on all of us, as the state now does, Nozick's state-like entity would be uncommonly niggardly when it came to distributing benefits.

In short, Nozick's real problem is that given his extremely strong theory of individual rights, side constraints, and so forth, he ought in all consistency to come to the conclusion that *no* unconsented-to boundary-crossings (*i.e.*, rights violations) are permissible, regardless of compensation. But that is a crazy conclusion, as he realizes. If accepted, it would immobilize us all, making us much like a bizarre gathering of morally musclebound rights freaks, lovely to look at, but unable to lift a finger for fear of encroaching on one another's moral space. So Nozick compromises. Of course, once he starts, only his intuition, or the degree of his moral finickiness, tells him when and where to stop, and how much to pay in order to achieve what a mathematically sophisticated Anglo-Saxon of the eighth century might have called a discounted *wergelt* raising the tribe to its previous indifference curve.

Before concluding this first, internal, stage of my critique, I should like to raise an additional question, and also correct an error in Nozick's one explicit use of Game Theory. The error is of no great importance to his argument, but the question, I believe, goes to the very heart of his theory, and indicates one of the ways in which it is inadequate. To put the question as succinctly as possible, what price will a dominant protective association charge for its services? A protective association is merely a private individual or group of individuals who go into business to sell a service. When such associations first spring up, price is

determined by market considerations. Once either oligopoly or monopoly develops, however, the dominant protective association can raise the price. For obvious reasons, there will be rather severe inflexibilities restricting entry of new firms into the market. If Nozick is correct, and a dominant protective association emerges with a de facto monopoly, the price will soar. The owners will charge as much as the market can bear, which will, in the nature of their service, be a good deal. What is more, like other monopolistic firms, the dominant protective association will not maximize output, which is to say that its maximum profit will probably result from a rather lower level of social stability and security than it could provide or than its customers would like. The customary laissez-faire safeguard against the dangers of monopoly is to assign to the minimal state the job of preserving the conditions of competition, but quite obviously it cannot perform such a function in this case!

We may therefore conclude that the protective association, once it acquires a monopoly, ought to charge only the fair market price, not the monopoly price. However, there is no such thing as a fair market price for the service sold by the dominant protective association! There is not even such a thing as what the fair market price would be. There could not be a "market" for what the association sells, because what it sells is the guarantee of a monopoly. Since there are no substitutes for law and order, consumers cannot even set limits to the monopoly price by switching commodities. Needless to say, the owners of the dominant protective association, inasmuch as they are merely businessmen out for a profit, will not be restrained by any of the traditional, irrational constraints on the exercise of political power, such as patriotism, public spirit, or a concern for the general welfare.

Finally, a few words about the payoff matrices, and accompanying analysis.<sup>24</sup> The hypothetical matrix is wrong, and the dominance arguments based on it do not go through. The problem lies in the figures postulated for payoffs  $DA'$ ,  $DB'$ ,  $D'A$ , and  $D'B$ . Nozick proposes the following matrix:

		Matrix II			
		Person II			
		$A'$	$B'$	$C'$	$D'$
$A$	5, 5	4, 6	10, 0	10, 0	
$B$	6, 4	5, 5	10, 0	10, 0	

24. R. Nozick, *supra* note 1, at 121-25.

Person I	C	0, 10	0, 10	x, x	x, x
	D	0, 10	0, 10	x, x	x, x

This matrix is wrong. An effort to block one's opponent from joining any protective association must have some nonzero probability of success,  $p$ . If it succeeds, and if one does not oneself attempt to join a protective association, then the outcome (ignoring costs of the effort) will be a mutual state of nature. Hence the true payoff matrix, including the expected utility calculations thus generated, should be:<sup>25</sup>

		Matrix II'			
		Person II			
		A'	B'	C'	D'
Person I	A	5, 5	4, 6	10, 0	$(p'x + (1-p')10),$ $p'x$
	B	6, 4	5, 5	10, 0	$(p'x + (1-p')10),$ $p'x$
	C	0, 10	0, 10	x, x	x, x
	D	$(px + (1-p)10)$	$(px + (1-p)10)$	x, x	x, x

