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# DISCUSSIONS

## Liberalism and Nozick's 'Minimal State'

GEOFFREY SAMPSON

Robert Nozick has recently produced a novel and somewhat unusual philosophical exposition and justification of political liberalism, that is, of the belief that the functions of the State should be limited to maintaining in being a free market in goods and ideas.<sup>1</sup> (For a more standard account of liberalism, see e.g. F. A. Hayek's *The Constitution of Liberty*.<sup>2</sup>) While any convert to the liberal cause is welcome (Nozick points out in his preface that he has come to liberal views only recently), he commits at least one serious error which seems likely, if uncorrected, to turn his book into ammunition for the many contemporary enemies of the open society.

One of the key principles of liberalism, as Nozick realizes, is that the State should not enforce 'redistribution': as far as possible it should avoid interfering with the pattern of rewards which emerges from the free play of market forces, either by progressive taxation or by providing a so-called 'social wage', i.e. benefits paid for from tax revenue rather than by charges to the consumers. (The phrase 'as far as possible' is necessary because there are certain goods which can be provided only as a 'social wage': maintenance of roads might be paid for by a tax on petrol, but it is impractical to charge pedestrians differentially for their use of pavements.)

It is commonly held that what Nozick calls 'the most minimal state seriously discussed by the mainstream of political theorists, the night-watchman state of classical liberal theory' (p. 25), is non-redistributive. According to Nozick, this is an error. The kind of ideal state actually envisaged by liberal thinkers (to which we might take the Britain of Dicey's 'period of Benthamism or Individualism', i.e. the middle decades of the nineteenth century, as a reasonable approximation<sup>3</sup>) is, *prima facie* at least, highly redistributive. Nozick goes on to argue that this *prima facie* appearance is in fact mistaken, and that the 'night-watchman' state *is* after all non-redistributive for reasons not discussed by earlier liberal thinkers. But his argument to this effect is, at best, tortuous, and in my view fallacious. It will be seen, therefore, why I suggest that Nozick's defence of liberalism is likely to be counter-productive: he appears to be pointing out a glaring paradox at the heart of classical liberal thought, and his attempt to solve the paradox is unsatisfactory.

Nozick argues that a 'night-watchman state' is *prima facie* redistributive by contrasting it with a situation which, he suggests, might develop by bargaining processes out of an initial situation of anarchy.

1 *Anarchy, State, and Utopia*, Blackwell, 1974.

2 Routledge and Kegan Paul, 1960.

3 A. V. Dicey, *Law and Public Opinion in England during the Nineteenth Century*, Macmillan, 1905, pp. 63 ff.

Under anarchy, groups of individuals will band together into 'protective associations' in order mutually to enforce their 'natural rights' and punish those who infringe them, and the standard advantages of division of labour will cause protective associations to evolve into competitive commercial concerns providing protection in exchange for the payment of a premium (pp. 12–13). It is likely that only one such company would survive in any given territory (pp. 15–17). But even if this happened, the result would still not be a 'state', since '[p]rotection and enforcement of people's rights [would be] treated as an economic good to be provided by the market, as are other important goods such as food and clothing'. Different individuals might pay for different levels of protection; some individuals might prefer to enforce their own rights and pay no protection money at all. It is of the essence of a 'state', on the other hand, to provide the same level of protection and enforcement of rights to all inhabitants of the territory of the state from general tax revenue; in other words these 'goods' are distributed in the same mode as is medical treatment under the National Health Service (the analogy is mine, not Nozick's). This means that 'some persons pay more so that others can be protected' (p. 25); universal protection is 'redistributive' (p. 113). And this raises a *prima facie* problem for the liberal.

[The] proponents [of liberalism] must explain why this redistributive function of the state is unique. If some redistribution is legitimate in order to protect everyone, why is redistribution not legitimate for other attractive and desirable purposes as well? What rationale specifically selects protective services as the sole subject of legitimate redistributive activities? (p. 27).

Nozick solves the problem by arguing that an 'invisible-hand process'—that is, the overall result of free bargaining by individuals each of whom seeks only his own benefit—can be relied on to convert anarchy-with-a-dominant-protective-association into a *de facto* 'minimal state'. This is because one of the services which the clients of the protective association will be anxious to purchase will be protection from the rough justice meted out by the 'independents'—individuals who have not chosen to become clients of the association, and who are likely to enforce what they see as their rights in a crude and ill-judged way. The protective association will use its overwhelming power to prohibit the independents from enforcing their rights against the clients of the association; but a general moral 'principle of compensation' requires the association to compensate each independent for this infringement of his liberty by paying him the price of a protection premium less the cost to the independent of protecting himself (pp. 110–11). By a further chain of reasoning which I shall not attempt to spell out, Nozick arrives (p. 113) at the conclusion that market pressures will eventually lead to a situation in which:

- (i) almost all inhabitants are paying either the full cost of a premium, or, if they are poor, that proportion which they can afford of the cost of the cheapest premium offered by the association, and
- (ii) all inhabitants receive from the association protection at the level for which they have paid, or at the level provided for by the cheapest

premium in the case of poor individuals who cannot even pay that premium (the balance of the association's costs in protecting the paupers will be recouped from the price of the various premiums charged to those who can pay the full amount); the only exception being that

(iii) the small minority of individuals who could afford to pay premiums but choose not to are protected only against those who have paid premiums, not against each other (which is what ensures that they will be a small minority; the cost of protecting them against clients is recouped as above).

