

EXPLORING NOZICK: BEYOND ANARCHY, STATE AND UTOPIA

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I have used the following abbreviations in referring to Nozick's principal works:

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| ASU | Anarchy, State and Utopia |
| PE | Philosophical Explanations |
| EL | The Examined Life |
| NR | The Nature of Rationality |

Introduction

This is a study of the moral and political philosophy of Robert Nozick. Other published studies have concentrated on Nozick's libertarianism and entitlement theory of justice as defended in Part One and Part Two of *Anarchy, State and Utopia*, despite the fact that he has abandoned these positions. His later views, and the question of how they might relate to the earlier ones have received very little attention. In this work I try to unify the major themes around the liberal ideal of "neutrality". Because I focus on his main positions there is much that I deal with only indirectly, and much that I do not touch on at all. This includes direct criticisms of Rawls and on egalitarianism in *Anarchy, State and Utopia*; much of the extended metaphysical speculation in *The Examined Life*, and the discussion of decision theory in *The Nature of Rationality*. These and many other parts of Nozick's published work would be featured in a truly comprehensive study of his moral and political philosophy. My work is confined to the main positions and a unified interpretation in terms of liberal neutralism.

What is neutralism? At the minimum, it is a political doctrine which says that the exercise of state power should be neutral in some significant sense. Beyond that, it is difficult to define satisfactorily. There are many relevant abstract definitions and distinctions in the literature of liberal political theory. For example, neutrality might be between individuals rather than ideals or conceptions of the good life. (Raz, 1986, pp110-2) If it is between ideals, then one can distinguish between "pure" neutralism, which says that the state should try to be neutral between every conceivable ideal, and "practical" neutralism, which says that the state should attempt neutrality only between actually contested ideals within its jurisdiction. (Larmore, 1987, p47) Another distinction is between "consequential" and "procedural"

neutrality, where the former requires neutrality of outcome (of state activity), and the latter neutrality in the decision procedure the state uses to formulate policy. (Kymlicka, 1989, pp883-5) Yet another is between "justificatory" neutralism, which attempts to justify the proposition that the state should be neutral in a way which is itself neutral (Larmore, pp51-3; Rawls, 1993, ppxxv-xxx), and what might be called "implicated" types of neutralism, which argue for degrees of state neutrality from the standpoint of a substantive moral doctrine. This latter category includes the "classical" liberal theories of Kant and Mill. (Larmore, *ibid*)

To analyse and form a settled, impregnable view on these distinctions and related issues is to define what it is for the state to be neutral. But that would be a major task in itself, and one which it would be inappropriate to attempt in the introduction to a work which is specifically concerned with Nozick. Moreover, we shall see reasons, or rather we shall see that Nozick gives reasons, to be suspicious of constructing an abstract blueprint to apply to all favoured states. We shall therefore proceed instead with an informal and pragmatic understanding of neutrality between ideals.

In the seventeenth century, the phrase "an Amsterdam of religions" referred to a state of general toleration, marking the prominence of Holland among the few countries who accepted any case for religious liberty. (Kamen, 1967, p223) We shall adopt the phrase "an Amsterdam of moralities" for whatever kind of state allows a stable plurality of ways of life, perfectionist ideals, conceptions of the good, utopian visions and so on. The substitution of "moralities" for "religions" marks the neutrality of the Amsterdam between religious and secular ideals: the plurality will presumably involve diverse ways of organising "the spiritual life", but not every element need understand, or present, itself as a religion. An Amsterdam of moralities might encompass a plurality of what

Rawls calls general and comprehensive moral conceptions. "A moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognised values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, non political values and virtues and is rather loosely articulated. Many religious and philosophical doctrines aspire to be both general and comprehensive." (Rawls, p13) But encompassed "ideas of the good" need not be all that comprehensive; comprehensiveness is not a condition of membership.

The notion of an Amsterdam itself involves an ideal, and this can be brought out in three related ways. Firstly, it can be more or less stable, subject to more or less conflict between the plural elements, and between the state itself and those elements. At its best (perhaps unattainable), it is a situation of mutual welcoming, where difference is greeted with enthusiasm rather than suspicion or grudging acceptance. We can distinguish between two senses of toleration; "positive" and "negative". The latter carries the kind of connotations T.S. Eliot objected to when he said that "the Christian does not want to be tolerated", meaning that the Christian wants to be respected, not just put up with. (Cranston, 1991, p78) Positive toleration involves just such respect. Often toleration is taken to presuppose disapproval, or at least dislike; the absence of negative attitudes shows that it is something else, say indifference, or indeed just respect, which is at work. (See for example, Gardner's discussion: Gardner, 1993, pp84-90) But although what may be doing the positive

work in positive toleration is respect - of at least the fact that ways different from one's (or "our") own valued way have been realized - there is enough inconvenience involved in being confronted with the fact of plurality to make it reasonable to think of respect mingled with toleration. Positive toleration characterises the Amsterdam at its most ideal.

Secondly, this means that the Amsterdam cannot be completely neutral. Absolute neutrality is impossible, as many writers have stressed (e.g. Larmore, p66). There will be no neutrality between tolerant and intolerant elements. Thirdly, the neutrality of the Amsterdam is not merely the bland, neutered "value free" affair neutralism is sometimes said to be: "Neutrality: a fighting word. Only neuters can be Neutral in politics. The fool who yearns for Neutrality indulges a special kind of silliness - from which libertarians and communards, Maoists and Straussians are mercifully immune. There can be no politics without vision, no philosophy without commitment. Neutrality is not just another political slogan. If taken seriously it will destroy the most distinctive feature of politics: the impossibility of reducing it to a neutral science of social engineering. Until the liberal is disabused of his absurd search for a value-free politics, his "philosophy" will remain a contemptibly superficial, if surprisingly seductive, exercise in suppression." (Ackerman, 1983, p372)¹

Voltaire said "candour and toleration have never excited civil commotions; while intolerance has covered the earth with carnage". (quoted in Gardner, p84) The lack of "civil

1. Ackerman goes on to argue that his version of neutralism based on the notion of "constrained power talk" (introduced in his 1980, pp.8-10) is a way of "dealing with competition in the struggle for power", and not a way of "depoliticising politics". (1986, passim)

commotions" within the Amsterdam need not be a sign of boredom, indifference or neutered acquiescence. As an ideal, the neutrality of the Amsterdam of moralities is a manifestation of enchantment with the diversity of the world, rather than a narrow, unimaginative and disenchanting value freedom.

Why use the term "neutral" at all? Even an ideal Amsterdam state cannot understand itself as permanently enshrining the conceptions and doctrines of one element from the plurality without compromising the ideal of positive toleration. If the state privileges one such element, the others will be put up with, and perhaps then only if they are lucky, or in some way useful, or not perceived to be enough of a threat for it to be worthwhile persecuting them. The main motivations behind the early modern rise of religious toleration and liberal theorising were the desires for relief from bloody religious conflict, and for stable conditions to allow profitable commerce. (Kamen, *ibid*) Thus I am not claiming that the seventeenth century had our ideal Amsterdam in mind, either in theory or practice. Catholics had no legal right to practice in seventeenth century Holland, although there was a *de facto* situation of negative toleration towards them. (Kamen, *ibid*) Locke thought that Catholics ought not to be allowed to congregate, or publish, because they owed allegiance to a foreign power. (Cranston, p81) On the other hand, I am not claiming that either procedural or justificatory neutrality is a necessary condition of a neutral Amsterdam. The latter is best understood in terms of a range of possible responses or attitudes to plurality, with welcoming and prizing difference at one end, fear and suppression at the other.

It is natural to contrast neutralism with "expressivism", the view which says that the state should promote a particular conception of the good or perfectionist ideal. This contrast might then be taken to represent the fundamental difference between liberal and non liberal (both socialist and

conservative) political philosophies. (for example, Dworkin, 1979, p127) At its most stark, expressivism endorses the organic model of society as a whole whose parts conform to a single unifying purpose, and insists that political ideals coincide with deepest personal commitments, so that a single conception of the good specifying the "place" of diverse individuals may be shared. That this is the only alternative to disintegration, alienation and anomie is the assumption driving much traditional "communitarian" criticism of liberalism. It is what Larmore calls the "distressingly recurrent and hackneyed" pattern of anti-liberal thought prevalent from post Kantian German Romantics (including Marx) through to "contemporary holisms". (Larmore, pp91-107; see also Taylor, 1975, Ch1) But because influential liberal theorists have argued for "implicated" neutralism - significant degrees of neutrality justified by substantive ideals such as Kantian autonomy - it is a mistake to deny the possibility of liberal expressivism. (Larmore, p x; p52)

Moreover, to the extent that the citizens of the Amsterdam share the ideal of positive toleration, they enjoy significant coincidence of personal and political ideals also; although it would be extravagant to call this a shared perfectionist ideal or unifying conception of the good life. It is better to treat the neutral Amsterdam as occupying one end of a dimension, with the most claustrophobic, regimented and imperialistic forms of organic expressivism at the opposite end. We can represent this dimension, "degree of expressivism", in metaphorical and rhetorical terms. The claustrophobia of the extreme expressivist end is suggested by William James' comments on the "through and through" philosophy of Hegel: "The 'through and through' universe seems to suffocate me with its infallible impeccable all-pervasiveness. Its necessity, with no possibilities; its relations, with no subjects, make me feel as if I had entered into a contract with no reserved rights, or rather as if I had to live in a large

seaside boarding-house with no private bedroom in which I might take refuge from the society of the place." (Quoted by Russell, 1977, p46)

The regimentation might be captured by the familiar dystopian vision of robotic workers in an industrial machine, differentiated by their tasks but also unified by them, as these are aimed at and coordinated by the Good, which is the output of the machine. The universalist aspiration of the state sponsored way of life is like an intolerant imperialism spread across the map, thoughtlessly crushing whatever alternatives lie along its path to domination.

At the other end, that of least expressivism, where we find the Amsterdam of moralities, there is the widest open space of moral possibility; a space of freedom allowed by the welcoming of difference. Huddling together in fear and loathing of the Other is not forbidden, but it is the opposite of official policy. The term "freedom" is not out of place here, for neutralism is often associated with liberal notions of liberty and equality. (Dworkin, *ibid*) But we must remember that the "freedom" found at the end of least expressivism is largely metaphorical. We can say that the various moral communities within the ideal Amsterdam are "free" from intolerance and persecution, and "equal" in being equally free in that sense. But we cannot define the ideal Amsterdam in terms of more substantive concepts of liberty or equality, for these stand in need of interpretation. They need to be located within comprehensive doctrines which provide accounts of moral personality, what rights are appropriate, what autonomy should amount to and so on. To be sure, once the interpretive fine print is clarified, and the "freedom" on offer is brought face to face with history, then it can seem much less bright and shiny than in the advertising rhetoric. But the point here is that if different interpretations are encompassed by the Amsterdam, then it cannot be defined, at

least in ideal form, in terms of one such interpretation. Thus it cannot be defined in terms of liberty (or equality). To so define it would be to move it along the dimension away from the end of least expressivism.

Now, what has all this to do with Nozick? Plausible philosophical accounts of morality and politics, and of the relation between them, are subject to certain conditions. For example, they must be coherent, and they must pay some attention to what, after Hume, might be called the "circumstances of justice". Hume saw justice was as a device to solve problems inherent to the "circumstances of justice", internal and external. The "external circumstances" mainly concern the relative scarcity of material goods, and the precariousness of possession of them. The "internal circumstances" consist in the fact that people pursue different ends, so that reasonable disagreement is inevitable. (Treatise, III, 2, i-ii)²

Given the Amsterdam of moralities as an ideal, we can add some further criteria of appropriateness. Firstly, it must pay special attention to the internal sense in which justice is artificial. Secondly, it must do this without resorting to a high degree of expressivism. Thirdly, it should be able to survive strong argumentative opposition from imperialistic sources high up the scale of expressivism; it should allay the

2. This is not to endorse Hume's account of the artificialness of some virtues in terms of their lacking a purely "instinctive" ground, as if the development of every virtue did not depend on socialization. Nor is it to accept Hume's explanation of the internal circumstances in terms of natural egoism and parochialism which ties genuine "conceptions of the good" to one's family, friends and associates. Firstly, this seems just false. Secondly, if universal different benevolence were to break out, there would still be different interpretations; a plurality of benevolent programmes. (Larmore, pp.70-73)

suspicion that only chaos and incoherence lie in the direction of less expressivism.

It is with these themes in mind that we shall explore Nozick, one of the most famous contemporary philosophers of freedom. We shall not constantly refer back explicitly to this ideal of an Amsterdam of moralities, or the accompanying criteria of appropriateness, but they will remain behind the scenes of the discussion. Parts One and Two of the thesis deal with Anarchy, State and Utopia; Nozick's libertarianism and framework for utopia respectively. Part three focusses on the later positions, mainly his account of ethics as responsiveness to value, and his theory of intrinsic value as degree of organic unity.

PART ONE

THE LIBERTARIAN PHASE

OR JOHN WAYNE IN A STATE OF NATURAL RIGHTEOUSNESS

Chapter One: The Libertarian Background

Nozick's libertarianism is a substantive moral theory as well as a political doctrine. The framework for the first two thirds of *Anarchy, State and Utopia* is a form of principled libertarianism - a framework of moral rather than pragmatic principles. (Kukathas and Pettit, 1990, pp75-6) There are four main components of this libertarianism.