Various assumptions about the values of  $x$ ,  $p$ , and  $p'$  will yield matrices with differing solutions. Consider, very briefly, the following three cases, concocted entirely out of imagination:

- i. Let  $x = 9$   
 $p = .1$   
 $p' = .8$

In other words, the state of nature is really quite pleasant, individual I has very little chance of stopping individual II from joining a protective association, but II has a very good chance of stopping I. If one substitutes the numbers into Matrix II' and computes the values, it is found that strategy B dominates for I. II, recognizing this, chooses strategy D'. The payoff is (9.2, 7.2), and the strategy pair is that I attempts to join a protective association, while II does not, but II attempts to stop I from joining.

- ii. Let  $x = 8$

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25. Where  $p$  = the probability that I will stop II from joining an association.  
 $(1-p)$  = the probability that II will succeed despite I's efforts.  
 $p'$  = the probability that II will stop I.  
 $(1-p')$  = the probability that I will succeed despite II's efforts.  
 $px + (1-p)0 = px$  = the expected value to I of the effort to stop II.  
 $px + (1-p)10$  = the expected value to II of an attempt to join an association in the face of I's opposition.

$$p = .9$$

$$p' = .2$$

The state of nature is a trifle less attractive. I has a very good chance of blocking II, while II has a slender chance of blocking I. Under these assumptions, I has no dominant strategy. II's dominant strategy is  $B'$ . I, recognizing this, chooses  $D$ . The payoff is (7.2, 8.2), and the strategy pair is that II attempts to join a protective association while I tries to stop him.

iii. Let  $x = 6$

$$p = .4$$

$$p' = .7$$

The state of nature is not so hot. I has a fair chance of stopping II, and II has a good chance of stopping I. I's dominant strategy is  $B$ ; II's dominant strategy is  $B'$ ; the outcome is (5.5), and the strategy pair is that each attempts to join and attempts to prevent the other from joining a protective association. This is a "prisoner's dilemma," since any of the state of nature outcomes is mutually preferable.

However, all of this is utterly irrelevant to questions of serious political philosophy! It is also very odd-sounding to anyone who has been brought up, theoretically speaking, on the great traditions of Western political writing. In the last section of this Article, I shall try to come to terms with the deeper meaning of that oddness. Now let us turn to some considerations of greater moment. In the next section of my discussion, I shall stand off a bit from the detail of Nozick's argument, and raise objections to certain of the assumptions that seem to underlie his approach to political philosophy.<sup>26</sup>

#### AN EXTERNAL CRITIQUE OF THE ARGUMENT

Perhaps the most irritating weakness of Nozick's book is its complete failure to take account of the most obvious and well-known facts of human motivation and social experience. For example, much of his discussion of the workings of a protective association seems to presuppose that the serious rights-violations against which one needs protection, are committed, by and large, by the sorts of solid citizens who will have joined a competing association, will be paid up on their premiums, and will have known addresses where they can be found. This may indeed be so in a small, rural society—one in which everyone knows

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26. For the purpose of organizing my remarks in this Article, I have distinguished in the titles of my sections between "internal" and "external" criticisms of *Anarchy, State, and Utopia*. The distinction, however, is scarcely fixed, and certainly not of any philosophical importance, so readers who do not find it intuitively clear are urged to ignore it.

everyone else, and in which an act of barn-burning or cattle-rustling can pretty certainly be laid at the door of those no-account Finkelstein brothers. But in the context of big-city street crime, Nozick's model is simply irrelevant. To put the point more generally, Nozick presupposes a society so settled, so orderly, that one might never feel the need for a protective association at all, let alone a state!

Nozick seems to me equally insensitive to the psychological, social, and institutional problems involved in creating and staffing a responsible, controllable police force, whether "public" or "private." The problem begins as soon as one introduces the notion of an *agent*. An agent is a private individual who adopts a social role. As an occupant of that role, he has rights, powers, responsibilities, and duties which he would not have were he not occupying the role, and which he puts aside when he steps out of the role. Thence—given the limits of the power of reason—comes the function of uniforms, titles, oaths of office, and similar accoutrement. They serve both to inform others of the role one is playing and to strengthen one's identification with the role. From this follows also the importance of internalizing the norms associated with a role, as opposed merely to making the appropriate adjustments in one's expected utility calculations. Nozick knows all of this, of course. He simply ignores it in the construction of his model of the rational individual and his analysis of the moral relationships between individuals.

