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978-0-521-19776-2 - The Cambridge Companion to Nozick's Anarchy, State, and Utopia

Edited by Ralf M. Bader and John Meadowcroft

Excerpt

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RALF M. BADER AND JOHN MEADOWCROFT

Introduction

Robert Nozick's *Anarchy, State, and Utopia* (1974) is recognized as a classic of modern political philosophy. In tandem with John Rawls's *A Theory of Justice* (1971), it is widely credited with breathing new life into political philosophy in the second half of the twentieth century. It effectively moved libertarianism from a relatively unimportant subset of political philosophy to the center of the discipline.

Anarchy, State, and Utopia (ASU) was written whilst Nozick was a fellow at the Center for the Advanced Study in Behavioral Sciences in Stanford during the academic year of 1971–1972. It constitutes the combination of three separate projects that Nozick was working on at that time. Part I is based on a talk concerned with how a state would arise out of the state of nature that Nozick presented to a student group at Stanford, whilst also incorporating some of the ideas developed in his 1971 paper “On the Randian Argument.” Part II primarily results from his engagement with John Rawls's theory of justice, which led to the formulation of the entitlement theory of justice, much of which Nozick developed whilst co-teaching a course on capitalism and socialism at Harvard with Michael Walzer. Part III, in turn, derives from Nozick's contribution to a panel on utopia at a meeting of the American Philosophical Association. Although Nozick initially wanted to work on the problem of free will whilst at Stanford, he instead ended up combining these three projects, yielding ASU.

ASU almost instantly received acclaim and fame, winning the National Book Award in 1975. Whilst well respected, widely praised and much discussed, the theory Nozick propounds therein is almost universally rejected, even by those who agree with many of his substantive conclusions. Most discussions are of a critical nature, trying

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to respond to Nozick's objections to end-state and patterned conceptions of justice, in particular his famous Wilt Chamberlain argument, rather than attempts to develop further and defend the project outlined by Nozick. In addition, there are a number of examples, arguments, and discussions put forward by Nozick in *ASU* that have had a significant impact on philosophy that are separable from Nozick's primary concern of providing a case for the minimal state, most notably Nozick's discussion of the experience machine, which has generated a vast secondary literature on its own.

Nozick never returned to political philosophy in a systematic manner. With the exception of brief and occasional discussions in *Philosophical Explanations* as well as in *The Examined Life*, Nozick almost exclusively focused his attention on other philosophical problems. Rather than trying to defend and develop further the ideas set out in *ASU*, he wanted to tackle new problems and engage with different questions. As he famously said: "I did not want to spend my life writing 'The Son of Anarchy, State, and Utopia,' 'The Return of the Son of ...,' etc. I had other philosophical questions to think about" (Nozick: 1997, p. 2). Whilst not returning to these issues, he nonetheless made a number of remarks that have been taken to indicate a rejection of the theory propounded in *ASU*. Most notably, in *The Examined Life* Nozick said: "The libertarian position I once propounded now seems to me seriously inadequate, in part because it did not fully knit the humane considerations and joint cooperative activities it left room for more closely into its fabric. It neglected the symbolic importance of an official political concern with issues or problems" (Nozick: 1989, pp. 286–287). Although he became critical of certain aspects of his earlier theory, he retained most of his libertarian commitments as is evidenced by his discussion in *Invariances* (2001) and as he explicitly stated in an interview towards the end of his life: "What I was really saying in *The Examined Life* was that I was no longer as hardcore a libertarian as I had been before. But the rumors of my deviation (or apostasy!) from libertarianism were much exaggerated. I think [*Invariances*] makes clear the extent to which I still am within the general framework of libertarianism, especially the ethics chapter and its section on the 'Core Principle of Ethics'."

Thirty-five years after the original publication of the book, it is an opportune time to step back and re-evaluate the content of *ASU*

as well as examine the way in which it has helped to shape political philosophy up to the present day. Such a re-evaluation allows, in particular, an assessment of those aspects of Nozick's work that have been relatively neglected as well as an examination of the extent to which a unified and coherent theory is to be found in *ASU*. The former is particularly important given the extent to which the secondary literature is skewed toward the critique of Rawls and egalitarian theories of justice contained in the second part of the book, whilst largely ignoring the fascinating discussions of anarchism and utopia to be found in the first and third part, respectively. The latter is pressing, given that most commentators focus on particular parts of the book and treat it primarily as a "neat" critique of Rawls's theory of justice, rather than considering it as a whole. Moreover, given that the book resulted from the combination of three projects Nozick happened to be working on, rather than from the systematic development of a single research project, there is a suspicion that the book is an assemblage of disparate, though connected, projects, rather than a unified account that is derived from a well-defined starting-point.