The first is that, as a political doctrine, it defines the way in which political philosophy is determined by moral philosophy, proper political practice by ethics. (ASU, p.6) As such it says that because political philosophy is concerned fundamentally with enforceable obligations, and because such obligations are exhausted by rights, the notion of rights is the foundation of political philosophy. (ASU, p32) Although morality involves more than rights, and morality sets the proper boundary of politics, it does so only by defining the proper scope of coercive force, for which individual rights is the relevant moral concept. The concept of the state which Nozick uses in *Anarchy, State and Utopia*, and beyond reflects this. He adopts the Weberian notion of the state with two essential features: firstly, any state claims an exclusive right to authorise and oversee the use of force within its boundaries; secondly, it offers protection, at least in principle, to everyone living within its borders. (ASU, p23) Thus Nozick's libertarianism says under what conditions, if at all, the exercise of state power may be morally legitimate.

Secondly, the rights involved are natural rights, in that all people possess them qua people. Such rights are not created by convention or by any action, rather they provide a framework for judging conventional arrangements and actions. Particularly important is that they are not contingent on the existence of state institutions: they hold in a state of

nature. (ASU, Parts I and II passim) Thus Nozick stands against those who believe that all moral and political viewpoints are relative to particular social institutions (or societies) and therefore doubt the propriety of positing an external moral framework with which to judge those particular institutions. In denying the view that well formed moral objections may occur only within particular institutions such as the state, Nozick is defending a position which is "objectivist" in the sense of non relativist. (Williams, 1982, p27)

Thirdly, the rights involved are generally "negative" rather than "positive". If I have a positive right to something, then someone (or everyone) has a duty to provide me with it. If I have a negative right then noone has a positive duty to provide me with anything in virtue of my having that right. Such a right is a right not to be harmed or interfered with in some way. Apart from the voluntary undertakings of obligation such as by contract, our rights are generally negative according to Nozick. Providing we respect the same rights of others, we have the right not to have our lives and, we shall see him attempt to argue, our property, interfered with at all. He thinks of all unconsented and intentional interference in terms of aggression against the person (and his property). (Parts I and II passim, especially pp26-53)

This not to say that all acts of aggression or violence against the person should be prohibited. We have a right to use force for self defence, provided it is proportional to the harm threatened. We also have a right to punish those who violate our rights. It is hard to characterise these rights as positive or negative; they are not in themselves rights to non-interference or rights to assistance. (Wolff, 1991, p.34) For the purposes of this essay, we can place rights of self defence and punishment in one category, which, since these are

generally rights to do things to others, we can call that of "active" rights (to punish and to self defence). So the natural rights posited by Nozick are negative and active, although the former are the most fundamental in that it is violations, or prospective violations, of them which trigger the latter.

We may also use force against those who threaten us even though innocent and not deserving of punishment. Nozick defines an "innocent threat" as "someone who innocently is a causal agent in a process such that he would be an aggressor had he chosen to become such an agent." (ASU, p34)³ Actual situations involving innocent threats in this sense may present painful decisions, such as how to deal with the taxi driver forced at gun point to take a terrorist bomb within range of its target. Nozick illustrates the issue with one of his imaginative thought experiments: "If someone picks up a third party and throws him at you down at the bottom of a deep well, the third party is innocent and a threat; had he chosen to launch himself at you in that trajectory he would be an aggressor. Even though the falling person would survive his fall onto you, may you use your ray gun to disintegrate the falling body before it crushes and kills you?" (ASU, p.34) This also illustrates a general tendency to deal with issues in a way which although often ingenious, imaginative and amusing, is often at some remove from actuality; not just from the specifics of actual first order political controversies, but from the general features of real political experience. This is a weakness that we shall exploit.

3. He notes the difficulty, for a view that makes non-aggression central, of sorting out the issues surrounding innocent threats and "innocent shields of threats" - "those innocent persons who themselves are non threats but who are so situated that they will be damaged by the only means available for stopping the threat." But he does nothing to resolve them. (ibid)

Fourthly, the rights involved constitute "absolute side constraints" in that they are not to be overridden by anything; not even considerations of minimising future rights violations, or the realization or maximization of any putative good. Nozick's basic position is a deontological one. He denies the assumption "that a moral concern can function only as a moral goal, as an end state for some activities to achieve as their result." This assumption underlies both end state maximization views, such as utilitarianism, and end state minimization views which might say, for example, "act so as to minimise future rights violations". Nozick's absolute side constraint view is radically anti-consequentialist, placing an absolute prohibition on rights violations to be relaxed only to avoid (unspecified) "catastrophic moral horror". (Although it does recognise consequences in the trivial sense of forbidding actions with the known consequence of violating rights.) This prohibition remains in force even when it is known that not violating now will lead to more violations in the future. (ASU, especially pp28-30)⁴

Nozick's conception of rights as side constraints is equivalent to Dworkin's conception of rights as trumps, despite the two philosophers' differences on the source and range of rights and on whether they should be taken as "total trumps". According to Dworkin, a person's right to X protects her from the consequences of untrammelled pursuit of collective goals; these latter are trumped by the rights, again unless there is a prospect of "moral catastrophe". (See Pettit, 1987, pp9-11)

This conception of rights as side constraints or trumps has two elements. Firstly, it involves treating rights as

4. This is more than the injunction to 'keep your hands clean' by not violating any rights, even to prevent further, greater violations; you must 'keep your hands clean now', as one should not violate rights even to minimise one's own future violation of rights. (Wolff pp21-22)

"personalised" claims, untradable across persons: my right to X is incommensurable with other people's right to X, in that violating my right to X is not justified by the fact that this would reduce the amount of violations of other people's rights to X. (Pettit, p11) Nozick's rights are personalised in this sense. Secondly, it treats rights as "privileged" in the sense of untradable against other goods; the pursuit of these is constrained or trumped by rights. Nozick and Dworkin assign different degrees of privilege: Dworkin says that a number of collective goals are trumped by rights; Nozick says that rights trump all considerations. (Pettit, pp11-12) In this sense his rights are total trumps, or absolutely privileged over other considerations.

This strength of Nozick's natural rights - their uncompromising absoluteness - determines the structure of the first two parts of Anarchy, State and Utopia. We shall see that his rights conception supports a formal Lockean view of freedom or liberty as the (natural) right to do what you have a right to do. Issues of punishment and self defence aside, this is basically the right to do what you want provided you don't violate the same rights of others. It turns out that to violate another's rights is intentionally to limit their options without permission. Thus although Nozick is in the natural rights rather than social contract tradition, contractual agreement is of central importance to his account; the libertarian lives a contractual way of life. To ensure this, state activity must be limited to the minimal functions of protecting rights and enforcing contracts - the functions of the "nightwatchman state".(ASU, pp26-8) The minimal state is to be neutral with respect to the content of legitimate contractual agreements (ASU, p33; Raz, 1986, p110), but such "ideas of the good" relative to which the state is neutral, must all be livable within the bounds set by the universal possession of libertarian rights. In principle, this leaves a significant scope for diverse individual and collective

(voluntary) lifestyles, which is the source of much of its appeal to Nozick; people are to be free to pursue individually, or by collective agreement, their own preferred ways of life.

However, the rights are so strong that they raise the issue of whether any state at all is justified. Part One of *Anarchy, State and Utopia* is devoted to showing how a minimal state might be consistent with the libertarian background, particularly the active rights to punish, and self defence. In Part Two of the book, Nozick is mainly concerned to show that no more extensive state can be justified. He does this through his "entitlement theory" of distributive justice. Again, an important issue is generated by the strength of the rights; even though exclusive property is necessary for the contractual way of life as manifested by capitalist civilization, it is not obviously consistent with the libertarian background.

We shall discuss these matters, which are basically about the application of the libertarian background, in Chapters Two to Four; then in Chapter Five we look at Nozick's arguments for the background itself. Firstly, I want to further advertise forthcoming issues by briefly casting some doubts on a standard view of the relative status of parts one and two of *Anarchy, State and Utopia*. Because it denies the legitimacy of any extensive state, Nozick's case in part two opposes the mainstream consensus on the subject, and in that sense is the most obviously controversial part of the book. This consideration, external to the logic of the book itself, has led commentators to say that it is the most important part; the most relevant to actual debates in political philosophy, relatively few of which take seriously the possibility that the state can never be morally justified at all. Most political philosophers are concerned with the nature and role of something whose justified existence, to some extent, can be

taken for granted. (eg: Singer, 1982, p40; Wolff, 1991 p75)
There are two reasons why this is misleading.

As far as the internal logic of the book is concerned, the relevance of the case against the more extensive state as necessarily violating rights presupposes a successful account of the minimal state as consistent with those rights. If the minimal state violates rights then, a fortiori, so does the more than minimal state. The internal importance of part two depends on the success of part one, and we shall doubt this success (as many have); the package of rights which underpins both parts seems to rule out any morally justified state, apart from under conceivable, but hopelessly utopian, conditions of unanimous agreement. Although this thwarts Nozick's own purposes, it is the libertarian moral package which is left standing, and in this sense the more important part of the first two-thirds of *Anarchy, State and Utopia*.⁵

It is also misleading to point to the entitlement theory of part two as the most importantly controversial aspect of the book in its assault on statist orthodoxies (whether liberal, conservative or socialist), without stressing the utopian nature of that theory. Much of Nozick's rhetoric might lead one to conclude, prematurely, that the practical implications of his views are simply about maximising the amount of laissez faire capitalism. Certainly it is clear that Nozick thinks that capitalism is justified in the abstract, and that, ideally, state institutions should not interfere with the free market. But, this cannot extend coherently to actual

5. Jonathan Wolff, for example, says "Nozick's real opponents are those - conservative, liberal, or socialist - who believe there is reason to adopt a more than minimal state. In the end everything rests on the entitlement theory [of Part 2]". (Wolff, p.75) But insofar as Nozick's intention is to defend the minimal state against all comers, his first and most devastating opponent is his own libertarianism as set out in Part 1.

or real states.

In 1982, Peter Singer wrote that "when times are hard and governments are looking for ways to reduce expenditure, a book like *Anarchy, State and Utopia* is about the last thing we need. That will be the reaction of some readers to this book." (Singer, p37) He suggests two reasons for judging this an inappropriate reaction: firstly because "rigorous, needle-sharp" philosophy should be welcomed whatever the conclusions; secondly because "the chances of Gerald Ford reasoning his way through Nozick's book to the conviction that he ought to cut back the activities of the state in fields like welfare, education, and health are not high." (ibid.) Thus the philosophical merits of *Anarchy, State and Utopia* outweigh the practical harm it is likely to cause. This attitude - a combination of philosophical praise and practical unease - has been expressed more recently by Dudley Knowles: "On Mondays, Wednesdays and Fridays, suspecting that even the most abstract exercises in academic political philosophy may recruit or reinforce practical support for causes I detest, I revile *Anarchy, State and Utopia*. On Tuesdays, Thursdays and during reflective weekends I enjoy the challenge and provocation of Nozick's arguments, admiring the clarity of mind and expression, enjoying the ingenuity and imagination, laughing at the jokes." (Knowles, 1993, p567)

Knowles does not seem to share Singer's view that those who worry him will not understand Nozick's book well enough for it to buttress their detestable policies. This might be because of what has happened since Singer's comments, and because Knowles believes something like this: "Nozick's views have many affinities with the defence of *laissez faire* capitalism which has been part of the ruling ideology of the 1980s. It has not escaped my notice that during my entire university career - both as student and teacher - Margaret Thatcher has been Prime Minister of Great Britain and ideas

like those of Nozick have had, to put it mildly, a huge and destructive effect on the lives of a great many people." (Wolff, p viii)

However, although there is some affinity between the entitlement theory in the abstract (and many of Nozick's accompanying arguments), and the ruling ideology of the 1980s, the practical implications of the theory, properly understood, point in the opposite direction, despite the "rolling back the frontiers of the state" rhetoric. We shall see that if it implies anything at all, Nozick's entitlement theory requires certain historical "corrections"; because actual capitalism is so corrupt it needs to be supplemented with a state system at least as extensive and redistributive as that advocated by Rawls for example. (Williams, pp35-36; Wolff, p116) As Bernard Williams remarks, within the argumentative structure of *Anarchy, State and Utopia* "there is to be found, one suspects, a robust and romantically creative individualist outlook which, though undoubtedly tough, is in quite a different street from that of the friends of business's nastier friends. But it will be partly Mr Nozick's own fault if they, and their enemies, think otherwise." (ibid.)

Chapter Two: Anarchy or State?

2:1 From State of Nature to Minimal State

Nozick gives an account of how a minimal "state like entity" might arise in a way consistent with libertarianism in order to show the libertarian anarchist that such a state can have moral legitimacy. Both of the state's essential features look inconsistent with libertarianism. Where everyone has a natural right to self defence, and to punish violations, the state claims a monopoly. It also insists on protecting everyone, including those who cannot afford to pay, and this will require compulsory taxation of others. (ASU, p51) Given the strength of Nozick's libertarian background, no state looks morally justifiable, even the "minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on..." (ASU, p ix) Nozick wants to show that the minimal state, but no more than the minimal state, can be justified to the libertarian would-be anarchist.

His starting point for this justification is Locke's state of nature. He gives two reasons for this. Firstly, he thinks it is necessary in order to give anarchism a fair start: "[In Locke's state of nature] people generally satisfy moral constraints and generally act as they ought. Such an assumption is not wildly optimistic; it does not assume that all people act exactly as they should. Yet this state of nature situation is the best anarchic situation one reasonably could hope for. Hence investigating its nature and defects is of crucial importance to deciding whether there should be a state rather than anarchy. If one could show that the state would be superior even to this most favoured situation of anarchy, the best that realistically can be hoped for, or would arise by a process involving no morally impermissible steps, or

would be an improvement if it arose, this would provide a rationale for the state's existence; it would justify the state." (ASU, p5)

His second reason is that this state of nature serves an explanatory purpose, for the best and most complete kind of explanation of "a realm" is a "fundamental" explanation of it - one which fully explains a realm in terms of factors extraneous to the realm in question. (ASU, p6) Thus an explanation of the whole political realm in terms of non political factors present in the state of nature would be valuable as a fundamental explanation of the political realm. This is not to say that he wants an explanation of the state which is historically accurate. The processes cited in his description of the progression from state of nature to minimal state are not intended as statements of historical fact.