Perhaps we can develop the philosophical underpinnings of these observations more systematically by examining the protective association on which Nozick erects his justification of the state. Following the standard libertarian account, Nozick represents such associations as companies that offer a service in the market, advertise for customers, promote sales by such devices as 13 weeks free protection with a 2-year subscription, money-back guarantees, and so forth. As he repeatedly insists, these companies are *groups of individuals*, and they have only individual rights and aggregates of individual rights which they, as individuals, exercise either directly or through their agents. There are no emergent rights, attaching only to corporate bodies and incapable of being decomposed into component individual rights.

The possibility of a protective association (that is to say, of a morally legitimate protective association) rests on four supposed moral facts, asserted (but not shown) to be facts by Nozick:

1. Each person in the state of nature has the right to enforce his (other) rights in a morally proper manner, and to exact suitable com-



pensation in an appropriate manner from those who have violated his rights.

2. Each person has the right—suitably hedged around—to punish rights violations against third parties.

3. Several persons may, through free and mutual agreement, do collectively in the way of rights enforcement and infraction punishment whatever they may do severally and singly.

4. An individual, and hence a group of individuals, may assign the tasks of enforcement, punishment, and so forth, to other persons *as their agents* (perhaps, but not necessarily, as their employees). These agents will act *not* in their own right as persons, but in their role as the authorized representatives of others. Rights are transferable in such manner that one person might, through a number of such transfers, come to be the bearer of many rights, just as one representative might bear many proxies in a committee election, or one lawyer represent the property interests of many clients in a suit.<sup>27</sup>

The operative assumption is clearly assumption 4, which underlies the moral legitimacy of protective associations as opposed to mere mutual aid societies. Let us assume that I can assign my rights to an agent, hire him to represent me, to do in my name what I have a right to do but what he, merely as an individual, might not have the right to do. Even granting all that, it must be obvious that I would stand under an obligation to monitor the actions of my representative, to ascertain that he has done only what I have authorized him to do, and *that* only in permissible ways. This obligation follows from the fact that I have the same obligation when I act as my own agent. If my agent violates the rights of others, I as well as he can be held responsible.<sup>28</sup>

Although it may be a relatively simple matter to monitor the behavior of my personal bodyguard, my personal lawyer, or the holder of my personal proxy, it very quickly becomes impossible in practice for me to exercise effective oversight as the protective association grows. Bureaucratic rationalization and institutionalization take over. It is not I who hire the association's enforcers (or private policemen); bureaucrats in the association's employment office do. I merely write out a

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27. To see the force of this assumption, we need only observe that even though *A*, in a state of nature, has a right to punish *B*'s violation of *C*'s rights, he may *not* have the same right that *C* does to punish *B*. *C* may have the right to use riskier methods of defense or of compensation; he may have a right, that *A* does not have, to forgive *B* for the infraction, or to offer *B* alternative modes of compensation. Should *A* become the agent of a protective association to which *C* has transferred his rights of retaliation and enforcement, however, he would then acquire in his role as *C*'s agent the rights that *C*, but not he, possessed in the state of nature.

28. This is a point on which Nozick's mentor, Locke, lays heavy emphasis. See J. LOCKE, *supra* note 2, at 365-66.

monthly check to pay the premium on my comprehensive insurance policy. Since the protective association is, we may suppose, a mutual benefit insurance company, I receive in the mail each year a notice of the annual shareholders' meeting, together with a request from the management for my proxy. I have roughly the same sort of control over the actions taken by the protective association in my name as I do now over the actions of the telephone company—with one exception: Now, if I get mad enough at the telephone company, I can write to my Congressman and ask that the government pass a law regulating the telephone company. In Nozick's model, however, the dominant protective association is the government! As a device for guaranteeing individual liberties and enforcing absolute side constraints, this is, to put it gently, a trifle feckless.