This collection makes good these lacunae by providing a comprehensive treatment of the whole of Nozick's work, allowing for a re-engagement with Nozick's work and encouraging greater focus on *ASU* in its entirety. The essays are organized around four parts: (1) Nozick's moral framework; (2) his critique of anarchism; (3) the entitlement theory and the critique of patterned as well as end-state accounts of justice; and (4) the framework for utopia.

MORALITY

In Chapter 1 Richard J. Arneson examines Nozick's argument for the existence of absolute side constraints. Nozick suggests that a commitment to absolute side constraints follows from the rejection of a "utilitarianism of rights" and then argues that Lockean libertarian rights provide the most plausible basis for the content of these constraints. Arneson rejects the claim that there are absolute side constraints. The existence of absolute side constraints is equated with complete self-ownership, which Arneson argues to be problematic since it precludes enforceable positive duties to others, as well as enforceable duties to oneself. Rather than adopting

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absolute side constraints, Arneson argues that Nozick's arguments at best support a moderate view. In particular, he claims that it is possible to develop a hybrid theory that includes both end-state and side-constraint considerations without ending up with absolute constraints. According to Arneson, this can be done by incorporating principles that govern the ways in which the end-state and side-constraint components of the theory interact as well as the ways in which they can be weighed up against each other. Arneson concludes that Nozick has failed to develop a convincing argument for his claim that the fundamental enforceable moral requirements binding all of us consist entirely of side constraints with the content of Lockean libertarian rights.

Michael Otsuka's contribution (Chapter 2) also focuses on Nozick's theory of side constraints that prohibit the sacrifice of one person for the benefit of others. Otsuka focuses on "the irrationality objection" to such constraints: that if what matters is the avoidance of constraint violation, then this should rationally lead to an argument for the minimization of constraint violation, but this would seem to be prohibited within Nozick's theory by his rejection of a "utilitarianism of rights." In other words, the prohibition of the violation of any individual's libertarian right of self-ownership would seem to permit even greater harms to take place, such as if the lives of five people in the path of a falling boulder could be saved if a sixth person were pushed in front of it, thus changing its direction. Otsuka argues that Nozick fails to provide a basis for believing that side constraints are rational in the face of the claim that they would not necessarily minimize constraint violation. In particular, Otsuka examines whether the rationality of side constraints can be defended by recasting them within complex goal-directed structures. He considers agent-relative rather than agent-neutral goals, as well as temporally specific agent-relative goals rather than temporally neutral agent-relative goals. While the former account faces straightforward counter-examples, the latter proposal is implausible and unmotivated since it relies on drawing morally arbitrary distinctions. Otsuka then argues that providing a moral status rationale for constraints is much more promising than attempting to recast side constraints within a goal-directed structure. The idea underlying the moral status rationale is that persons have an elevated moral status that ensures that they ought not be treated merely as

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means. Otsuka points out that merely appealing to the distinctness of persons is not sufficient for establishing constraints, as can be seen from the fact that the distinctness of animals does not generate analogous constraints. Nozick attempts to bridge this gap by connecting side constraints to the notion of a meaningful life. Yet this connection cannot be based on the idea that the possibility of leading a meaningful life is to be promoted since one would then not end up with constraints. Instead, the connection is to be based on the idea that the possibility of leading such a life is to be respected. This strategy, however, is subject to the problem that the increased inviolability of a being leads to a reduction in saveability, by which Otsuka means that fewer things can be done to beings of the same type to save it.

In the third chapter Fred Feldman provides a detailed examination of Nozick's famous thought experiment involving an experience machine that would enable a person to experience anything that one wished – the experiences would not be real, but they would seem real to the person attached to the machine. Feldman identifies four different targets which the experience machine example might be thought to be an attempt to undermine (1) utilitarianism, (2) ethical hedonism, (3) mental state theories of welfare, and (4) psychological hedonism. Each of these interpretations is rejected on the grounds that no persuasive argument can be devised to establish the falsity of any of these possible target theories on the basis of the claim that a person would not choose a life in the experience machine. Moreover, all of these interpretations lack adequate textual support. In particular, Feldman argues that drawing conclusions from the thought experiment is problematic since this either relies on problematic claims about how what we would choose is connected to what really has value or needs to appeal to problematic idealizations. For instance, from the fact that someone would not choose to plug into an experience machine, it does not follow that life in the experience machine is less valuable than living a normal life. This would only follow if the person were rational, welfare selfish, and "axiologically insightful," yet whether such a person would plug in is something that can be doubted by a hedonist. In an appendix Feldman mentions a fifth alternative interpretation, according to which the experience machine is concerned with what has intrinsic value,

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the idea being that this thought experiment is meant to make us reflect on whether we consider experiences to be the only features of our lives that have intrinsic value or whether there are other things that matter as well. Feldman claims that this interpretation, whilst interesting, is at best suggested by what Nozick says but lacks solid textual support.

