

NOZICK'S LIBERTARIANISM: A QUALIFIED DEFENCE

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A standard criticism of libertarianism is that it will at best tolerate, and at worst actually cause, extreme — and extremely unjust — inequalities. I take extreme inequality to be such a distribution of resources that there is a threat of domination by a few wealthy individuals who have control over jobs, production and politics. Does the libertarian argument as put forward by Robert Nozick in *Anarchy, State and Utopia*¹ provide a sufficient basis for defending such a situation of extreme inequality as morally justifiable?

I will look first at Nozick's self-ownership argument. Since his conception of a self-owning person is partly based on certain rights or entitlements, the next step will be to examine these, and to consider their origin. I will argue that although Nozick might not have succeeded in satisfying the requirements of a convincing demonstration, there are nevertheless no alternative theories of distribution which, by attempting to remove extreme inequalities, satisfy the requirements for moral justification.

I consider the objection of the egalitarian liberals (such as John Rawls² and Ronald Dworkin) biased, because they assume that under libertarian arrangements extreme inequalities would indeed occur. The idea of unrestrained capitalism seems to evoke a picture of exploited masses living in abject poverty and the privileged few living in excess and abundance, and this picture is the source of the intuitive objections to libertarianism. However, such a world does not necessarily follow from Nozick's entitlements theory, and from his restrictions on the exchange process in the form of his three principles of justice.

The straightforward libertarian answer to the dilemma about whether extreme inequalities are just would be that, if inequalities arise as a result of the full exercise of entitlements, they cannot be objected to on the grounds of injustice, and liberty may not be in any way infringed to reduce such inequalities. Nozick asserts that the individual may freely dispose of his holdings even if this results in massively unequal distribution of income and opportunity. He offers the principle of 'self-ownership', which is a particular interpretation of the Kantian principle of treating people as 'ends in themselves'. Such a principle requires a strong theory of rights, so Nozick needs to develop an entitlements theory.

CONTRASTING CONCEPTIONS OF THE PERSON

Nozick's conception of a person is different from that of Rawls, who claims that people's talents do not belong to them. Nozick argues that if I own myself, then I own my talents, and that if I own

my talents I own the products of my self-owned talents. The notion of self-ownership has a reflexive significance — what owns and what is owned are one and the same, the whole person. That is why, as a self-owning person, I have absolute rights over my property. Redistributive taxation from the talented to the disadvantaged accordingly violates self-ownership in two ways. The conditions under which the use of my talents and their products will lead to a just allocation of resources are specified by the three principles of justice: the principle of initial acquisition, the principle of transfer, and the principle of rectification. First, if we insist on the Rawlsian principle of justice — that the talented ones only benefit from their talents if this also benefits the disadvantaged (the difference principle) — then this is, according to Nozick, a failure to treat people as equals, since the disadvantaged have partial property rights in other people, and so is a violation of the principle of treating other people as ends and not means. Second, self-ownership and property rights are necessary to enable an individual to pursue his conception of the good and his self-determined way of life. By taking away his property we are decreasing his options and limiting his possibilities. This violates his freedom and is therefore morally unjustified.

This second argument, however, can be used *in favour* of redistribution. Self-determination is a very important part of freedom. So if we are appealing to the value of freedom, isn't a person entitled to be given resources to exercise his freedom — to be given the things he needs to be able to fulfil his conception of life? But for Nozick, this 'positive' view of freedom (to use Isaiah Berlin's classification) is incompatible with his view of self-ownership and absolute property rights.

SACRIFICING ONE PERSON TO BENEFIT ANOTHER

Rawls and Dworkin both differ from Nozick in that they deny self-ownership: they do not regard natural endowments, such as talents and social position, as belonging to the individual possessing them. These must be used to compensate the disadvantaged and equalise the society. They are regarded as resources of which society as a whole may legitimately dispose. Nozick's example of an eye transplant takes the rationale of such redistribution to its logical extreme. An eye is taken from somebody who has two eyes and is given to a person who would otherwise be blind. The first person was merely lucky to be born with two healthy eyes, and he therefore doesn't own them, according to Rawls and Dworkin. Dworkin's reply to this criticism is to draw a line, and to define what makes an individual. Will Kymlicka admits that libertarianism is in this case a more attractive alternative since it says that such a line needn't be drawn and shouldn't be drawn.⁴

