

Chapter 2

The Minimal State

A robust theory of rights such as the one Nozick outlined poses a significant challenge to political philosophy. If people's rights cannot be overridden, then most forms of government we're familiar with lack moral legitimacy. This might imply the moral necessity of anarchism. While for some people, that sounds like a conclusion so obviously wrong it requires no answer, Nozick thinks it worth taking seriously. "The state" seems like it necessarily violates rights: rulers of various stripes lay down the law and force people to comply on pain of fine, imprisonment, or death. Some laws might map onto some people's predispositions anyway, but the coercion is there nonetheless. For example, maybe I think it is prudent to wear a seat belt when driving and would do it even if there were no laws compelling it, but as it happens, there *are* laws compelling it, which means coercion is being deployed even if *my* choices are not in this instance coerced. I could not change my mind, and others who think differently are coerced already. And the state's operations are financed coercively, via taxation. Since this, too, is coercive, individualist anarchists have a point which we cannot simply ignore: the state is coercive in its very nature, and this is morally problematic for anyone who takes rights seriously. So Nozick sees it as incumbent on himself to explain how some sort of state could be possible without violating people's rights.

One of the common rationales given for government is that even if we have rights, we may find it difficult to protect those rights against predators, and therefore it is in our interest to have some sort of agency to enforce rights claims, and both deter and punish violators. (This argument might sound familiar to readers of seventeenth century philosopher John Locke, and Nozick refers to this approach explicitly.) In most societies, this is the rationale for courts and

police departments. But, Nozick observes, there are lots of things we would have a hard time doing ourselves and therefore defer to others. It would be difficult for most people to own and fly airplanes, so instead we look to airlines to operate them, and then book passage. So protecting and enforcing rights claims can also be understood as a service provided by an external agency. Nozick says that we have a right to defend our own rights, and it's therefore morally permissible to ask for and receive help in doing so, and this means that "groups of individuals may form mutual-protection associations: all will answer the call of any member for defense or for the enforcement of his rights" (p. 12). But this is inefficient in several ways—for one, it's never clear just when one is "on call" to render the assistance, and for another, it's even less clear whose side Smith should be on if the dispute is between fellow members Jones and Brown. So Nozick sees the more likely model to emerge as being protective *agencies*. And indeed, anarchist theory says just this: people are free to contract with various agencies for protection of their rights. If they find the arrangement unsatisfactory, they switch to a different agency, just as they might switch from one insurance company to another.

The anarchist's concern is that "the state" represents a monopoly protective agency, a coercively-maintained monopoly. This means that if you find your rights inadequately protected, or that the protection is too costly, or the protective agency is itself a violator of your rights, you have no recourse. So anarchist conceptions typically postulate non-monopolistic (or "polycentric") legal services, and hence, no state. While Nozick intends to rebut this, it's important to note that he thinks it is a serious problem for anyone who takes rights seriously, rather than something to be dismissed out of hand. He says, "The night-watchman state of classical liberal theory, limited to the functions of protecting all its citizens against violence, theft, and fraud, and to the enforcement of contracts, and so on, appears to be redistributive" (p. 26). In other words, if we had a minimal state, one genuinely limited to protecting rights, it would still violate rights by being coercively funded. So the choices are, see that this is the case and embrace anarchism, or show why it is not actually the case. Nozick's approach is the latter.

In order to address this concern, and show that a minimal state could be legitimate, Nozick asks us to imagine something in between, which he labels an

“ultraminimal state.” The ultraminimal state also maintains a monopoly on the use of force, but provides the service only to those who subscribe to its service. People who don’t subscribe do not receive the protection. The only difference between this ultraminimal state and the minimal state is that the latter covers everyone and funds the additional work with what amounts to redistribution: even those who don’t pay get coverage courtesy of those who do. If this redistribution is legitimate, why not do the same thing with many other services? It seems to undermine itself, leaving the inviolability of rights as a hollow symbol. So, Nozick, says, that means we would need to show how a single monopoly protective agency that covers everyone could arise *without* violating rights.