Nozick introduces Hempel's notion of a "potential explanation" to try to clarify the type of explanation he has in mind. A potential explanation "intuitively (and roughly) is what would be the correct explanation even if not everything mentioned in it were true and operated." (ASU, p7) Such explanations may fail to be correct through containing false lawlike or factual statements, or through relying on non existent processes. Even so, potential explanations which are also of the fundamental type can be valuable. "State of nature explanations of the political realm are fundamental potential explanations of this realm and pack explanatory punch and illumination, even if incorrect. We learn much by seeing how the state could have arisen, even if it didn't arise that way. If it didn't arise that way, we also would learn much by determining why it didn't; by trying to explain why the particular bit of the real world that diverges from the state of nature model is as it is." (ASU, pp8-9)

The argument for (or potential explanation of) the state has six stages, representing the transformations involved in an invisible hand process taking us from the state of nature to a minimal state, the point being that no rights need be violated at any stage of the process. Stage one is Locke's state of nature. The transition to the next stage is explained by certain problems present within that situation, as described first by Locke. Nozick lists these problems (pp11-12): although people generally respect natural rights they will sometimes interpret them differently; without an institutional adjudicator, individuals will have to decide amongst themselves whether, when and by whom transgressions have been committed and what is the proper punishment; people's judgements will often be biased in their own favour and motivated by a variety of factors other than justice; people often will lack the power to enforce their judgements and defend themselves adequately.

Locke took these "inconveniences of the state of nature" to sanction an immediate judgement: "I easily grant that civil government is the proper remedy". (quoted in ASU, p10) Nozick's sensitivity to the moral force of individualist anarchism makes him unwilling to accept such a rapid inference: "Only after the full resources of the state of nature are brought into play, namely all those voluntary arrangements and agreements persons might reach acting within their rights, and only after the effects of these are estimated, will we be in a position to see how serious are the inconveniences that yet remain to be remedied by the state, and to estimate whether the remedy is worse than the disease." (pp10-11)

Within a state of nature individuals may try to solve the problem of their lack of power to enforce judgements and to defend themselves by cooperating voluntarily in "mutual defence associations", in which "all will answer the call of any member for defence of for the enforcement of his rights. In union there is strength." (ASU, p12) These mutual defence

associations constitute the second stage. Problems attending them cause the transition to the third stage: every member of the simple mutual defence association is always on call which is onerous and raises the question of how to decide who will respond to calls not requiring the attention of every member; such protective associations might be troubled by irrational claims from some of its members, and used by unscrupulous members to violate the rights of others under the pretence of self defence; there will be difficulties if members of the same association are in dispute and make competing claims for assistance from their fellows. (ASU, pp12-13)

This brings us to the third stage - commercial protection agencies. "These inconveniences can be handled in the usual manner by division of labour and exchange. Some people will be hired to perform protective functions, and some entrepreneurs will go into the business of selling protective services." (ASU, p13) Such protective agencies will not protect clients from the counterretaliation of non clients provoked by the retaliatory activity of those clients who decide to enforce justice without the permission of the agency. This will minimise occasions on which agencies get drawn into messy conflicts which have developed without their influence. Private protection agencies will not necessarily require clients to sign away rights of personal enforcement of justice against its other clients, but those individuals who do go in for personal enforcement will be refused protection from the agency against counterretaliation. (ASU, p15)

The fourth stage is a situation in which one dominant protective agency, or a federation of cooperating agencies, exists in any geographical area. This tendency to monopoly is explained in terms of the benefits to agencies of merging or making cooperative agreements to settle disputes by arbitration rather than costly conflict. Furthermore, individual consumers of protection will see it in their interest to join

the most powerful agency. So a process of takeovers, cartels, mergers and changing membership patterns will tend to produce a dominant agency monopolising protection services in any given area. (ASU, pp15-17)

The situation of a geographically dominant protective agency probably requiring, as a membership condition, that members renounce the right personally to punish and to self defence, without permission, looks like a minimal state. (ASU, p17) But it fails to satisfy either of the necessary conditions of statehood - the claimed exclusive right to authorise the use of force, and the offering of protection to everyone within its borders. (ASU, p51) Or at least it has not been shown yet how these conditions can be satisfied without violating rights. In particular there remains the problem of independent individuals who exercise their rights to choose not to join the agency and retain their right to punish and accept the responsibility for their own defence. For the dominant agency to become a state without violating rights, it has to be shown how an independent can be made to join in without violating his rights. (ASU, pp51-3)

Stage five corresponds to what Nozick terms the "ultra-minimal state". (ASU, p26) This does claim, legitimately, the sole right to authorise the use of force within its boundaries, but does not provide protection to all within its boundaries. Only those who buy its protection and enforcement policies - its clients - are provided with protection and enforcement services. But it does rightfully prohibit the independent's personal pursuit of justice. The argument emerges from a general discussion of risky activities. (ASU, pp54-108) "Independent" punishment and self-defence is classed under risky activity, and Nozick has in fact two lines of argument to show that a dominant protection agency may prohibit rightfully such risky activities.

Firstly the independent is liable to violate the procedural rights of others. Nozick discusses some difficulties with the notion of procedural rights within a natural rights framework. (ASU, pp96-101) But, as he points out, they seem inescapable: "The natural rights tradition offers little guidance on precisely what one's procedural rights are in a state of nature, on how principles specifying how one is to act have knowledge built into their special clauses, and so on. Yet persons within this tradition do not hold that there are no procedural rights; that is that one may not defend oneself against being handled by unreliable or unfair procedures." (ASU, p101) Given that people have the right to be judged in accordance with procedures known to be reliable, a dominant protective agency might rightfully insist on approving any judicial process used against its clients. The independent's procedures are not known to be reliable. Therefore, a protective agency may prohibit his law enforcement activities, and become an ultra minimal state. (ASU, pp101-3)

The second line of argument is similar, but does not rely on procedural rights. Instead it relies on what Nozick calls the "epistemic principle of border crossing": "If someone knows that doing act A would violate Q's rights unless condition C obtained, he may not do A if he has not ascertained that C obtains through being in the best feasible position for ascertaining this." (ASU, p106) Any violator of this principle may rightfully be punished. The principle implies that an independent may not punish without following the best feasible means for determining guilt. Thus it is reasonable and legitimate for a dominant protection agency to monitor his activities to make sure he is guided by the most reliable procedures in relation to its clients, and in effect to claim sole authority over such procedures. (ASU, pp103-8)

Considerations of compensation sanction the move from the ultra-minimal state to the minimal state - the final stage.

Nozick has a "principle of compensation". "Those 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 others." (ASU, pp82-3) Therefore because the independent's punishment activities are only liable to be harmful and are not necessarily harmful, if their riskiness is to be met with prohibition, and this disadvantages him, he must be compensated. (ASU, p114)

Nozick does not go far towards clarifying the notion of disadvantage involved here. He thinks of it in terms of being rendered less able to live a "normal kind of life". For example, it would be very risky to allow epileptics to drive a car, and so prohibiting them from doing so is legitimate. But because this prohibition amounts to a serious disadvantage in a car-dependent society, it requires compensation. (ASU, pp78-9) So, with independents, prohibiting their do-it-yourself law enforcement "makes it impossible for them credibly to threaten to punish those who violate their rights, it makes them unable to protect themselves from harm and seriously disadvantages them in their daily activity and life". (ASU, p110) In this case independents are entitled to compensation by the protection agency, and the most appropriate form of compensation is the provision of protection. (ASU, pp111-13) The ultra minimal state becomes a minimal state when it protects all who were independents. Although it might involve clients paying for the protection of some non-clients, this is not a situation brought about for illegitimate redistributive reasons, but for moral reasons of compensation. (ibid) Thus moving to the minimal state differs from the previous transitions because it involves an explicit recognition of a moral claim - the independent ought to be compensated - whereas the earlier steps were made on the basis of rational self interest. Still, the moral motivations required to explain this move don't have to involve any intention to set up a state, only that of compensating for the

prohibitions imposed. So, "the explanation remains an invisible hand one." (ASU, p119)

This completes Nozick's basic argument for the rightness of (at least) the minimal state. But notice that insofar as the protection offered is on the basis of compensation for actual disadvantage caused by its prohibition of independent justice enforcement, Nozick's state will be providing full protection to some, offering cheap policies to others, and full price policies to others. (Wolff, 1991, p71)⁶ Moreover, as Nozick points out himself, the state will have no business intervening in disputes between independents unless it believes that there is a risk to its clients.

2:2 The Libertarian Anarchist Prevails

This story (begs) an immediate natural response. To attempt to justify the minimal state in terms of such a merely potential explanation - an invisible hand so very removed from history - is to fail to justify anything. Certainly the invisible hand process described involves no morally impermissible steps - at least as far as Nozick and the anarchist are concerned. But it is not clear why an account involving only hypothetical developments from a hypothetical anarchic situation should impress the anarchist, whose main claim is that no actual state is morally justified. (Wolff, p49) The libertarian anarchist probably already accepts that a minimal state, achieved through unanimous agreement, or through some morally legitimate process, would be justifiable. He just denies that any actual state is so favoured, and thinks it extremely unlikely that any will be. (Nagel, 1982, p203, n4)

6. I am indebted to Jonathan Wolff's recent lucid discussion of Anarchy, State and Utopia.

Nozick says that his use of an invisible hand potential explanation is an exercise in "explanatory political theory" which is not the same as "political philosophy". And this is right because to explain the state - to show why it exists, or why it has certain features such as that of claiming a monopoly of force - is not to justify the state or any of its features. If explaining x is insufficient to justify x, then potentially explaining x is insufficient to justify x. (Wolff, p50) True, the particular potential explanation he offers explains how a minimal state might arise from the most favourable realistic anarchic situation, without violating any rights; and this undermines any argument to the effect that the state is necessarily immoral because it must violate rights. But if this is taken as a justification, it can only be a justification of a merely conceivable hypothetical state, and so would not overly impress the anarchist, other than as entertainment or consolation. Even in terms of entertainment, the story will trouble, and certainly not console, the committed libertarian, for as a "potential explanation of the political realm" it will highlight just how fallen from grace is the actual world of state activity. From the standpoint of an historically grounded libertarian anarchist, the notion of a rightful, or voluntary, appearance of a libertarian state, is likely to seem a bad joke.⁷

However, Jonathan Wolff has shown that the material involved in Nozick's invisible hand explanation of the minimal state is most usefully interpreted as an answer to the general problem of political obligation. The important questions are "why should I obey the government?" "What authority does it have over me?" To clarify Nozick's answer to these questions

7. When we discuss Nozick's Experience Machine thought experiment we shall see that he describes an ideal device to allow the anarchist to contemplate the story whilst forgetting in what poor taste the joke is.

it is necessary to downplay his talk of hypothetical invisible hand processes. (Wolff, pp50-52)

Important to questions of political obligation, at least in the context of a natural rights understanding of political morality, is what Wolff calls the "Lockean Predicament". (Wolff, p.39, p50) On the one hand, the theory of natural rights suggests that the state has no moral authority. On the other hand, the inconveniences present in the state of nature (even favourably conceived) suggest the state would be an improvement; administrative justice in particular is likely to go better in a state. Therefore, provided that most others do so, there are good reasons for individuals to accept state authority.

Most people, if pressed, would accept the case for the state based on natural inconveniences. (Wolff, p50) But some might yet refuse to accept state authority on grounds of principle. The question then is what rightful authority, if any, the state has over would-be independents. Thus there are two elements in a comprehensive natural rights justification of the state. Firstly, it must be shown that there is good reason to accept state authority; that the advantages of the state will appeal to rational self interest. Secondly, it must be shown that those unconvinced by such reasons are nevertheless morally obliged to accept state authority, so that forcing them to do so violates no rights. (ibid) Nozick's invisible hand story contains both elements. The transition from state of nature to dominant protective agency represents a demonstration of the superiority of the state over the state of nature, from the standpoint of rational self-interest. The transition from dominant protective agency to minimal state, with its stages of prohibition and compensation, represents the moral case for forcing would be independents, unconvinced by the rational case for the minimal state, to obey its dictates. (Wolff, pp51-52)

Wolff claims that putting Nozick's argument like this makes it clearer and easier to assess. But then, as he proceeds to show, Nozick's argument does not work when clarified in this way. Its inadequacies are just those that would need to be solved to make the hypothetical story coherent.

Before looking at these problems, we should notice Wolff's reference to independents - those who exercise their right not to join the agency - as "John Wayne types". This is appropriate because the name, John Wayne, connotes various things, and in doing so gathers together a number of relevant elements. For example, it suggests an archetypal (American) rugged individualist, desiring and prepared to stand on his own two feet, especially to stand up for his rights and who, when around, is difficult to ignore. It also suggests an individual who might arrogantly assume his own moral infallibility and take himself to be a rightful judge, jury and executioner; a picture of someone who cannot be relied upon not to get carried away, despite, indeed because of, a self assurance that justice is on his side. John Wayne is not just a maverick, he is dangerous. Still, it would be a mistake to think that libertarian John Wayne is irrational simply because he takes an independent line on punishment. By hypothesis he has a natural, active right to punish rights violations, and it would prejudice the issue to interpret this right automatically as subject to the permission of the non-independent majority.