It has been argued that self-ownership is compatible with various regimes of property ownership. This argument is based on the fact that market exchanges involve more than the exercise of an individual's self-owned powers. Market exchanges involve legal rights over things which are not created out of nothing by our self-owned powers, such as land, and accordingly the right to use land cannot follow solely from the exercise of my self-owned powers. According to Nozick's principle of transfer I must be the legitimate owner not only of my powers but also of initially unowned external resources. The test of legitimate appropriation that Nozick offers is the so-called Lockean proviso, which is designed to ensure that the circumstances of others are not worsened by the original acquisition from nature. However, Nozick's example of Amy and Ben, in which Amy appropriates the land and pays Ben to work for her, doesn't provide sufficient guarantees that Ben, or indeed both of them, will not be worse off. Another line of attack on the connection between the notion of self-ownership and the entitlements theory of private property is G. A. Cohen's claim that the world is jointly owned, and his attempt to establish the case for equality of condition by combining private ownership with the common ownership of external resources.³ It would seem that self-ownership tells us nothing about what kind of ownership we have of external resources. We need to look elsewhere for justifications for the entitlements theory.

Nozick's property rights are not created or licensed by the state. Individuals have them independently of the social institutions in which they live. So how does Nozick justify them? He invokes the



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right of non-aggression, which prohibits “sacrificing one person to benefit another”. He doesn’t want anyone to be forced to contribute to the welfare of another person who has no right to this contribution. The chief among the other rights that an individual is entitled to is the property right. If a person is deprived of something to which he has acquired title in accordance with the three principles of justice, then his property right has been violated. The origin of Nozick’s ‘natural’ property rights is an intuition he discovers in himself. Everyone has an absolute right to be free from coercion and an absolute right to acquire and dispose of his property. Each person is entitled to his talents and abilities and to whatever he can make, get or buy with his own efforts, with the help of others or with plain luck. Anyone is entitled to whatever he ends up with as a result of the repetition of this process.

Thomas Nagel⁵ protests that Nozick tells us very little about the basis of the inviolability of persons and of their rights. Why may not a person’s rights be violated for the greater social good? An appeal to the distinctness of people is not sufficient to override the desire to balance benefits and harms between people, and so the source of the special constraints on the imposition of sacrifice must lie elsewhere. The fact that assault is bad or disagreeable, says Nagel, doesn’t explain why the prohibition of it should constrain the pursuit of other values even if those other values outweigh the badness of assault in a utilitarian calculation of the relative desirability of possible outcomes. A general feature of anything worthy of being called a right is that it is not translatable into a mere assignment of disvalue to its violation.

Nagel finds the explanation of the basis of rights in the actor and his relation to the person he is constrained not to treat in certain ways, and in the interaction between those constraints and the goals whose pursuit they constrain. He also finds no reason to think that either in personal life or in society the force of every right will be absolute or nearly absolute, that is, never capable of being overridden by consequential considerations. We thus have a new way of assessing, for example, taxation. Whether a tax to acquire resources for the promotion of desirable ends is permitted is a function of the gravity of the violation and of the desirability of the ends. Nagel concludes by saying that there is no reason to believe in an absolute moral right to profit from one’s natural talents and abilities. However, he does not maintain that equality has absolute preference over liberty. Unless there is independent justification for equality, an equal distribution is just as arbitrary from a moral point of view as any other. Although he is sympathetic to equal distribution, he does not believe that equality as a good in itself has been successfully defended.