If Nozick's 'minimal state' is intended to be the state of classical liberal theory, then he has clearly failed to show what he claims to have shown. (Nozick is somewhat inexplicit about the relationship between the 'night-watchman state of classical liberal theory' and his 'minimal state': once the latter term has been defined the former no longer appears, but his index includes the rubric 'night-watchman state . . . See also minimal state'.) The state which Nozick claims to emerge by free bargaining under anarchy is a grotesque parody of the classical liberal ideal. In a classical liberal state (as Nozick has himself noticed) there is no analogue of different levels of protection purchased by different 'premiums' or tax contributions: the services of the armed forces, police, and judiciary are provided equally to all inhabitants. Nor does such a state contain even a tiny minority of individuals who are allowed to opt out of paying taxes in exchange for forfeiting the right to call on the state to enforce the law *vis-à-vis* one another. Furthermore, even if Nozick is correct in predicting the outcome of his hypothetical bargaining process, the moral framework within which it is conducted seems perversely *ad hoc*. Nozick does nothing to explain why it is morally permissible for a successful commercial 'protection association' to prevent individuals from enforcing justice according to their own lights, even though it is morally impermissible to do so without compensation—commercial success is surely no guarantee of higher moral standards.

If Nozick's argument were necessary in order to rescue liberalism from paradox, then liberalism would certainly stand condemned. But it is not necessary. Nozick's claim that the classical liberal state is *prima facie* redistributive is simply false.

Nozick's fallacy lies in presupposing (the point is never argued) that the benefits provided by a liberal state are benefits which accrue to individual inhabitants and which could therefore, at least in principle, be charged out to individuals rather than having to be paid for from general tax revenue. This supposition is quite false. The only benefits provided by a classical liberal state which could reasonably be seen as accruing to specific individuals are remedies provided by the civil law against others' misbehaviour. Such benefits cost the taxpayer nothing, since the costs of a civil action are paid by one of the parties; so no element of redistribution arises. All the other activities of a liberal 'night-watchman' state, while they will often incidentally benefit particular, identifiable individuals, are justified in terms of protecting the market as a whole rather than the several participants in the market. Thus, a liberal state may provide police protection for a citizen who is threatened with murder,

but will certainly leave it to the citizen himself to purchase medical treatment when he is dangerously ill: the rationale is that failure to protect particular individuals against murder threats would encourage murder and thereby reduce every citizen's expectation of freely enjoying the way of life he has managed to gain in the market, while allowing a particular individual to die for lack of funds to pay for medical treatment does nothing to damage other individuals' interests. If a liberal state is financed by, say, a flat percentage income tax, again no element of redistribution appears to arise: individuals who gain relatively heavily from participation in the market, i.e. whose incomes are relatively high, will pay proportionately high taxes. Conceivably it might be argued that relative income is for some reason not a just measure of the relative benefits derived by various individuals from participation in the market; but it will certainly not do to assert flatly, with Nozick, that a society in which the rich pay more in taxes than the poor must *ceteris paribus* be redistributive.

Nozick has failed to show any contradiction in classical liberal thought. His own theory, on the other hand, is thoroughly contradictory.

In the first place, Nozick's notion of the 'minimal state' can be seen not to be well-defined, once we appreciate that the services which he sums up vaguely as 'protection' are services to the market as a whole rather than to individual participants. In Nozick's minimal state, individuals may opt to pay for different levels of 'protection'. Suppose I choose a more expensive policy than my neighbour: in what sense can the Navy protect me more than it protects him, or how can my lawsuit be better judged than his—what if he is the other party to the suit? (We may be represented by counsel of different levels of skill, but in a liberal state legal counsel are not provided at public expense.)

More importantly, the argument in which Nozick justifies the minimal state morally by showing that it could have arisen out of anarchy by free market processes itself rests on inconsistent premisses. For Nozick's minimal state to arise, it is necessary that individuals obey the moral rules governing behaviour in a free market: e.g., a dominant protective association must compensate independents for forbidding them to administer their own justice, although nothing can force a dominant association to pay compensation. Nozick admits that '[w]e have assumed that generally people will do what they are morally required to do' (p. 119). (The word 'generally' appears to leave room for exceptions; but Nozick's argument in fact assumes that people will *always* obey moral rules, where these are relevant to the question whether a minimal state will evolve out of anarchy.) However, if individuals did in general obey the moral rules governing participation in a market, there would be no need for a state: anarchy would itself be utopia. For a liberal, the interference with free market processes implied by the existence of a state is justified exclusively as a means of preventing more serious interference with those mechanisms that would occur without a state. If people 'do what they are morally required to do', then there could be no demand for the services of protective associations; thus one of the premisses which Nozick needs in order to show that anarchy will develop into a minimal

state itself guarantees that anarchy will remain anarchy and that no state of any sort will arise.

I conclude that the standard defences of liberalism are still the correct ones. Liberals such as Hayek and Popper invariably justify liberalism on the grounds that it conduces to moral and material progress in the future, irrespective of the starting point from which one sets out, rather than on the grounds that it has or could have resulted from some particularly admirable sequence of events in the past. In a world as morally unattractive as that of the late twentieth century, forward-looking arguments in politics seem the only ones likely to have much practical appeal.

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