Using "John Wayne types" to refer to independents can also be misleading. For example, some independents might refuse to join the agency, not because they are motivated by John Wayne type rugged individualism, but because they cannot afford to, or because they do not like the protective policy they can afford, or because they prefer to buy other goods. More important and interesting is that "John Wayne type" might suggest someone who is a moral reactionary, as well as an

arrogant maverick in the area of justice enforcement. Many people, when they think of John Wayne, will think of someone who is not happy at the prospect of diverse ways of organising sexual relations, or of religious differences, and generally unconventional lifestyles. As a maverick reactionary, John Wayne is a somewhat paradoxical archetype. The problem is not that he might get carried away when punishing those he thinks have violated his rights, or when defending himself against those he thinks would violate them, where these are the rights people, including him, generally respect in the state of nature. The problem is that he is not a libertarian, and will not exist in the Lockean state of nature thought of as a situation in which people generally try to respect libertarian rights to non interference.

This is an important reminder of the limitations of Nozick's project. John Wayne will not regard the minimal state as immoral because it claims a monopoly of force and prevents his personal punishment activities. Rather he will think it wrong that the state claims a monopoly of authorised force, whilst protecting individuals' non-existent rights to be left alone to their immoral activities. Reactionary John Wayne will not have been shown to be irrational until libertarianism has been demonstrated as true, whatever libertarian John Wayne - that rugged champion of individual natural rights - can be persuaded to believe about the legitimacy of the minimal state.

However, it is libertarian John Wayne, jealous of his natural rights, who is the problem for the moment. He opens Nozick's book and finds himself inspired by the opening sentences: "Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far reaching are these rights that they raise the question of what, if anything, the state and its officials may do." (ASU, p ix) In fact Nozick's main lines

of argument for the minimal state, and for his entitlement theory of justice are undermined by the strength of these rights.

We turn now to see why Nozick fails to make prohibition of independent punishment consistent with the libertarian background. The move from dominant protection agency to ultra minimal state depends on considerations of procedural rights and his "epistemic principle of border crossings". This is to say that he has two arguments employing respectively these considerations, to show that it is legitimate to prohibit independent punishment of rights violations. The argument from procedural rights seems, on the face of it, quite straightforward. It is reasonable to think that if natural liberty is fundamental, then the right to a trial by a procedure known to be reliable is derivative from this (an unfair trial violates one's right to non-interference), and so is not a merely conventional device which the independent is entitled to ignore. Furthermore, if it is objected that as a type of natural right, procedural rights must be present in a state of nature, and so cannot be part of a moral justification of state authority, then it is open to Nozick to point out that although the right is present without the state, judicial procedures known to be reliable need not be - this is one of the inconveniences of the state of nature for which there are various possible forms of state remedy. (Wolff, p63)

The other argument seems hopeless however. Nozick's "epistemic principle of border crossings" says "If someone knows that doing act A would violate Q's rights unless condition C obtained, he may not do A if he has not ascertained that C obtains through being in the best feasible position for ascertaining this." Unfortunately, it is quite unclear what "best feasible" means in this abstract formulation, given that it is most implausible to take it as meaning "best physically possible". For example, driving a car carries a risk of

violating the rights of others, and I ought to take reasonable precautions against this risk "... but what would it be to use the best feasible means for ascertaining that I will not violate rights? I am far less likely to violate the rights of the innocent if I employ a servant to walk in front of me, as I drive, waving a red flag, and warning me if anyone comes near. Perhaps four servants, in radio contact, carrying closed circuit cameras, would do an even better job." (Wolff, pp65-66) Perhaps Wolff is exaggerating here; after all, ordinarily we seem to know what it is to take reasonable precautions against driving too dangerously. But to think this is to ignore what is at issue. The relevant risk here is not to be understood in relation to our ordinary judgments of acceptable danger, coloured as they are by many, non-libertarian, considerations of the relative values of the various possible outcomes. Rather the issue is the risk of violating an absolute right to non-interference. The epistemic principle of border crossing does not provide a sensible means of judging when the risk of violating such a right is legitimate, and so cannot be used as a premise in an argument to show that it is legitimate to prohibit an independent's risky punishment activities.

Nozick's case for prohibition therefore rests on procedural rights. This route is not as straightforward as it at first seems, however, because Nozick does not make clear whether respecting procedural rights and not exercising the right to punish involves a clash of rights: an independent's natural right to punish versus the procedural rights of others. If these rights are in conflict, why should procedural rights win? Nozick's libertarianism does not explain this, and seems to lack the resources to deal with any conflicts between rights equally absolute and on the same level. This is why it is a problem that the right to punish cannot be characterised easily as a negative right; procedural rights can be characterised as negative rights not to be subject to unsound procedures. It might be that Nozick intends the right to punish to be

conditioned always by procedural rights, so that the 'right to punish' is equivalent to the 'right to punish according to a procedure known to be reliable'. This would prevent the conflict but, as we shall soon see, it presents problems for his argument for compensating the independent. (Wolff, p66)

The procedural case for prohibition is doubtful also for a more fundamental, reason. The argument is supposed to convince the libertarian independent that the would-be minimal state is within its rights to monopolise punishment. But even if John Wayne accepts that his right to punish is conditioned by reliable procedure, he is bound to point out that agency punishment rights are also conditioned in this way. The agency will claim that its procedures are known to be reliable, unlike those of the independent. John Wayne will claim the reverse, but even if the agency is right, he needn't know this, and we don't have to doubt his sincerity or integrity. So it seems that we cannot escape entirely the faults of Nozick's invisible hand explanation. Libertarian John Wayne is conjured into existence by Nozick's libertarian framework. He might agree that his right to punish is conditioned by procedural rights, and that an agency's procedures are known to be reliable. Thus we can conceive of an independent being persuaded of the legitimacy of an ultra minimal state. But conceivability isn't enough; we can also imagine John Wayne disagreeing sincerely with the agency's methods, perhaps rightly. The procedural case for prohibition assumes firstly that the agency procedures are (known to be) reliable, and secondly that all parties concerned (including John Wayne) do know them to be reliable. Libertarianism as such does not imply the truth of these assumptions.

Nozick's argument for the legitimacy of extending protective functions to cover independents is based on his principle of compensation: "those 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". Wolff notes that it is not clear why this principle is relevant to cases of the prohibition of risky activities. If there is a right to prohibit certain activities on grounds of risk, then such prohibition simply marks the exercise of a right and there seems no need for compensation. If there is no such right then, given libertarianism, the activities should not be interfered with. In the particular case of prohibiting an independent from engaging in punishment activities because it risks violating procedural rights, when the right to punish is understood to be constrained by procedural rights, preventing punishment which does not follow known procedures does not violate any rights. So "to make compensation even relevant, Nozick needs to argue that John Wayne has rights which he is prevented from exercising as they conflict with the procedural rights of others." (Wolff, pp67-68)

It must be true, given the libertarian background, that one can have a positive right to compensation only if there has been some violation of one's own rights. The notion of "disadvantage" involved in the principle of compensation must be grounded in some notion of rights violation in order to generate rights to compensation, otherwise any moral case for compensation generated would not trigger political morality. If the only legitimate political duties states have are to do with the protection of rights (including enforcement of contracts and so on), and it finds itself with a duty to provide compensation to independents for prohibiting their non-procedural punishment activities, this must be because the prohibition violates the independents' rights.

What rights might these be? One immediately obvious possibility is simply a right to punish non-procedurally. This resurrects the question of why procedural rights should always win rights conflicts (and isn't it absurd to suggest

people have both procedural rights and the right to punish non-procedurally?). It might be that strength is to be the deciding factor in conflicts of rights. A protective agency or state has the right to protect its clients by prohibiting independent punishment. Independents are also within their rights to punish procedurally. So an agency has the right to enforce its prohibitions if necessary, and independents have the right to resist. Being bigger, the agency is very likely to win. Wolff claims that it is "uncharitable" to assign this line of thought to Nozick, and that the anarchist is "hardly likely" to accept a "justification" of the state which involves merely bowing to its superior strength. (Wolff, p66) But it is not a simple matter of "might is right". Rather it is a case of conflict between two opponents, both equally in the right, which will be won by the stronger party. This suggests an interesting answer to Wolff's question of political obligation:

The independent must recognise the legitimate right of the state/protection agency to protect its clients by prohibiting his punishing them non-procedurally. However, the independent also knows he has a legitimate right to resist the prohibition, but is aware that if he tries to exercise this right he will lose his contest with the agency. This latter point constitutes his reason to accept in practice the authority of the state/agency, which he should know is as legitimate, in principle, as his right to punish. Thus by exercising its right of prohibition, the state/agency is acting in a way which the independent ought to respect as legitimate, but is also violating, or nullifying, his right to punish. This violation might be enough to generate a right to compensation.

The problem with this interpretation (apart from the oddness of simultaneously possessing natural procedural rights and rights to punish non procedurally, and the sort of unease

Wolff mentions that the anarchist will feel at this type of justification), is that Nozick's principle of compensation is about those "disadvantaged by being forbidden to do actions that only might harm others ...". The interpretation of the argument we have just outlined assumes that having one's procedural rights violated is a way of being harmed, not that it might be a way of being harmed. If the independent is prohibited from non procedurally punishing, he is not being forbidden from activities that only might harm others, and the principle of compensation does not apply. The state may forbid his non procedural punishment activities but, according to the principle of compensation, has no more a duty to compensate him for this than for other necessarily harmful acts, such as murder (given that the point is about necessary harmfulness, the suggestion that he has a right to punish non procedurally, and no right to murder is irrelevant).

At this point, I think that the absurdity of the suggestion that people have the right to punish non procedurally, as well as having procedural rights, becomes too great to ignore; especially if procedural rights are derived from absolute rights to non interference, and so must generate a duty to respect them. Positing a right to do something that necessarily will be harmful in the sense of necessarily violating a right which one has a duty to respect regardless of consequences, does not seem to be a sensible option.

Another apparent candidate for the right violated by the prohibition of non procedural punishing is the independent's right to punish in accordance with procedures which, in his opinion, are known to be reliable. This interpretation is reasonable because the notion of a procedure known to be reliable does not imply either that any specific procedure is reliable or that any particular individual or group are necessarily knowledgeable in such matters. If the state/agency thinks that the procedures it authorises are the

only ones which are (known to be) reliable, it will be justified in prohibiting alternatives. If an independent does not believe that the agency backed procedures are (known to be) reliable, and thinks that if his preferred alternative is operated its reliability will become generally accepted, the agency will still prohibit his punishing, on the grounds that it is non procedural (in its view). The conflict now effectively is between an independent asserting his right to punish in accordance with procedures he thinks are reliable, and an agency asserting its right to enforce what it thinks is known to be a reliable procedure. The agency will win the conflict and should compensate the independent for preventing him from asserting his right.

Unfortunately the anarchist independent is even less likely to consider this a satisfactory solution to the question of political obligation than he was the previous suggestion. Again we are assuming that the independent has the right to punish in accordance with his preferred procedure. Given that he knows that he has this right, it will be difficult for him to accept that the state/agency has the right to prohibit his activities in favour of procedures which he thinks he knows are unreliable (although he will probably agree that it is in his practical self interest to bow to its authority). Another problem is that this situation still does not seem to trigger the principle of compensation. Given that the independent's conception of the procedure known to be reliable will be different to its own, and that it believes in its own authorised procedures, the agency will consider the independent's proposed or actual punishment activities to be necessarily harmful to its clients.

Another possible account of the right violated by prohibiting independent punishment is that it violates the right to choose one's own way of life. Wolff points out that Nozick does not argue for the principle of compensation, and

nor is it implied by libertarian assumptions. (Wolff, p68) Still I think we might try to understand the principle, or at least its operation in this case of prohibition, in terms of those assumptions. We saw earlier that by "disadvantaged" in the principle of compensation, Nozick means "rendered less able to live a normal life". The full content of "normal" here must be relative to social conditions; car driving is normal in a car-dependent society, and so on. It cannot be that Nozick means that people generally have a positive right to the means to live a normal life - that would be disastrous for his whole project. What he seems to mean is that we have general negative rights to non-interference, and that being rendered less able to live a normal life violates this right, given that we have chosen to live a normal life.

How can we think of prohibiting an independent from punishing non procedurally as violating his right to live a normal life - or the life he has chosen? It cannot be that it violates his right to live the life he chooses, where this is normality plus bouts of independent punishment activity. Given the fact of procedural rights, let us take it that he has no right to choose that kind of life. The important point I think is that prohibiting his punishment activities, without compensating him by providing protection, will render him less able to live a normal life minus such activities. If everyone knows that he is not allowed to punish independently, and that he is not receiving state protection, then he will be less able to live a normal life in the way Nozick describes. So, although by prohibiting the state does not violate any right to punish non procedurally, or to pursue an independent line on reliable punishment procedures (assume, for the moment, these rights do not exist), if it prohibits without providing protection, the independent's right to live a normal life - by extension, his right to live a life of his choosing (provided he respects the rights of others) - does get violated.

So the state owes compensation, which will be in the form of protection. Although "compensation" no longer seems quite the right term. On the one hand, the situation is that an independent non client, living within the territory of a dominant agency/state, is prohibited from non procedural (independent) punishment by the agency, and this effectively impairs his right to live a normal life. Given that he had not chosen the agency - has made no contract with it, and is not responsible for it in any way - the actions of the agency, although legitimate, are the responsibility of the agency, and it must compensate for any rights violations caused. On the other hand, "compensation" has a post facto connotation which seems out of place. The answer to the question of political obligation being offered to the anarchist is not "the state has a right to make you obey its judicial procedures which you must respect, and though this will impair your ability to live the life you choose, once you have suffered this impairment the state will compensate you". What is being offered is more like "the state has a right to make you obey its judicial procedures which you must respect, and to prevent this from damaging your right to live the life you choose, the state will offer you its protection".