RIGHTS VERSUS COMMUNITY

Another strand of argument against Nozick is that which criticises those political theorists who assert the primacy of rights. Such theorists ascribe rights to individuals, but attach less significance to ideas of belonging, of obligation to sustain society and of obedience to authority, which are derived from rights by means of our consent or because they are to our advantage. Charles Taylor,⁶ a proponent of this view, tells us that self-determination is very important, but that it requires self-understanding, which is not possible to maintain on our own but only in a social matrix. This view is based on his argument about what it means to ascribe rights to an individual: “Asserting a right is more than issuing an injunction, we need an essential conceptual background without which it would not make sense. Our position would be incomprehensible and incoherent if we ascribed rights to human beings in respect of the specifically human capacities, while at the same time denying that these capacities ought to be developed, or if we thought it a matter of indifference whether they were realised or stifled in ourselves or others.” So if we cannot ascribe natural rights without affirming the worth of certain human capacities, and if this affirmation has other normative consequences (such as: I ought to develop these capacities), then any proof that these capacities can only develop in society is a proof that we ought to belong to and sustain society. Therefore, the assertion of rights leads to an obligation to belong to society. Taylor considers culture and civilisation essential to the development of full moral autonomy, and accuses those who insist on the right to an independent moral conviction of denying this development to others, for example to later generations.

Nozick does not recognise that asserting rights itself involves acknowledging an obligation to belong; he has to show that men are self-sufficient outside of society. A right to life is based on sentience, but we are sentient in any society, or none. With regard to a right to property we are all capable of possessing things and this does not seem to involve a capacity needing development. However, when we look for the reason for asserting this right, which is that the right to property is an essential underpinning of a life of genuine independence, we can say that the right to property involves developing the capacity to act and choose in an independent way. In order to be capable of conceiving alternatives and arriving at a definition of what a person really wants, we need freedom (the same freedom that is valued by the primacy rights theorists). Taylor maintains that the free individual or autonomous moral agent can only achieve and maintain his identity in a certain type of culture, carried on in institutions and associations which require stability and continuity and society as a whole. All this creates a significant obligation to belong for whoever affirms the value of this freedom. The free individual therefore must be concerned about the shape of this society and culture, and cannot be concerned purely with his individual choices and neglect the matrix in which such choices can be open or closed. Here Taylor appeals to the historical record, and concludes that a society with the necessary ‘liberal’ facets — liberal in sense of individuals being free — will not emerge under anarchist communes. Political institutions are crucial for us to determine how to realise our identity as free beings. The aspiration to autonomy and self-direction became conceivable only thanks to civilisation and culture.

But why does the society that Taylor talks about have to have certain characteristics — these ‘liberal’ facets? His appeal to the historical record might remind us that not all societies and civilisations have these qualities, and this may lead us to ask what made our society liberal. Perhaps it was insistence on human rights? Most societies in history have been tyrannical, disregarding individual freedom, and human beings could not profit from society merely because they were human beings. The reason and impetus for change was the promotion of classical liberal values (Locke’s natural rights, the argument against slavery) which allowed each individual to benefit from the social state. The primacy rights theorists do not deny the advantages of civilisation, but the prerequisite for these benefits is the proper definition of individual rights. In this light, we can see libertarianism as proposing a more progressive social matrix compared to the existing one, which enhances the liberal characteristics Taylor himself sees as necessary for a society in which free agents can realise themselves.

IMPERFECT BUT PREFERABLE

To conclude, Nozick’s principle of self-ownership is based on insistence on certain rights — property rights — whose origin is rather arbitrarily defined. Also, this principle may lead to results which are intuitively unacceptable to most people — inequalities in society which some feel cannot be defended by claiming that they are based on morally relevant differences among people. But Nozick’s principle nevertheless offers a more intuitively acceptable alternative to Rawls’s and Dworkin’s conception of the person, with his talents and natural endowments detached from him, and to their restrictions on the free exercise of these powers.⁷

NOTES

1. Robert Nozick, *Anarchy, State and Utopia*, Basic Books, New York, 1974.
2. John Rawls, *A Theory of Justice*, Oxford University Press, London, 1971.
3. Matthew O’Keeffe has dealt with this argument in his *World Ownership is Not Compatible With Self-Ownership: A Defence of Robert Nozick Against G. A. Cohen*, Philosophical Notes No. 20, Libertarian Alliance, London, 1992.
4. Will Kymlicka, *Contemporary Political Philosophy*, Oxford University Press, 1990.
5. Thomas Nagel, “Libertarianism Without Foundations”, in Jeffrey Paul, ed., *Reading Nozick*, Basil Blackwell, Oxford, 1981.
6. Charles Taylor, “Atomism”, in his *Philosophy and the Human Sciences*, Cambridge University Press, 1985.
7. Nozick uses the greater appeal of his conception of a person as part of his intuitive argument for self-ownership.