Nozick, we must recall, is not an anarchist. His purpose is to prove that the just state is possible, not that it is impossible. Perhaps it is not *de facto* tyranny to which he objects, only income redistribution. Therefore, we cannot defeat his argument merely by observing that it is an ideological rationalization for AT&T. Let us therefore take a closer look at assumption 4, with which we began this line of analysis, and at the argument that depends upon it.

The key to the assumption is the claim that person *A* can transfer a right in toto to person *B*. In Nozick's view, the full right passes, by means of a contractual agreement. (His theory of justice in transfers, which is part of his theory of entitlement, is merely a special case of this general claim.) Hence the entrepreneurs who own the protective association accumulate a stack of rights from their clients. They can in turn transfer those rights, in aggregation, to employees of the firm who walk the streets, staff the jails, run the courts, and collect the fines, all of them living bearers of those aggregated rights.

If total transfers of that sort are in fact permissible and possible, then Nozick might be able to carry his argument through (leaving to one side such objections as have already been raised earlier in this Article). However, Nozick is guilty here of an error that we might label "the fallacy of the transitivity of rights transfers." It bears a resemblance to the notion that indifference is transitive, although not too much weight can be placed on that comparison. When an individual is called upon to order a set of elements by means of the relation "preferred or indifferent to," he may judge himself to be indifferent between *x* and *y*, and indifferent between *y* and *z*, and indifferent between *z* and *w*, and yet *not* indifferent between *x* and *w*. This would be explained by the fact that the differences between the members of each pair were

too small to affect his preference judgments, too small to be noticed, whereas the aggregated differences, as revealed in the comparison of  $x$  with  $w$ , might exceed his threshold of indifference.

By analogy, in a simple rights transfer, as when I hire a lawyer to close a real estate sale for me, there is a minute slippage or blockage in the rights transfer, due to the fact that my agent is also an independent human being. Because he is a person as well as an agent, there is a small but nonzero probability that he will exceed his authority, or get his instructions confused, or interpret a situation in a manner that I would not approve. There is also a nonzero probability that I will be unaware of the breakdown of agency, or will be unable to rectify it. Because Nozick focuses his attention on simple rights-transfers, where the probability of slippage falls below the minimal threshold of moral awareness, he fails to see that as the protective association grows, as the rights collected are transferred and retransferred, as my relationship to my so-called agent grows ever more attenuated, I will become less and less able to see my own will, my own moral agency, in the actions of the association's owners and employees. As the imperfection of the transfer magnifies, my right to consider the transfer as having taken place diminishes. Eventually, I must recognize that for all practical moral purposes, I cannot exercise the oversight that is a necessary component of any permissible rights-transfer. I must therefore withdraw my authorization from the association. The net result is an unstable fluctuation in the size of the clienteles of the protective associations, with the mean size oscillating between limits the higher of which is no where near large enough to permit even a momentary pretense of dominance.

Obviously, this point could be expanded upon at great length, but inasmuch as others have done so,<sup>29</sup> there is no need to elaborate on the subject here. Suffice it to say that Nozick appears to have no appreciation of the staggering problems of controlling a protective association, of monitoring those actually entrusted with the tasks of enforcement. Since he must assume some level of rights violation, and hence some tendency of individuals to commit such violations, in order to get his argument going (otherwise, who needs a state?), he cannot pass this off as a practical detail from which his model abstracts.

The real problem—indeed, the underlying problem with all of *Anarchy, State, and Utopia*—is Nozick's persistent failure to take account of the nature of social reality. Nozick's models, methods, and arguments all treat social relationships as *transparent* rather than as

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29. For a brilliant exposition of this point, see ROUSSEAU, *THE SOCIAL CONTRACT* 88-96 (Cranston ed. 1970).