More important is that it is not clear in this story just why the agency/state has a duty to provide the independent with protection. For a start, the principle of compensation is not triggered in this version either: by punishing them non procedurally, the independent inevitably will violate the rights of agency clients. Moreover, how can a combination of rightful punishment prohibition and rightful lack of protection be made up into a duty on the part of the agency/state to provide protection to the independent? The agency has a duty to prohibit independent non procedural punishment activities (so no compensation is required for that), and the independent has chosen not to involve himself with the agency - he has decided not to be a protection buying client (assuming that he

can afford it). If it is said that the independent has a positive right to protection, then the agency has a duty to provide it independently of any line it has on the respecting of procedural rights.

The point seems to be that the agency/state is responsible for the curtailment of the independent's right to live a normal life and so must compensate: if it did not exist he would be in a position to defend himself by credibly threatening punishment to potential violators of his rights (being a John Wayne type, he needs no agency membership to achieve this credibility). But if he has no positive right to protection, then the agency has no automatic duty to protect him. Given that negative rights exhaust political morality, why is it not just the independent's bad luck that an agency with the right to prohibit his punishment activities exists in his area? This is not to say that no moral case can be made for compensation here - perhaps one based on simple fairness. (Nozick's point, that the move from ultra minimal to minimal state requires a moral motivation over and above rational self interest, seems to require that the morality involved is "non-political" morality, i.e. non rights based morality). But it is to say that the agency is within its rights to ignore such a case.

This brings us back to Wolff's point that the principle of compensation is unargued for and independent of libertarianism. There is no reason to show that the libertarian must accept it. The only consideration given in support of the principle, apart from Nozick's view that it accords with the judgement that the independent should be compensated, is that it says that we should compensate the epileptic who is banned from driving and cannot afford a chauffeur. But "the libertarian might say 'either the epileptic has a right to drive, or he does not. If he does not, then we can ban him from driving; if he does we must not interfere.' If we decide the epileptic has no

right to drive and ban him from doing so, we might feel very sorry for him, and choose to help, but this does not, in libertarian terms, show he has a right to compensation." (Wolff, p69)

We have looked at three possible ways of explaining the rights violated by the agency prohibitions on independent punishment. In addition to other problems, each fails to trigger Nozick's principle of compensation because they involve an inevitably harmful action: non procedural punishment. Given that people have procedural rights, punishing them non procedurally must harm them. Therefore, to make the principle of compensation relevant it is necessary to drop, or modify, the modal component ("... might harm others"), as well as show what independent rights are violated by prohibition.

It might be objected that non procedural punishment, if proportionate to the crime, only might be harmful (despite necessarily violating rights) because the person punished only might be innocent, and receiving punishment proportionate to one's crime does not harm one, unless all punishment is harmful. Before answering this, we should notice that Nozick intends his doomed epistemic principle of border-crossings to deal with such problems as whether an unreliable method of punishment might be rightfully used against someone whose guilt is known only to himself. This is how he sums up the position implied by the epistemic principle of border-crossings:

"On this view, what a person may do is not limited only by the rights of others. An unreliable punisher may not punish him. This extra space is created by epistemic considerations... Note that on this construal, a person does not have a right that he be punished only by the use of a relatively reliable procedure. (Even though he may, if he so chooses, give another permission to use a less reliable

procedure on him.) On this view, many procedural rights stem not from rights of the person acted upon, but rather from moral considerations about the person or persons doing the acting." (ASU, p107)

But he immediately goes on to express reservations about this view: "It is not clear to me that this is the proper focus. Perhaps the person acted upon does have such procedural rights against the user of an unreliable procedure." (ibid) The inadequacy of his epistemic principle of border crossings confirms these reservations. Against the above objection to our view that non procedural punishment is necessarily harmful (even to the guilty) we can say the following: all punishment is (at least intended to be) harmful to those punished, so if punishment can be rightful, inflicting harm can be rightful. The reference to harm in the principle of compensation, must be interpreted as a reference to wrongful harm. And given procedural rights, inflicting non procedural punishment (even proportionately upon the guilty) is not rightful - it is necessarily wrongful.

There seems little enough reason to accept the principle of compensation as Nozick presents it. (Wolff, pp69-70) But it is clearly unacceptable if changed to require that those disadvantaged by being prohibited from necessarily harmful activities be compensated. So although we can imagine groups of libertarians deferring to conventional procedure in a spirit of cooperation, once John Wayne types are introduced, the story becomes stuck on the inconsistencies between the states duty to compensate and the independents' rights to punish. It was committed libertarians that the story was meant to convince; Nozick's libertarianism is consistent with minimal statism only on the assumption that there are no awkward independents who insist on their rights.

Chapter Three: Entitlements and Transfers

3:1 Nozick's Entitlement Theory of Justice in Holdings

The main intended conclusion of Anarchy, State and Utopia is that the minimal state is uniquely right; the minimal state is legitimate, but no more extensive version is justified. His main case is based on considerations of distributive justice; he advances an "entitlement theory" theory of distributive justice as consistent with the libertarian background, and according to which the only justified state is the minimal state. (ASU, pp149-182) I shall briefly outline this theory as a whole, and then (in the rest of this chapter and the next) examine its parts. We shall see that it fails to ground a convincing case against the extensive state, that in itself it is hopelessly incomplete, and simply begs the question against distributive theories inspired by non-libertarian political moralities.

Nozick begins his case, and sets the rhetorical tone, by quarrelling with the term "distributive justice" itself for embodying a picture of some central mechanism of distribution. "Distributive justice" thus encourages us to look favourably upon the possibility of redistributing resources, and this is already to subscribe to a false view of the issue: "... we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no central distribution, no person or group entitled to control all the resources jointly deciding how they are to be doled out". (ASU, p.149) Instead of the infected "distributive justice", Nozick suggests we use the phrase "justice in holdings". (ASU, p150)

Nozick claims the general issue of justice in holdings involves three main elements each requiring its own principle. Together they constitute his entitlement theory. Firstly, there is the original acquisition of holdings, the

legitimate appropriation of previously unheld resources to be dealt with by the "principle of justice in acquisition". (ibid.) The second element is concerned with all forms of transference of holdings between people. Legitimate transfers are in accordance with the "principle of justice in transfer". (ibid) These two principles are enough to define ideal justice. "If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1. and 2." (ASU, p151)

The core of Nozick's theory is that a given distribution of holdings is just iff "everyone is entitled to the holdings they possess under the distribution", where this entitlement is contingent upon the distribution of holdings having arisen from another just distribution by legitimate means. (ibid) We shall see that the legitimacy of a transfer is largely a question of its being voluntary.

The third principle is concerned with situations arising from deviations from the other two. Unjust acquisitions and transfers need to be rectified according to a principle of rectification. (ASU, p.152) Thus Nozick's entitlement theory of justice in holdings consists of three principles: principles of acquisition, transfer, and of the rectification of violations of these. It should be noted that merely

registering the existence of these principles only gives a general outline of a theory. Nozick is aware of this and points out that a specific theory here would require the specification of these three principles in detail. But, although as we shall see, he gives more detail than I have mentioned so far, he says "I shall not attempt that task here." (ASU, p153)

Nevertheless, he thinks a general outline is enough to show up the fundamental defects of his rivals. Firstly, the entitlement theory is a "historical theory", in the sense that it makes the justice of a distribution depend on what actual steps led to it. (ibid) So it is to be contrasted with unhistorical theories employing what he calls "current time slice" or "end state" principles. (ASU, pp153-5) These concentrate on structural principles of distribution, so that only the structure of a distribution is taken to be relevant to its justice, irrespective of how this arose. Thus to compare the justice of two distributions, the utilitarian checks which has the greater utility; another theorist might check to see which realizes most closely his fixed pattern of trade offs between utility and equality. Here, structural identity implies identity of justice, even if different people occupy the structural positions: "My having ten and your having five, and my having five and your having ten are structurally identical distributions." "Welfare economics is the theory of current time-slice principles of justice." (ASU, pp153-4) Historical principles, on the other hand, enshrine the intuition that the history of a distribution is relevant to its justice. "An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people's entitlement or deserts; it may not fit the actual history." (ASU p155)

Nozick distinguishes the principles of his entitlement theory from another subclass of historical theories.(ASU,

pp155-60) Historical principles may be patterned or unpatterned. A patterned principle "specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle." (ASU, p156) Nozick suggests "moral merit" and "usefulness to society" as examples of the "natural dimensions" according to which distributions may be patterned. He extends "pattern" to cover designs intended by end state principles or combinations of such principles, meaning it to include complex, society wide distributions composed of smaller, simpler patterns applying to different sectors, or of combinations of patterns varying in proportion across sectors of a society. (ibid)

Although the favoured basis of the pattern varies - moral merit, needs, marginal product, effort, etc. - Nozick points out that almost every other account of distributive justice is patterned. (ASU, pp156-57) His entitlement theory is unpatterned, for "there is no one natural dimension or weighted sum or combination of a small number of natural dimensions that yields the distributions generated in accordance with the principle of entitlement." (ASU, p157) Almost certainly a distribution of holdings, wholly just according to the entitlement theory because it conforms to principles of justice in acquisition and transfer will contain "heavy strands of patterns" (for example, perhaps it largely conforms to the principle "distribute so that what people hold varies with what they held that others wanted"), but that is not why it is a just distribution. Furthermore, a distribution arrived at justly in terms of entitlement but which is random with respect to patterns, will be intelligible despite the lack of patterns, because it arises from actions in accord with the small number of entitlement principles. (ibid)

The entitlement theory thus contrasts with the views of those who think that the point of a theory of distributive justice is to fill in the blank in "to each according to his _____". This latter approach is the pattern approach. (ASU, p.159) Moreover, Nozick claims, the separation of this from "from each according to his _____" suggests falsely that production and distribution are separate independent issues. His theory does not make this mistake. The idea is that when someone makes something, having legitimately acquired the resources involved, he is entitled to it. "The situation is not one of something's getting made, and there being an open question of who is to get it. Things come into the world already attached to people having entitlements over them. From the point of view of the historical entitlement conception of justice in holdings, those who start afresh to complete "to each according to his _____" treat objects as if they appeared from nowhere, out of nothing." (ASU, p160)

This hostility to "patterns", and to the idea that the state should enforce one such, is a persistent, neutralist theme running through Nozick's work. That the other elements of the entitlement theory store up so much embarrassment for him demonstrates the inadequacy of libertarianism as a means to elaborate that theme. The currency of justice here is "holdings", that is to say property, but we shall see that his account of acquisition fails to explain how exclusive property rights can arise consistently with the libertarian background. He stresses the importance of history to justice. We have already seen that his "potential explanation" of the minimal state is disastrously ahistorical, but things only get worse, for history is not on his side at all. We return to these issues in the next chapter, on acquisition and rectification. In the meantime we must bracket them out to examine his principle of justice in transfer.

3:2 Transfers

Because Nozick does not specify in detail his principles of justice, they are difficult to defend in detail. In fact Nozick's defence of the entitlement theory consists mainly in a critique of its competitors. This is certainly true of his principle of justice in transfer. Basically, the argument is that maintaining the patterns favoured by rival conceptions of distributive justice is inconsistent with a proper regard for individual liberty. He claims that "it is not clear how those holding alternative conceptions of distributive justice can reject the the entitlement conception of justice in holdings". (ASU, p160) To illustrate and defend this bold claim, he introduces the case of Wilt Chamberlain:

Suppose you hold a patterned theory and that your favourite distributive pattern, D1, is realised. "Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction ... He signs the following sort of contract with a team: in each home game, twenty five cents from the price of each ticket of admission goes to him ... The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty five cents of their admission price into a special box with Chamberlain's name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that is one reason one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution D2, unjust?" (ASU, p161)

Nozick thinks that D2 is just. By hypothesis, D1 was just and people chose to act in a way which brought about D2. In operation here is the general principle endorsed earlier: "a distribution is just if it arises from another just

distribution by legitimate means." (ASU, p151) The most significant feature of the move from D1 to D2 is the voluntary nature of the transfer involved; people chose to exchange part of their D1 shares for watching Wilt Chamberlain. Although Nozick does not formulate it explicitly, voluntariness is the basis of the entitlement principle of justice in transfer.

He also tells a little story about an entrepreneurial philosopher in a socialist society who gives an evening lecture to others in exchange for their operating his productive process which he constructed from (hypothetically) legitimate D1 socialist holdings. (ASU, pp162-3) He says that "the general point illustrated by the Wilt Chamberlain example and the example of the entrepreneur in a socialist society is that no end-state principle or distributional patterned principle of justice can be continuously realised without continuous interference with people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern." (ibid)

Thus, Nozick's case against patterned theories of distributive justice consists of three connected claims concerning the role of freedom in the transfer of holdings: voluntary transfers will upset patterns; whatever follows from a just distribution by voluntary actions, as does D2, is itself just; enforced maintenance of patterns involves unacceptable interference with people's liberty. I shall consider each of these in turn.