ANARCHY

In Chapter 4 Eric Mack provides a critique of Nozick's response to the challenge put forward by the individualist anarchist who would deny Nozick's claim to have shown in Part I of *ASU* that a state can come into being without infringing anyone's rights. After pointing out that Nozick is not warranted in inferring the existence of procedural rights from the wrongness of using risky procedures, he goes on to argue that the defense of the minimal state on the grounds provided by Nozick is unstable. This is because the principle of compensation to which Nozick appeals leads to an attenuation of rights. In particular, the compensation principle has the effect that (in the absence of special conditions) a right amounts to nothing more than a claim to receive due compensation for transgressing the boundary defined by the right. Mack then appeals to this attenuation of rights to put forward an extrapolated response to the anarchist. This extrapolated response is based on the idea that protective services are not standard marketable goods that can be provided by voluntary mechanisms but are special insofar as they are public goods that would not be provided or would be under-funded due to widespread attempts at free-riding resulting from their non-excludable nature. This forms the basis for an argument in favor of the mandatory purchasing of protection services, leading to a minimal taxing state. Yet, the attenuation of rights, which represents a shift from rights as claims protected by property rules to being merely protected by liability rules, would undermine principled anti-paternalism. This is because it would justify not only the mandatory purchasing of protection services but also justify taxation for the provision of other public goods, leading to the mutual advantage state. Mack then provides a response to the anarchist that only allows some forced exchanges, namely those that protect people from rights violations more extensive than the rights violations involved in the

forced exchanges. This response leads to the minimal taxing state but does not end up with the mutual advantage state.

In his chapter Gerald Gaus focuses on the role of invisible-hand theorizing and the project of explanatory political philosophy that Nozick pursues in his attempt to show that a minimal state can arise without violating any rights. He examines what role such explanations can play by assessing what Nozick's argument would have established had it been successful. Gaus argues that invisible-hand accounts provide particularly informative explanations of emergent properties via filtering and equilibrium processes. This explains how invisible-hand accounts can be important for explaining how certain systems or features are maintained and preserved even if they did not arise via the processes identified by the account. Gaus points out that the invisible-hand account that Nozick develops to respond to the anarchist's challenge attempts to provide a justification of the state by incorporating moral filters into the processes giving rise to the emergent property, thereby ensuring that the resulting state arises without there being intentional rights violations. This then suggests that the state is not intrinsically immoral. Gaus argues further that ultra-minimal states are morally justified in using coercion to enforce compliance with laws, showing that "a legitimate political order is an emergent property for all populations of Lockians," thereby answering the question what the properties of a just state are. Moreover, it not only shows that such states are morally legitimate but also that they are justified insofar as everyone will be better off than in the state of nature in terms of having rights to life, liberty, and property protected.

JUSTICE

Peter Vallentyne (Chapter 6) examines Nozick's libertarian theory of justice. He argues that, according to Nozick, justice is concerned with respecting rights, which is understood as not infringing or violating duties owed to individuals. While Nozick seems to reject the claim that rights are necessarily enforceable, it seems that justice is restricted to respecting enforceable rights, whereby Nozick is appealing to a near-absolute choice-protecting conception of rights grounded in the capacity for autonomous choice. These rights in particular take the form of an entitlement theory specified

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in terms of principles of justice in acquisition, transfer, and rectification. Vallentyne supplements the account by adding principles regarding prevention of injustice as well as principles regarding initial rights, in particular self-ownership rights. He then argues that Nozick's famous Wilt Chamberlain example is ineffectual against weak patterns as well as against starting-gate theories that specify a patterned initial distribution but that appeal to a procedural understanding of the transfer principles. Moreover, he argues that the Wilt Chamberlain example presupposes absolute rights, an implausible commitment that can be avoided by combining a purely procedural theory of justice with property rights that have limited content.