*opaque*. He portrays social interactions as marginal to the existence, integrity, and coherent identity of the individuals who participate in them, rather than as central and constitutive. It follows that he can have no usable notions of false consciousness, of self-deception, of alienation, and of the objectification of subjective categories. The demystification of social reality, which ought to be set as a major task for social theory and social practice, is simply assumed by Nozick as a given presupposition of his analysis.<sup>30</sup>

Nozick frequently assumes, for purposes of assessment of liability and payment of compensation, a degree of transparency of social relationships sufficient to permit plausible and usable ascriptions of responsibility, disadvantage, gain, or loss, to specific, identifiable individuals. When I speak of "the transparency of social relationships," I mean the possibility of tracing out at some length the filiations, the links in a chain of causes and effects, before the complex interconnections are obscured by the mist of social surfaces. To get some sense of what such a tracing out might mean, one can contrast a title search for a piece of land, which is carried out through ten or fifteen changes of ownership over more than a century, with the attempt—almost sure to be frustrated after two or three points of exchange—to trace back the lineage of a quantum of money as it is exchanged for a commodity, divided and exchanged again for several commodities, combined with other monies and exchanged once more for a service, and so forth.

Even a little reflection will reveal how problematic such ascriptions of disadvantage or responsibility are in a society like ours. Any intelligent and thoughtful person is perpetually troubled *both* by the legal attributions of specific liability to persons whose role in some rights-

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30. If I had been trained on the continent, in the dialectical mode, rather than in America by analytic philosophers, I might be tempted to suggest that there is, in the history of modern social theory, a dialectical progression:

- From the classical liberal assumption that social relationships are transparent, so that rational individuals already possess an adequate understanding of the true nature of society; which is the *first thesis*:
- To the conservative, irrationalist view that society is mysterious, non-rational, incomprehensible, so that human reason cannot fathom it; which is the *first antithesis*:
- To the higher claim that society is now opaque, mysterious, incomprehensible, but that reason can, by developing or perfecting itself, arrive finally at the realization that society is truly rational, and hence that social relationships can be grasped by reason; which is the *first, or Hegelian, synthesis*:
- From the Hegelian synthesis, which becomes the *new, or second thesis*:
- To the utopian socialist doctrine that society is now irrational, and must be changed immediately by action to make it conform to reason's dictates; which is the *second antithesis*:
- To the recognition that the achievement of collective, or social, rationality is a collective human project, requiring the union of thought and action, and requiring both a transformation of social institutions and a transformation of our thought about social institutions, each transformation both assisting and drawing assistance from the other; which is the *final, or Marxian, synthesis*.

infringement seems a social accident, *and* by the consequent dilution of the notion of individual responsibility, with the inevitable conclusion that no one in our society ever *does* anything, and that some nonbeing called "society" bears all the blame. Nozick excuses himself from the burden of this contradiction by simply denying one-half of it and doggedly asserting the other half. For example, in order to distinguish a legitimate protective association from a protection racket, Nozick invokes the distinction between productive and unproductive exchange.<sup>31</sup> The distinction, however, as he elaborates it, is internally contradictory. It requires that we be able to trace out the effects, actual or possible, of one person's actions on others. This, in turn, presupposes a level of knowledge possible only at a very advanced stage of socioeconomic integration. However, as Nozick acknowledges in his discussion of property rights and the theory of entitlement, once we have reached that advanced level of socioeconomic development, no one any longer is in a position to assert, with confidence, the sorts of property rights on which the theory of productive exchange relies.

Somewhat more generally, the degree of development of social interdependence and economic integration necessary to provide the institutional base for the sorts of calculations Nozick posits is so great as to undermine the privateness of property rights. This is especially evident in the lengthy aside on pollution.<sup>32</sup> Nozick treats pollution as marginal to the operations of a modern industrial economy (although not therefore unimportant, of course). More precisely, he treats external economies and diseconomies as marginal to the operations of firms or of individuals. But "pollution," taken broadly, is a metaphor for modern society! That is what Marx meant by the socialization of production.

It is an odd historical fact that Nozick's principal methodological tool—the concepts and models of game theory—came on the intellectual scene at a time when it was peculiarly *inappropriate* to social reality. Historically, classical economic theory emerged at a time when economic relationships were still *relatively* more transparent than they are today. Nevertheless, the theory assumed a total opacity of economic relationships. It posited a system of producers and consumers in which the size of the contribution of each firm, consumer, or worker to the market was vanishingly small. This permitted the theory to treat wages, prices, and the various other indices of economic life as given objective facts, to which the individual or firm adjusted on the basis of a calculation of relative advantage. As the theory developed, it took account of the

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31. See R. NOZICK, *supra* note 1, at 84-87.