The claim that voluntary transfers will upset at least most patterns seems acceptable. He admits that "it puts things perhaps a bit too strongly to say that every patterned

(or end-state) principle is liable to be thwarted by the voluntary actions of the individual parties transferring some of their shares they receive under the principle. For perhaps some very weak patterns are not so thwarted." (ASU, p164) The weaker the pattern, the more likely it is to be preserved by voluntary transfers, so he thinks it plausible that "any patterning either is unstable or is satisfied by the entitlement system." (ibid)

Against the objection that all might choose to avoid upsetting the pattern, Nozick points out that it is unlikely that they will all most want to maintain the pattern. (ASU, p163) He also says it is unrealistic to expect people to be well enough informed to know which of their activities will upset the pattern, and to be able to coordinate their far flung and diverse activities into the pattern. (ibid) Although these considerations are relevant only to the notion that a pattern might be perfectly realised, which is something noone believes. (Wolff p82)

The second claim, that whatever follows by voluntary steps from a just situation is just, is more interesting. This is the basis of the principle of justice in transfer: a transfer is just iff it is voluntary. He later explains a non-voluntary action as one constrained by another's rights violating action. (ASU, p262) Thus a worker in capitalist society who must work or starve is not unjustly exploited unless someone violated his rights in setting up the situation.⁸ A starving man arriving at the factory gates has

8. In his 1969 paper "Coercion", Nozick discusses the distinction between threats and offers, and argues for a concept of coercion that makes exploitative offers non-coercive, even when their exploitative nature makes it inevitable they will be accepted. In this respect at least that paper is a preliminary to Anarchy, State and Utopia.

no legitimately enforceable right to food, never mind to a job; the owner is within his rights to offer a crust in return for work, and violates no rights by suggesting the exchange, even though it leaves the man no choice but to work on these terms. Compassion, charity, generosity and so on are all virtues in Nozick's eyes, but they do not penetrate this political morality. (e.g. Singer, pp42-3)

It has been pointed out that Nozick's understanding of voluntary and its opposite here departs from common usage (especially in preserving the voluntariness of highly exploitative contracts), thus undermining the intuitive plausibility he tries to tap by stressing the connection between liberty and justice. (Wolff, p85) Yet more controversial is the way he handles (or ignores) problems attached to the consequences of many transfers which everyone would agree were voluntary. "Third parties still have their legitimate shares; their shares are not changed", he says about Wilt Chamberlain's paradigmatically just accumulation. (ASU, p161) But although it might be true that third party shares remain unchanged, large scale voluntary transfer and accumulation obviously may affect the situation of third parties. Money is power and, given that power will concentrate where wealth is concentrated, third parties will be affected by the degree of this concentration. Nozick's position is that this power is illegitimate only if gained by rights violations, or used to violate the rights of others: voluntary exercise of economic power, say to raise house prices through speculative buying, or to lower wages by forming cartels, in itself is no cause for complaint. (Wolff, p87)

Many will find this unacceptable; unfettered voluntary transaction will produce vast inequalities of wealth and power and this should not be allowed, despite the value of liberty. Moreover, these pernicious consequences will grow over time - affected third parties include future generations. This is

one of the reasons Rawls gives for treating the "basic structure of society" as the primary subject of justice:

"...suppose we begin with the initially attractive idea that society should develop over time in accordance with free agreements fairly arrived at and fully honoured. Straightway we need an account of when agreements are free and the social circumstances under which they are reached are fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate ostensibly fair agreements, together with social and historical contingencies, are likely as time passes to alter institutions and opportunities so that the conditions for free and fair agreements no longer hold. The role of the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and corrected, the social process will cease to be just, however free and fair particular transactions may look when viewed by themselves." (Rawls, 1977, pp159-160)

This is precisely the sort of patterned position Nozick wants to knock down. True, he does sketch "an account of when agreements are free and the social circumstances under which they are reached are fair": agreements are free when voluntary (unrestricted by rights violations), and the circumstances are fair when all parties are entitled to their holdings and make their agreements freely. But he ignores the point that accumulated results of transactions might create unfair conditions, which as a matter of justice will need rectifying. Or rather he negates it by simply asserting his view that it is the voluntariness that matters and consequences are irrelevant. Clearly, the libertarian background is at work here, but the point is that in order to establish his entitlement conception and knock down the rival patterned theories, he needs to do more than give examples which illustrate his view. The Wilt

Chamberlain story is an appeal to our intuitions, but our intuitions are likely to make us insist upon the relevance of the consequences for third parties and, as we have noted, make us doubt his notion of voluntary. So the claim that whatever follows by voluntary steps from a just situation is just, considered as an assertion simply begs the question against rival theories of distributive justice and is highly dubious when considered as an appeal (via suggestive examples) to our intuitions.

The obviousness Nozick relies upon is there only for the libertarian. If D1 is just and libertarianism is true, then if the move from D1 to D2 is "voluntary" (by definition no rights are violated), then D2 must be just. Again, consequential unfairness might be unfortunate and generate a moral case for charity, but unfairness doesn't imply injustice in the sense of morally necessitating political or state action. Now, we might agree with Nagel that the suggestion that we rely on private charity to meet the unfairness brought by a system of purely voluntary transfer "... is no more convincing coming from Nozick than it was coming from Barry Goldwater." (Nagel, 1982, p199) And we might say that libertarianism provides an over simplistic account of political morality: "even running the argument by [Nozick's] rules, his conception of at best one aspect of our moral ideas." (Williams, p.34) Still it is not a refutation of libertarianism to say that it looks simplistic in relation to orthodox theory and practice, or that it has unjust consequences from an orthodox point of view. It might be that the latter viewpoint is overcomplex and promotes injustice. Even so, if the claim that whatever follows by voluntary steps from a just situation is obvious only from a libertarian standpoint, then establishing it against non-libertarian objections will require more than examples of voluntary transfers.

We accepted the first claim that voluntary transactions will upset patterns, but obviously that is not enough to establish the entitlement theory; maybe those pattern busting voluntary activities ought to be prohibited. We have not been impressed by the argumentative force of Nozick's second claim. Therefore, his case against the competition rests on his third claim, that maintaining patterns constitutes unacceptable interference with individual liberty. We shall now see that this claim is most implausible.

Nozick expands on the theme that patterned theories ride roughshod over the voluntariness necessary to proper justice. Ironically, even well intentioned versions promote "individualism with a vengeance" because maintaining patterns is consistent with people spending their legitimate resources on themselves, but not with spending it on others. In this way, the rights of individuals to choose what to do with their own holdings is not respected. It also makes family life suspect as an arena of pattern busting transfers: "Either families themselves become units to which distribution takes place, (on what rationale?) or loving behaviour is forbidden". (ASU, p167) Patterned theories concentrate on the rights of the recipients of distributed resources - who ought to get what - and ignore the rights people have to give things. (ASU, p168)

When Nozick says that maintaining distributive patterns necessitates unacceptable interference in people's lives he apparently has in mind a picture of constant surveillance and intervention in the minutiae of people's lives. Thus he is expanding on Hume's argument that liberty and equality are incompatible because "severe jurisdiction" and "rigorous inquisition" would be required to identify and redress the inequalities that would inevitably threaten the egalitarian pattern. (Wolff, pp79-80) However, if his argument is simply that all patterned theories would require a Big Brother totalitarian state to maintain the preferred pattern, then it

fails because not all such theories propose such a rigorous implementation; rather they tend to advocate an approximation to the preferred pattern, the value of which is tempered by the value of liberty, and vice versa. (Nagel, p201)

For example, "there is a great difference, and Nozick carefully ignores it, between a rule of law under which it is publicly known that a structural ideal dictates taxation policy and a regime which allows the state to interfere with people as occasion arises". (Kukathas and Pettit, 1990, p89) If the publicly known structural ideal expresses Rawls' Difference Principle which dictates a taxation system (a publicly known and predictable framework of economic interference, let us say) then there seems no reason to assume that this must correspond to a situation of constant unacceptable interference. ⁹

Nozick presumably has something like that in mind when he asks this rhetorical question: "But if some time limit is to be set on how long people may keep resources others voluntarily transfer to them, why let them keep these resources for any period of time? Why not have immediate confiscation?" (ASU, p163) Thus if you are going to maintain a pattern, it will require the confiscation of justly acquired resources, and if you are prepared to do that, you may as well do it as rigorously, and confiscate immediately; hence constant interference. But an obvious answer to Nozick's question is that immediate "confiscation" is not required to approximate a favoured pattern.

9. Rawls' Difference Principle says that "social and economic inequalities are to be arranged so that they are ... to the greatest benefit to the least advantaged ..." (Rawls, 1972, p302)

However, although patterned theories do not necessarily require constant, interference, they do require redistribution of holdings. It is possible, if highly unlikely, that a voluntary distribution would fit a given pattern, but it would be impossible for the pattern to remain in the face of voluntary gifts and exchanges. So an argument focussed on the evil of redistribution will at least get off the ground as a general anti pattern argument. Nozick argues that redistribution violates individuals' rights, except when operated in accordance with the principle of rectification. (ASU, p.168) States achieve redistribution via taxation, so Nozick illustrates his case with a discussion on the theme that "taxation of earnings from labor is on a par with forced labor". (ASU, p169)

It is easy to see Nozick's claim that taxation is on a par with forced labour as a piece of tendentious exaggeration. Even he is not sure whether he is arguing that taxation is a form of forced labour or only that there are illuminating similarities. (ASU, p169n) But the differences might just as easily be taken as illuminating: unlike forced labour, progressive taxation in itself allows the option of deciding how much work to do, what sort of work to do, and who to work for. (Wolff, p91) Nozick asks us to imagine a graded continuum between forced labour and taxation. At one end you are forced to do one thing (forced labour), then given the choice between two things, then between three and so on along the continuum to income taxation. (ASU, p169) But, as Wolff points out, we should not infer that amoebas are human beings from the fact that there is a "biological continuum" stretching between them, only that there is at least one property they have in common. On the taxation/forced labour continuum, the seriousness of the interference with liberty decreases as taxation is approached and forced labour left behind. (Wolff, p.92) So why think that serious interference with individual liberty is a shared property? There are two strands to

Nozick's discussion here. The first one focusses on his view that taxation is a case of the limiting of choice by force; the second on his view that it is a case of claiming part ownership of people.

We have already seen that Nozick denies that people are forced to do something whenever the alternatives are much worse. He also rejects this line of thought: taxation for redistributive purposes is proportionally raised on income greater than the amount necessary for basic needs; therefore, because there is no specific number of hours anyone is forced to work by this system, and anyone can avoid taxation by earning only enough for basic needs, such a system forces no one to work extra hours. On the contrary, he argues that the intentional rights violations involved makes it unacceptable: "The fact that others intentionally intervene in violation of a side constraint against aggression, to threaten force to limit the alternatives, in this case to paying taxes or (presumably the worse alternative) bare subsistence, makes the taxation system one of forced labor and distinguishes it from other cases of limited choices which are not forcings." (ASU, p169) From this point of view, it is "surprising" that redistributionists leave alone those whose pleasures are such that it is unnecessary to work extra, taxable, hours to afford them, and yet the extra burden of taxation is placed on the "poor unfortunate who must work for his pleasure." (ASU, p170)

His argument here seems to be that taxation is like forced labour in that it is a case of options being limited by rights violation: once the tax system is in place, then however much work you "choose" to do, your choice is "forced" and unfree. Libertarian John Wayne might not want to work more than is necessary for his subsistence if that means he will be taxed, or he might still want to do the extra work and grudgingly pay the tax. Whichever choice he makes - work less (and pay no tax) or work more (and pay tax) - his options are constrained

by an intentional rights violation: he is forcibly prevented from working more whilst paying no tax. In the case of forced labour, the choice is limited to one - work - and this limitation is a rights violating constraint of the options. Thus although there are more real choices in the taxation case than in the (literally) forced labour case, the constraining rights violation involved means that none of the chosen options will be unforced; in this sense any labour will be forced, no matter who you work for or how much or for how long, or however much you get paid.¹⁰ Of course this assumes that the side constraint applies here; i.e. that individuals have a natural right to choose to work or accumulate as much as they want without paying tax - a natural right violated by the taxation proposed by redistributionists, who therefore advocate 'forced labour' to realise their patterned schemes. I expand this point soon.

The second strand to Nozick's discussion of taxation as forced labour proceeds as follows. He asks "what sort of right over others does a legally institutionalised end-state pattern give one?" This turns out to be a property right. He says that "the central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options

10. Since it is non libertarian patterned theorists who are the target of this argument, it cannot be that only a society of taxed John Wayne types suffer in this way. If someone chooses to work more (and pay tax) and does not mind the taxation or positively supports it, his options must still be limited by the rights violating decree: pay tax or live on subsistence. Nozick's claim is not that for some people taxation is on a par with forced labour. Presumably, even willing taxpayers are unjustly coerced when the state reduces their options from work less for subsistence only, or work more and pay no tax, or work more and voluntarily pay tax (which then is equivalent to charitable donation), to work less for subsistence only, or work more and pay tax.

concerning X shall be realised or attempted". The laws or principles of society set the relevant constraints; for Nozick these should be libertarian natural rights. (ASU, p171) When patterns are enshrined by the legal framework of a society, everyone has an enforceable claim to some specified portion of the total social product, representing the labour, creativity and organisational ability of individuals. Patterned principles of distribution give each person an enforceable claim whether or not the particular relationships which would ground the claims exist, and of whether the producers voluntarily accept the claims. Thus the redistribution required by distributive patterns involves appropriating the activities of others, and this is partly to appropriate them themselves (ASU, p171-2):

"Seizing the results of someone's labor is equivalent to seizing hours from him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over a animal or inanimate object would be to have a property right in it." (ibid)

The argument here seems to be that taking away the results of an individual's labour through taxation is equivalent to taking a number of hours of his life and making him work for another's ends, which is what happens in forced labour. Furthermore, the removal of powers of decision, here as in forced labour cases, not only negates autonomy but self ownership considered as a property right in the self. One obvious response to this is to emphasise the difference between taxation and forced labour by pointing to the different motivations behind them. Given that we are not talking about

tax raised by an absolute dictator, then even if the libertarian does not share the paternalist or moral concerns of the taxation advocate, he must recognise that they are importantly different to the concerns of people who want to put John Wayne into a forced labour camp for their own selfish reasons. Moreover, without wanting to overestimate naively the power given to (especially minority) individuals in democratic states by their right to vote on taxation issues, where taxation is decided via representative institutions, the situation is importantly different to paradigms of forced labour such as press-ganged naval service and labour camps. But again a more fundamental problem with Nozick's line of argument here is that it assumes that any "property right" in others is always wrong. Whereas liberal pattern theorists might be happy with some weak interpretation of our "belonging to each other" as marked by a taxation system, even if they condemn the stronger property rights over others involved in forced or slave labour.