In Chapter 7 John Meadowcroft explores and evaluates Nozick's critique of Rawls. The importance attached to *ASU* in contemporary political philosophy owes a great deal to the relationship between *ASU* and John Rawls's *A Theory of Justice*. These two books are often said to have framed the contemporary debate about the nature of justice by representing the two fundamental opposing views of what constitutes justice in the distribution of income and wealth. In *ASU* Nozick pays generous tribute to the brilliance of Rawls's philosophical construction, but he also sets out a fierce critique of Rawls's work. Meadowcroft shows that at the center of this critique is the entitlement theory of justice, which Nozick proposes as an alternative conception of justice to that advocated by Rawls. The success or otherwise of Nozick's critique of Rawls is highly contested. Meadowcroft argues that Nozick's critique of Rawls is more telling than is commonly assumed: Nozick successfully shows that the concept of entitlement must play some part in any theory of justice, that the maintenance of any preferred pattern of distribution must involve continuous interference in people's lives that will violate their rights, and that Rawls's theory of justice is an artifact of the assumptions built into his philosophical construction of the original position.

David Schmidtz's contribution focuses on Part II of *ASU*, examining Nozick's account of justice and its relation to Rawls's theory. Schmidtz emphasizes that Nozick's critique of patterns, in particular the Wilt Chamberlain example, applies only to strong patterns and that it is possible to devise weak patterns that are sensitive to both history as well as to patterns and that are compatible with liberty and do not require constant interference with everyday life. He

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then focuses on Nozick's entitlement theory, discussing the principles of acquisition, transfer, and rectification. Schmidtz points out that while appropriation diminishes the stock of what can be originally appropriated, it need not reduce the stock of what can be owned but on the contrary generally leads to the creation of vast amounts of resources. Moreover, he notes that the key component of Nozick's theory is the idea that a thoroughly voluntary transfer is a thoroughly just transfer, and that while many past injustices cannot be rectified, conforming to the voluntariness standard ensures at the least that no new injustices are introduced. Finally, he considers the issue of luck or moral arbitrariness, distinguishing between a benign version to be identified with randomness and a problematic version amounting to capriciousness, noting that the natural lottery belongs to the benign variety.

In Chapter 9 Barbara Fried argues that no coherent theory of property rights is to be found in *ASU*. While Part I is broadly utilitarian in that property rights are protected by liability rules and thus are to be understood in welfarist terms, Part II contains a Lockean libertarian understanding of property rights that considers them as being protected by property rules. Finally, Part III only imposes minimal constraints that do not go beyond ensuring that a minimal possibility of exit be preserved, insofar as opting out must be possible at the national level even though it need not be possible at the local level despite the fact that there is a limited range of communities and that there might not be any community catering to a particular person's preferences. Fried argues that Nozick's failure to come up with a coherent theory is symptomatic of a set of general problems that deontologists and rights theorists face when it comes to applying abstract rules or rights. While they can deal with clear cases in a straightforward manner, they quickly run into trouble when more complicated cases are considered, in particular cases involving risk. In order to provide a plausible account of cases involving risk, they need to appeal to other principles, in particular to welfarist principles, thereby undermining the project that they set out to pursue. For instance, dealing with the risky enforcement procedures of independents requires Nozick to downgrade the right to self-defense from being protected by a property rule to being protected by a liability rule, thereby allowing the dominant protection agency to prohibit risky activities as long as adequate compensation

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is provided. Once Nozick extends this reasoning to all cases of risky actions in which it would be too costly to obtain consent as well as to cases in which the transactions costs involved in getting prior agreement are higher than the costs of the compensation system, he ends up with an account that is strongly utilitarian or welfarist in character.

UTOPIA

Ralf M. Bader (Chapter 10) provides an analysis of Nozick's possible-worlds model of utopia. He identifies and examines critically the following three arguments in favor of the minimal state: (1) the minimal state is the real-world analogue of the possible-worlds model and can hence be considered to be inspiring; (2) the minimal state is the common ground of all possible utopian conceptions and can hence be universally endorsed; and (3) the minimal state is the best or at least a very good means for approximating or achieving utopia. Each of these arguments is found to be problematic and unable to yield the conclusions that Nozick intended to establish. Nonetheless, Bader argues that interesting results can be established on the basis of these utopian considerations, in particular the result that the minimal state is the maximal institutional structure that is in principle compatible with the complete satisfaction of the maximal non-arbitrary set of preferences that are in principle co-satisfiable, as well as the corollary that in utopia any state will exert at most the functions of a minimal state.

In the final chapter of the collection Chandran Kukathas provides a critique of Nozick's argument that the minimal state is a framework for utopia. In particular, he criticizes the argument that the minimal state functions as a filter device that allows us or helps us to identify and realize utopia. Nozick claims that the vast complexity of life implies that we cannot design utopia but instead have to rely on filter devices and that the framework serves as such a filter that eliminates inappropriate alternatives, insofar as it allows there to be many different communities, some of which will flourish while others will be modified or abandoned. Kukathas questions what role the minimal state plays in this process of trial and error, of experimenting and imitating, pointing out that such a process could take place without a state in an anarchical situation. Moreover, he