Following anarchist logic, Nozick begins with the idea of competing, non-monopolistic protective agencies. But then, he argues, the likely evolution of these firms would be a series of mergers, resulting ultimately in there being only one, or at least one in any distinct geographical area. If the competing firms agreed all the time, they’d be likely to merge for the sake of efficiency, and if they fought a lot, either one would emerge as dominant, or they would merge for the sake of avoiding costly conflict. “Out of anarchy, pressed by spontaneous groupings, mutual-protection associations, division of labor, market pressures, economies of scale, and rational self-interest there arises something very much resembling a minimal state or a group of geographically distinct minimal states” (pp. 16-17). Since membership in the (competing) protective agencies would be voluntary, mergers between the companies don’t constitute rights violations. So, Nozick argues, we can imagine a process by which a monopoly provider of the rights-protection service could emerge non-coercively.

This “dominant protective agency” is starting to look like a “state.” But Nozick thinks that to fully show this, we must examine some additional conditions. “To get something recognizable as a state we must show (1) how an ultraminimal state arises out of the system of private protective associations; and (2) how the ultraminimal state is transformed into the minimal state [in a way that extends the protection to all]... [and] that these transitions in (1) and (2) *each* are morally legitimate” (p. 52).

One crucial obstacle Nozick needs to overcome in order to allay the anarchist objection is the need for the dominant protective agency to prohibit other agencies. Doesn’t prohibiting others from entering that market violate

rights? The other is a challenge to show why the de facto redistributivism of the minimal state wouldn't itself violate rights. His argument here is that allowing people who don't subscribe to the dominant agency to pursue their own enforcement places enormous risks on others in the area, in terms of open conflict or just the fear of this outcome. So the prohibition on this is morally necessary, though, he adds, it also requires compensation. The dominant protective agency prohibits independents from seeking other means of rights protection, but compensates them for this. As he puts it, "The dominant protective association with the monopoly element is morally required to compensate for the disadvantages it imposes upon those it prohibits from self-help activities against its clients" (p. 119). (He notes that they might not do this—his claim is that it is possible they would, and that therefore his contention that the minimal state could arise without violating anyone's rights is warranted.)

The principle of compensation he appeals to here isn't identical to fairness—he wants to rule out cases where I force you to accept a benefit you didn't ask for and then demand that you pay for it. He illustrates this with his example of the neighbourhood entertainment system (pp. 93-94). Some people in your neighbourhood decide to take turns providing the day's entertainment. You aren't involved in this decision, though you often do enjoy the entertainment. One day, you are informed you must take a turn out of fairness. Nozick argues that you are not in fact obligated to participate. But the principle of compensation works somewhat differently: "when an action is forbidden to someone because it might cause harm to others and is especially dangerous when he does it, then those who forbid in order to gain increased security for themselves must compensate the person forbidden for the disadvantage they place him under" (p. 81). It is the spectre of open conflict that underlies this special category of prohibition, but it carries with it the obligation to compensate. He concludes this section by noting that the theory of compensation he is appealing to is in a "somewhat fuzzy state," but that it is sufficient to move his argument along. In any event, Nozick argues that there will likely not be a large percentage of people holding out, since the level of service provided by the compensation will be less substantial than the level provided to subscribers: "the agency protects these independents it compensates only against its own paying clients on whom the independents are forbidden to use self-help enforcement. The more free

riders there are, the more desirable it is to be a client always protected by the agency. This factor... acts to reduce the number of free riders and to move the equilibrium toward almost universal participation” (p. 113).

Thus, Nozick concludes, he has shown that the dominant protective agency can emerge without violating rights, and that it transitions to being the minimal state without violating rights, and is therefore morally legitimate in a way that responds to the arguments of the individualist anarchists. He refers to this as an “invisible-hand explanation,” alluding to eighteenth century philosopher Adam Smith, because it is an account of how something could arise without anyone having that thing as a specific objective. Unlike a conquering king seeking to acquire new territory, the minimal state Nozick describes comes into being without having been designed and sought.