Both strands of Nozick's case for thinking of taxation as on a par with forced labour presuppose certain rights which are violated by taxation as they are by forced labour. If this case against taxation is meant to persuade pattern theorists that maintaining their preferred pattern involves unacceptable interference, then these theorists must either already believe that those individual rights ought to be respected as side constraints, which they don't, or they must be convinced that this is the case. We shall see that Nozick's argument has no force to do this.

Nozick's view, that maintaining patterns involves unacceptable interference in the sense of a constantly spying and intervening Big Brother state apparatus, is implausible. We must then interpret unacceptable interference in terms of violating the right to live and dispose your holdings as you choose whilst respecting the rights of others. For Nozick,

only a rights violation counts as interference with individual liberty: rights are negative rights to non interference provided the rights of others are respected. The notion of liberty involved is a Lockean formality: it is the freedom to act within the moral law, or "the right to do what you have a right to do". (Wolff, eg p96) Now, it is easy to see how hopelessly circular is the attempt to defend a set of rights as what liberty requires when the notion of liberty operating is Lockean; one needs to articulate a set of rights before one knows what such liberty consists in. But we need to be careful about applying this point to Nozick's account, which treats rights as natural rights to non interference.

For example, Jonathan Wolff follows Cheyney Ryan in arguing that "on Nozick's preferred conception of liberty ... enforcing a pattern need not restrict liberty at all". Nozick's Lockean notion of liberty simply says that you have the right to do what you have the right to do. "Thus to decide whether enforcing a pattern violates liberty we must examine whether the pattern includes the right freely to transfer goods in whatever way the holder wishes. But there is no reason to think that all patterns include this right." Therefore maintaining a pattern can be consistent with full respect for liberty. (Wolff, p100; Ryan, 1982, passim)

But this is not quite right as a response to Nozick. Wolff seems to assume that what gives substance to this notion of liberty is a set of rights which in turn is given content only by a patterned theory of distributive justice. Wolff means only to point out that if the pattern theorist adopts a formal Lockean notion of liberty then he can claim that his favoured pattern, which defines a set of property rights, does not restrict that liberty. But one problem with this move is that any amount of restrictive pattern enforcement can be made consistent with "liberty" in the same way. Another problem is that it does not address Nozick's position which, although

formally Lockean in the sense described, is also Lockean in the sense of focussing on liberty as defined by natural rights: liberty is a natural right to do what you have a natural right to do. Assuming that he is a Lockean libertarian then, if John Wayne thinks he has a natural right to transfer as he wishes, then this right is not contingent upon a pattern, and any pattern not including this right restricts this natural liberty. Weak patterns conforming to the entitlement conception are acceptable, but it is no good telling John Wayne that your favoured pattern does not include his right to dispose of his possessions as he sees fit.

However, the Ryan/Wolff argument underlines the impasse between Nozick, with his set of natural rights (including, in this part of his argument, full ownership rights to whatever has been justly acquired), which grounds his Lockean notion of liberty, and the patterned theorist who either has a different concept of liberty altogether, or defines Lockean liberty in terms of the rights specified by his favoured pattern. Unfortunately for Nozick, the onus is on him to break the deadlock and show that his is the correct account of liberty and rights, otherwise his claim that enforcing patterns brings unacceptable interference simply begs the question. It is unclear how he could possibly do this. The really crucial rights are those of full ownership of property justly acquired. He cannot defend these rights by appealing to liberty without circularity. He gives no other successful account of them: in the next chapter we shall see that he does not show that the libertarian must accept natural exclusive property rights, never mind anyone else.

Chapter Four: Acquisition and Rectification

4:1 The Problem of Original Acquisition

If the entitlement theory is to be taken seriously, then there can be no just transfers of holdings, not even between individuals and up and coming protection agencies, without a secure principle of justice in acquisition which describes how exclusive property rights over previously unowned objects may arise in the first place. But original acquisition of property is hard to justify from a libertarian standpoint. If an acquisition gives exclusive ownership, then not only are others inconvenienced (possibly drastically) by being prevented from using the object newly acquired, but individual acquisition implies a loss of liberty for everyone else, who no longer have the right to use that previously unowned object. Someone acquires a piece of property; everyone else acquires new obligations of non-interference whether or not they give their consent.

The issue is loss of rights rather than loss of opportunity. If I deprive you of the opportunity to drop in for a casual visit over the weekend by going off to visit my brother without your consent, I do not violate your libertarian rights. But if I deprive you of the right, which you had previously along with everyone else, to pick raspberries in Sunny Valley, by acquiring the land, fencing it off and calling it my fruit farm, and I do this without your agreement, then it is not at all clear that I have not violated your libertarian rights. So although the libertarian can allow unconsented deprivations of opportunities, it is doubtful, at least prima facie, whether he can allow unconsented obligation acquisition or the accompanying rights deprivation (such as that of being an unmolested raspberry picker in Sunny Valley). (Gibbard, 1986, p238; Wolff, 1991, pp100-101) This is not to say that

people have a natural, positive right to pick raspberries wherever they want, but that before it was owned people had the right to pick without interference as long as this violated no one else's right or the Lockean Proviso discussed below. If it is thought too arbitrary to consider fencing Sunny Valley a problematic case of acquisition, and not the picking of individual raspberries within it, think of the situation as one where raspberry pickers deprive those who simply want to stroke the very same still attached raspberries of the right so to stroke without interference. Agreements about what natural produce should be left in place for aesthetic reasons, and what may be used for subsistence, might be protracted, and brought to an end only by the threat of starvation. But that is rigorously uncompromising libertarianism for you.

Allan Gibbard has highlighted this problem for libertarianism by sketching a hypothetical state of nature, in which the fact that fundamental libertarian rights are always respected, explains a lack of widespread exclusive ownership. This applies to what he calls "hard libertarianism" - the view that a person can be denied the right to use something only with his consent.¹¹ Hard libertarianism contrasts with the "Lockean view that under certain conditions, one becomes the owner of a previously unowned thing without the consent of those who are thereby excluded from using it". (Gibbard, p237)

The argument goes as follows (Gibbard, pp238-240): according to hard libertarianism, when someone takes something, say land, from its natural state and transforms it, say clears it for farming, this deprives everyone else of the right to use the transformed material, in this case land, only if they have voluntarily agreed to renounce the right. Without such

11. Gibbard intends A's right to use x to imply that it is morally permissible for A to use x, and morally impermissible for anyone else to coerce him not to. It does not imply that A has a positive right to be provided with x.

agreement, everyone retains the same right to use the manufactured or grown goods, for they have the status simply of unowned raw materials given new form. Now, individuals within a community following hard libertarian principles, but with no agreement as to unequal property rights, will have no incentives to clear and harvest land or manufacture anything; without such an agreement, everyone has the same right to use the produce of labouring individuals. Therefore, without agreement on exclusive property rights, everyone will be reduced to living off the natural produce of uncleared land.¹²

This situation will inspire a voluntary arrangement reflecting the fact that each person is better off being excluded from some bit of the natural world than retaining an equal right to use all natural things. Various arrangements are possible; agreements will depend on the general situation. Two features of the bargaining situation discussed by Gibbard are relevant here. The first has consequences which might seem damaging to Nozick on a misinterpretation of his position. The second feature rules out any plausible reconciliation of private property with hard libertarianism.

Firstly, those bargaining for an agreement will not all be in the same personal situation. Some will be handicapped or unable to cultivate the land to produce more than is available naturally. These will gain nothing (and probably lose much) by renouncing their rights and consenting to others'

12. Presumably there might be at least some produce from people who do labour anyway, either because of a benevolent community spirit, undaunted by lack of reciprocity, or because they simply enjoy the work. Gibbard's story assumes, reasonably, that such factors will have negligible effect.

appropriation. So they will not consent, other than to some form of agreement allowing the able-bodied to own things subject to taxation for the benefit of the handicapped. But Nozick can live with such welfarist consequences because they are arrived at voluntarily in a hypothetical story in which all respect the rights of others. (The situation is less hypothetical - closer to actuality - than a state of nature where everyone is both respectful of rights and able-bodied.)

The second important feature of the proposed agreement situation is that it assumes that all parties "find themselves in a state of nature at the same time", when "in fact people live through different, though overlapping, periods of time". If people have hard libertarian rights, agreements made before they were born, or reached adulthood, cannot bind them. Such agreements, to which these later generations were not party, cannot justify coercing them not to use what they have a right to use - natural materials, whether in a natural state or transformed by manufacture. New adults will have enormous bargaining power relative to those keeping to the pre-existing agreements. Each adult will know that any agreement she makes will be vulnerable in this way and that future new adults will have as much claim as she does to any goods she produces. Thus there will be little incentive to produce naturally scarce goods (such as cleared land) or to agree to exclusive private property. So hard libertarians will be very unlikely to form exclusive property rights. Therefore, a libertarian who wants there to be such rights had better be of the Lockean sort. The state of nature from which the minimal state is to develop must be Lockean in this sense.

The task now required of Nozick is to explain Lockean acquisition in a way that is recognisably libertarian (or at least consistent with libertarianism) to the extent that it would satisfy an awkward John Wayne-type that the libertarian flame is not kept alive by hard libertarianism. Say Wayne, as

an uncompromising hard libertarianism, is deeply offended by the thought of being deprived of any natural rights without his consent, and that he is much more worried by this than by any deprivation of private property; he is inclined to think that he is the true libertarian - he respects all natural rights and rejects the dilution involved in any Lockean account. In the context of a theory of negative natural rights John Wayne's hard libertarianism has the most plausible prima facie claim to be the "true faith", the pure libertarian form, any deviation from which must be explained and justified by a self respecting libertarian.

Given these problems, we might have expected Nozick to spend some time formulating a principle of acquisition consistent with the libertarian background. Instead he says "we shall not formulate here the complicated truth about this topic". So Nozick does not formulate a principle of acquisition, but he does discuss Locke's theory of acquisition (he says so as to "introduce an additional bit of complexity into the structure of the entitlement theory"). (ASU, pp174-182) At least he discusses two of the main features of Locke's account: the view that a person's "mixing his labour" with an unowned object grounds rightful appropriation, and the view that such appropriation should be subject to the proviso that "enough and as good be left to others".

Locke's labour mixing view is importantly relevant in two ways. Firstly, it offers an explanation of why appropriation should give exclusive rights over an object; one already has exclusive ownership rights over one's own labour, when this becomes inextricably mixed with some object, the object comes to contain what one already has exclusive property rights over. Secondly, the rights a person has over his property might be thought, through being mixed with labour, to partake of the strength of the rights he has over his own labour - this might

be why property rights can be as strong as the rights a person has over his own body. (Wolff, p102)

However, Nozick rejects Locke's labour mixing view as too mysterious and question begging. For example, how does one decide the boundaries of what labour is mixed with? "If a private astronaut clears a place on Mars, has he mixed his labor with (so that he comes to own) the whole planet, the whole uninhabited universe, or just a particular plot?" (ASU, p174) And, why does mixing ones labour with something result in ownership? If the idea is that one owns ones labour and so a previously unowned object becomes my property through being permeated with what I already own, why should this process not cause me to lose, rather than gain something? "If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?" (ASU, p175) If the idea is that expending labour upon a thing increases its value and that achieving such improvement of unowned objects confers a right to own them, then why should this right not extend only to the added value produced by the labour, rather than to the whole object? (ibid.)

. It is unclear just how fair Nozick is to Locke's views here.¹³ But it is clear that he cannot just take over Locke's position in its entirety. Locke's own account of private property is too heavily tainted with his theological outlook, a particular viewpoint with strongly anti-libertarian

13. For example, Locke emphasised the reducing effect that the cultivation of (adding of value to) land has on the pressure on other resources. And he claimed that the original value of land is trivial compared to that of cultivated land. But it is unclear how these considerations can justify exclusive individual property rights - even to land. (Wolff, pp104-5)

particular viewpoint with strongly anti-libertarian implications which Nozick could not accept even if he were a theist. One of Locke's theologically based views is that "mankind is to be preserved as much as possible". Another is that the world is initially owned in common by humankind. If it is also true, as Locke believes, that consumption is illegitimate without individual ownership, and that consumption is necessary for self preservation, then it must be true that some appropriation of private property is justified or in accordance with God's will. Locke simply has to expand on the justification of appropriation of items from the common stock; explain its scope and limits, and give its earthly rationale. (e.g. Wolff, pp104-5)

But if mankind is to be preserved as much as possible, then Locke's view that the poor have a positive right to charity is justified. Locke argues in the First Treatise that those with a surplus have a duty to help the needy. This is inconsistent with Nozick's libertarianism.¹⁴ Furthermore, the notion that the world is originally or naturally owned in common is not one that Nozick can accept, because he rejects

14. Nozick rejects the secular version of the preservation thesis used by Ayn Rand to ground a libertarianism similar to his own. Rand argues from the view that "man has the right to life" to the existence of property rights, via the premise that men need physical things to survive. He rejects this move on the grounds that to posit a positive right to the physical necessities of life is to subscribe to welfarism, not libertarianism: "a right to life is not a right to whatever one needs to live; other people may have rights over those things ... At most, a right to life would be a right to have or strive for whatever one needs to live, provided that having it does not violate anyone else's rights." He also says the following about the priority of property rights: "Since special considerations (such as the Lockean proviso) may enter with regard to material property, one first needs a theory of property rights before one can apply any supposed right to life (as amended above). Therefore the right to life cannot provide the foundation for a theory of property rights." (ASU, p179n)

the notion of one "big common pot of holdings" requiring just distribution. The question for him has to be what entitles individuals to take exclusive ownership of what was not owned by anyone. (Wolff, p106)