32. *Id.* at 79-81.

facts of oligopoly and monopoly in its formal models. In short, it acknowledged, and made theoretical room for, the fact that individual firms might be able to calculate the effects of their actions on supply or demand curves. But the calculations still assumed an opaque social fabric. The identities and characters of the other economic actors were obscured from view. During the forties, when advanced industrial society had achieved so high a degree of functional integration that individual robber-barons had given way to anonymous board chairmen, and family firms had given way to multinational corporations, along came a new, mathematically sophisticated model of economic analysis—game theory. For the first time an economic theory took formal account of the existence, identity, values, and reasoning processes of the other economic actors whose rationally chosen policies, in ongoing interplay with one's own, produced those price levels, wage levels, and supply and demand curves that conventional economic theory had initially treated as given.

Nozick's extensive use of the game-theoretic model of rational choice is systematically inappropriate to his subject. He assumes throughout that the formal criteria of rational decision can be abstracted from the concrete social reality which is their matter or content, as when he rather irrelevantly brushes aside a century and a half of sustained criticism of the classical and neo-classical rationalization for industrial capitalist wealth with a fantasy about Wilt Chamberlain.<sup>33</sup> As we have seen, the Nozick model implicitly makes assumptions—risk rather than uncertainty, transparency rather than opacity—that presuppose specific stages of socioeconomic development. The net effect is to beg most of the important questions of social philosophy in a manner that provides ideological comfort for policies and doctrines which have never been established by argument.

#### ON THE WEIRDNESS OF ANARCHY, STATE, AND UTOPIA

In recent years, a number of philosophers, political scientists, and economists have adopted the style of language and mode of analysis that one finds in *Anarchy, State, and Utopia*. The rhetoric of game theory, if I may characterize it in that way, first appeared in the late fifties and early sixties in discussions of nuclear deterrence theory. I have in mind such books as Schelling's *The Strategy of Conflict*,<sup>34</sup> which was probably

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33. R. NOZICK, *supra* note 1, at 161-63. In the nineteenth century, apologists of capitalism, such as Nassau W. Senior, spoke the religious language of "abstinence." See N. SENIOR, AN OUTLINE OF THE SCIENCE OF POLITICAL ECONOMY 58-59 (1836). "Outstanding athletic ability" is not much of an improvement as an explanation for the existence of massive accumulations of capital!

34. T. SCHELLING, THE STRATEGY OF CONFLICT (1960).

the most distinguished intellectual contribution to that debate. More recently, it has appeared in the writings of such theorists as James Buchanan and Gordon Tullock,<sup>35</sup> and—in a rather subdued manner—in John Rawls' work.<sup>36</sup> When I read books of this sort, I have two initial reactions. The first is that they are clever, witty, iconoclastic, that they look at old questions in remarkable new ways. The second is that they are creepy, that there is something fundamentally awry in the language and reasoning of the work. When I read *Anarchy, State, and Utopia*, I have both of these reactions. The first is easy to explain; Nozick is easily the brightest, most imaginative, most ebullient political philosopher to appear on the American philosophical scene for some time. The second reaction, however, is somewhat more difficult to explain, and it is only after some considerable reflection that I think I am able to get at its roots. In this last section of my discussion, I shall try to account for the curious impact of Nozick's style of political argument on myself and, I suspect, on other readers as well.

The growth of capitalism transformed certain spheres of human activity—the productive, the economic—by rationalizing them (in Max Weber's sense of that term). It came to be accepted, even praiseworthy, to apply rational principles of cost, profit, and benefit, to activities that had previously been dominated by customary, religious, or other norms. But broad though the scope of the economic is in social life, there remained a great deal of life that was very much less considerably affected by the change, notably religion, politics, family life, and personal relationships.

Utility theory, game theory, and their associated models of rational choice, seek to extend the methods of calculation, the presuppositions and rhetoric of rationalized economic activity into spheres of life hitherto shaped or governed by quite different sorts of considerations. One can make a joke of this move, as when one asks whether love is a zero-sum game, a bargaining game, or a game of perfect coordination. One can use the rhetoric and methodology for covertly ideological purposes, as the deterrence theorists did in the late fifties.<sup>37</sup> One can also seriously undertake to explore political and moral life with these models, as Nozick does. However one deploys the models, the sense of surprise comes from the incongruity of applying a terminology drawn from one field to phenomena usually considered in an entirely different field. Anthropologists achieve this surprise when they apply a terminology

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35. J. BUCHANAN & G. TULLOCK, *THE CALCULUS OF CONSENT* (1962).

36. See J. RAWLS, *A THEORY OF JUSTICE* 153-58 (1971).

37. See, for example, H. KAHN, *ON THERMONUCLEAR WAR* (1960).

that we associate with primitive societies to the urban life of an advanced industrial society.

Nozick continually employs this rhetorical trick. He will consider, for example, forcibly restraining someone from defending his own interests according to his own view of them and paying him off for thus restraining him. Nozick describes this as compensating him sufficiently to raise him to his previous indifference curve,<sup>38</sup> a form of speech that we expect to find in a formal treatment of problems in welfare economics. The notion of an indifference curve presupposes the rationalization of a sphere of human experience. It presupposes that notions such as homogeneity, continuity, and substitutivity can find plausible application. What makes talk of this sort creepy (if I may repeat my rather unphilosophical word) is the assumption thereby insinuated that a hitherto uninvaded sphere of human activity should be similarly rationalized—and thus made ready for the extension into it of these models and methods.

Now perhaps we can see *why* Nozick's book is so strange. Nozick's decision to write about questions of morals and politics in the manner he does constitutes a covert proposal to transform into quasi-market-rationalized form important areas of human experience that have until now *not* been so treated. Such a proposal is inhuman; that is to say, it is a proposal to dehumanize much of our experience. To see that this is so, one need only reflect on the effect of such rationalization on the world of production and exchange.

Nozick may reply that I take too simple-minded a view of the matter, that I impute to him a vision of a mechanized, computerized life that bears no relation to his discussion. Just as there is room in economic calculations, he might point out, for some workers' preference for leisure over higher wages, or for a consumer's "noneconomic" pleasure in doing business where he is personally known, so there is room in *Anarchy, State, and Utopia* for obsessive fears of bodily harm, for soul-deep commitments to home and family, or for dogmatic religious convictions (all of which might, on some inadequate construal of the term, be stigmatized as "irrational").

However, such a reply would be too quick, and fundamentally wrong, in my judgment. The methodology infects the reasoning. The root problem is not at all that the method is too precise for the data (as Aristotle might have objected), but quite the reverse. If Nozick's inferences were tight, then we would be obliged to live with them, no

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38. R. NOZICK, *supra* note 1, at 57.



matter how counterintuitive his conclusions might be. But of course we are not presented with inferences at all. We are offered a flood of rapidly sketched situations—scenarios—in which there are either no actual figures cited or in which the figures are “for illustration only.” The real burden of the argument is not on the reasonings themselves (for without more elaborate sophistication or more stringent simplification, we could never judge their validity), but on the plausibility of looking at matters in the manner implied by the language and methodology. Nothing is ever said to suggest a reason for accepting that new and peculiar way of looking at things.

Consider simply the notion of compensating someone for a “boundary-crossing.” Such compensation involves, among other things, paying him for the indignity of the infraction. Now, it is one thing to pay a man damages for an affront to his honor. It is quite another to say that his honor has a price—that the payment, in fact, has determined the market price of his honor! Indeed, once it has been established that a person’s honor has a price, he may plausibly be said to have lost his honor, in which case its market value is nil.

#### CONCLUSION

Despite its brilliance, its imaginativeness, and its sheer air of intellectual high spirits, Nozick’s book cannot, in my opinion, be judged a success. Its central argument will not stand up, although it shares that failing with most of the truly distinguished works in the corpus of Western political theory. More seriously, its treatment of politics abstracts from the essential character of social life, and thereby merely fails to come to terms with the most complex and intractable problems of political theory and practice. Most seriously of all, its language and methodology encourage us to treat as already rationalized those spheres of human experience that have not yet been subordinated to the dehumanization of quasi-economic rationalization, and that ought to be protected at all cost from such subordination.