Nozick is aware of this problem and, after briefly considering the effects of appropriating a grain of sand from Coney Island, he concludes that "the crucial point is whether appropriation of an unowned object worsens the situation of others." Others no longer have the right to use that grain of sand and must respect the new property rights over it, but this does not "worsen their situation", so it does not matter. (ASU, p175)

Locke's proviso on justice in acquisition - "that there be enough and as good left in common for others" - is to prevent the situation of others from being worsened. Nozick distinguishes two relevant senses of worsened situation: someone may lose the opportunity to improve his situation by appropriating, or he may no longer be able to use freely (without appropriation) what he could before. This distinction supports one between different strengths of the requirement that people not be made worse off by an appropriation. A "stringent" version excludes both senses, and a "weak" version excludes only the second. (p176)¹⁵

15. He makes this distinction primarily to rebut an argument, which says that since the proviso can no longer hold, it can never have held. If Z is the first person for whom there is not enough and as good left to appropriate, then Y, the last person to appropriate, left Z without his previous liberty to act on an object. Therefore Y's appropriation is ruled out by the proviso. But then X, the previous appropriator, left Y in a worse position by ending permissible appropriation. X's appropriation also was impermissible. The weak version of the proviso is supposed to prevent this effect from "zipping back" to A, the first appropriator, by allowing appropriation which leaves enough and as good left to use, even if not to appropriate. (ASU, p176) As Wolff points out, this is

Nozick believes that whatever else it contains, a theory of justice in acquisition will include the weaker Lockean proviso. This will not include worsening due to limited appropriation opportunities (as in the stringent version), or such situations as worsening the position of a seller by appropriating materials to set up in competition with him. And he adds the important consideration that an appropriation which otherwise would have violated the proviso of the principle of justice in acquisition is allowable if the appropriator compensates others, so that their position is not worsened. (p178) The weak Lockean proviso is open to two different interpretations, depending on whether the intention is to justify private property in general, or in a particular appropriation. Clearly particular appropriations could violate the proviso, even if the generality of acquisition does not. (Wolff, p112) Nozick intends the 'macro' interpretation, apart from in cases where someone appropriates all of something necessary for life. (ASU, p179) Moreover, he describes the proviso as casting a "historical shadow" over the principle of transfer - transfers otherwise valid because voluntary might add up to a monopoly over some necessary resource and so violate the proviso. This qualifies the voluntarism that otherwise exhausts the principle of transfer. Nozick believes that left to itself, voluntary capitalism would be unlikely to reach this situation. (ASU, pp171-8)

This leaves the question of whether any right to property can arise in the face of the proviso; are people made unacceptably worse off by the appropriation of others? Nozick mentions the "various familiar social considerations favoring

15(cont.) implausible - for example, because there is not now plenty of land around for people to use. The part of Nozick's account which in fact resists the "zipping back" argument is his view that the system of private property has general advantages which compensate for reducing opportunities to use previously unowned things. (Wolff, p109) We examine this view shortly.

private property", such as increased social product, efficiency and experimentation which could "enter a Lockean theory to support the claim that appropriation of private property satisfies the intent behind the "enough and as good left over" proviso, not as a utilitarian justification of property". It is important to be clear that these considerations are aimed at satisfying the proviso and not at justifying private property on the grounds of general social utility. For example, in an otherwise highly effective critique of the entitlement theory, Cheyney Ryan misinterprets Nozick as being willing to trade the loss of liberty implied by private property for the social benefits it brings. (Ryan, 1982, p359) End state considerations would be inconsistent with the libertarian background, so the social good is not the end which justifies property as a means, rather there is a trade off at the level of the individual, where the proviso operates: the existence of private property deprives me of certain rights to appropriate and use many important resources, but the general social goods fostered by private property benefit me so that the weaker proviso is satisfied - there is enough and as good around for me to use.

Unfortunately, this line is obscured by the difficulty "in fixing the appropriate base line for comparison. Lockean appropriation makes people no worse off than they would be how?" He adds that "this question of fixing the baseline needs more detailed investigation than we are able to give it here". (ASU, p177) It has been argued that the "baseline problem" in itself prevents the proviso from being a plausible, sufficient condition of legitimate appropriation. The argument is that Nozick is not careful enough about what counts as worsening another's situation; he assumes that the decisive comparison is with a situation with no appropriation, but other comparisons seem equally relevant and important, for example one with a world of socialist common ownership. (Wolff, pp113-114)

Why should the comparison be with a situation of no property? This situation is of fundamental importance to the justification of property, given the libertarian moral background. The libertarian posits certain natural rights. The issue, then, is whether private property can be justified given these rights, one of which is the right to use natural resources. So the proviso baseline must be in relation to a situation of non-appropriation, not different possible ownership arrangements, or a situation of joint ownership - even of the means of production. This is not arbitrary, given the libertarian background (although that background itself may turn out to be arbitrary).

Nozick admits that there is a problem with baselines for comparison. But it is not a devastating theoretical point to say that Nozick assumes the baseline will be relative to actual conditions without appropriation. The real problem here is in telling how well off people are in such situations. Nozick ducks this question, and looks for partners in crime, pointing out that it is not only champions of private property who are faced with the problem of accounting for the legitimate origination of property rights. How, for example, does the believer in collective property explain the origin of the property rights of a particular collective? (ASU, p178)

So Nozick's principle of acquisition rests on the proviso. But does he do enough to convince John Wayne that the initial state of nature should be Lockean in terms of property acquisition? Clearly not because he avoids the problem of telling how well off people are without appropriation. Without a clear, plausible way of doing this, the proviso cannot be applied and, given the libertarian background, we have no visible grounds for thinking that anybody is entitled to exclusive private property. Presumably hard libertarianism allows for enough individual consumption of natural products to sustain life. And certainly, the proviso

can be triggered negatively - we can assume that people in a property-less situation are better off than those who live under conditions of property but are at the mercy of someone with exclusive ownership of the water supply. But beyond the level of basic necessities of physical existence it looks very difficult to give a non question begging judgement as to how well off people are without private property. (Compare debates about absolute and relative poverty.)

"Being well off" might be given a clear sense by defining it in terms of number of personal possessions - if you own a given number of specified items, then you are "well off". But this obviously will not do - it makes it true by definition that those in the propertied situation are better off than those in the non propertied situation. Defining it in terms of a certain level of general material prosperity, including all the familiar social considerations, would have the same consequence. True, we have accepted Gibbard's point that without exclusive property rights people generally will be reduced to living off what is naturally available. So in this sense they are worse off than those to whom widespread property rights have brought a higher level of material prosperity. But now we need to know the relative value of that greater prosperity and of the natural rights curtailed by the exclusive property required for it. How can we decide this, other than by legislation? (It is obvious in which direction "we" are going to legislate; this is the thought which Nozick trades upon: of course "we" are better off with private property.) But the point of making rights natural is to make them prior to (or above) legislation generated by the operation of institutions or conventions.

Apparently, we are supposed to tell hard libertarian John Wayne that we are justified in depriving people like him of certain of his rights because of the compensatory material benefits of private ownership. But what if he and his friends

can survive without private property and do not care about increasing their material prosperity as much as they value preserving all of their natural rights? There seems no non question begging way of deciding whether widespread appropriation worsens the situation of people relative to how they would be in a non ownership situation. It depends on what is important to them in that situation - in particular it depends on whether they are hard libertarians.

4:2 Rectification

We turn now to the third principle of Nozick's entitlement theory. Not all actual holdings are just. Some might have been obtained by illegitimate transfers from a previous just holding; others have certainly been transferred from an unjust distribution. People obtaining resources in these ways are not entitled to them. Others do not end up with what they are entitled to. This is the rationale behind the principle of rectification. (ASU, p152) Nozick says that ideally, historical information should yield at least two descriptions: one, based on previous situations, the injustices committed in them and the actual events following from these to the present day, gives an account of actual holdings; there should also be at least one account of how things would have turned out if the injustices had not taken place. If the description of actual holdings does not match one of the just descriptions, then the situation must be rectified. (ASU, pp152-3)

There are two fairly obvious fundamental problems with this. Firstly, we have seen that Nozick fails to give an adequate libertarian account of original acquisition, and without this it is impossible to give any description of a just history of entitlements. Without an account of original acquisition we cannot even begin to build an ideal model of a just progression of acquisition and transfer. We might try to

imagine a society of hard libertarians all agreeing to an arrangement whereby they each acquire property rights and relinquish other rights, and then further imagine 1) successive generations go along with this, and 2) the original generation had reason to believe their offspring would all go along with the arrangement. But even if we could do this and take it to be the ideal model for comparison, Nozick rules it out as such by going for an account of acquisition centred on the Lockean proviso. He seems to do this precisely because he wants there to be exclusive property rights which are not contingent on voluntary agreements. We have seen that his sketched Lockean account is unconvincing because it is not obviously more in keeping with the libertarian background than is hard libertarianism, and because it requires an impossible judgment about the legitimacy of the trade off, between the rights held without private property, and the benefits of life in a world full of private property.

The next problem is that even without such a description we know enough actual history to doubt the entitlement justice of most if not all current holdings. This is simply on the basis of violations of the principle of justice in transfer. But without a model description of justice we cannot tell what it would take to rectify the situation. For example, the English land enclosures involved the forced transfer of land previously held in common (or at least of land which people had a common right to use) into the exclusive ownership of individuals. (Ryan, 1982, p337) More particularly pertinent to Nozick are the innumerable examples, showing that the transference of holdings from Native Americans to European settlers of America, and their descendants, were not in the accordance with the principles of libertarian John Wayne types. "The records of the American past re-echo with denunciation of the fiendishness of the savages, just as Negroes were accused of insatiable lust, bloodlust and criminal propensities of all kinds; but the Christians themselves raped, scalped, looted,

murdered, burned and tortured, the very deeds by which they justified their contempt and loathing for the Indian." (Brogan, 1985, p62) Many American contemporaries of the Union General Phil Sheridan were appalled by his remark that "the only good Indians I ever saw were dead", but it also struck a deep, widespread and traditional chord. The historian Hugh Brogan discusses possible causes for the massive historical injustice perpetrated on the "Red Man". One line of thought, which focusses on mutually incomprehensible attitudes to property is especially relevant:

"White contempt for the red man now seems so absurd as to be almost incredible. We can see that over a period of millennia the Indians, making use of very limited resources, had in every part of the Americas evolved ways of life that were almost perfectly adjusted to the environment, and in many cases held out high hopes of future evolution. More, we can see that in some respects - and those which were most universally to be found among the tribes - Indian culture too was superior to the European. Thus the idea of cooperation was central to Indian life, as competition is to ours. The Indians were highly individualistic, and vied with each other in the performance of brave deeds. ... But their essential social belief was one of property-as-use. The Indians shared what they had, especially food; it was noted that while there was any to share, all shared it; when there was none, all starved. Most of all, they shared the land. ... The Indians could no more understand the Europeans' conception of perpetual personal title than they could understand his conception of none. Nor could he understand the accumulating itch. Why did the People Greedily Grasping for Land want more acres than they need to grow food on? Why did they build houses that would outlast their occupants? Why were Indians called thieves for helping themselves to what they needed, as they always had? Above all, why, even when they had acquired it honestly, did the white man insist that land he had bought

became his exclusively, and for all time? How could he make such a claim? It was ridiculous. 'Sell a country!' exclaimed Tecumseh. 'Why not sell the air, the clouds, and the great sea? Did not the Great Spirit make them all for the use of his children?'" (Brogan, pp65-66)

It is not necessary to romanticise the environmentalism and communism of the Indians, or to force an analogy between their "property-as-use" and possible "voluntary" agreements about consumption of resources reached by hard libertarians in a state of nature, in order to see that they had "holdings" which were not recognised by many of the newcomers, and were not relinquished voluntarily into the new system of exclusive property rights. If the Indian "common holdings" were just, then their non voluntary transfer was enough to render subsequent holdings illegitimate. If the common holdings were not just, then the subsequent holdings (of that land and its produce) were illegitimate, however they were transferred (unless they were transferred in accordance with a principle of rectification - which there is no reason to believe). Either way, without some reliable method of telling how holdings would have been distributed had the unjust enclosures, or the previously unjust situation not occurred, then we cannot tell how to rectify the subsequent injustices. There are many historical examples of transfers which illustrate this problem; another one is the slave trade.

An even more fundamental general drawback is that the very ideal nature of Nozick's approach to the problem undermines it. The injustices are built into the fabric of actual history: certainly many people and possibly whole societies would not exist at all if certain injustices had not occurred - these then will not figure in the model description of ideal transfers. How then can rectification take place without committing injustices against them? On the one hand rectifying natural rights violations cannot be subject to a

statute of limitations, such as would justify a political programme, taking current holdings as given, under the slogan of "libertarianism starts tomorrow". (Wolff, pp115-6) So some principle of rectification, reflecting the importance of all natural rights violations, is necessary. On the other hand, many people whose existence and/or way of life is contingent upon past injustice will not be mentioned in descriptions of an ideal history of transfers. The point of rectification is to "make things better" in the sense of bringing actual states of affairs closer to the ideal represented by a description of how things would have turned out if no injustice had occurred. Therefore possibly the ways of life, but certainly the livelihoods, of those not mentioned in the ideal description are threatened by the rectification. This does not violate their rights, since their holdings (and possibly their existence) are tainted by past injustice. These people (or at least their ways of life) have the status of unfortunate historical errors whose dispensability is an unintended consequence of trying to compensate for the fact that actual history is not of people mostly respectful of rights in a Lockean state of nature. Does this not suggest moral horror sufficiently catastrophic to justify the suspension of libertarianism? If it does, then we know enough history to doubt the coherence of a libertarian programme of rectification.

Now we can see just how little comfort for contemporary capitalism there is in Nozick's entitlement theory, despite his attempt to give a theoretical defence of the classical night watchman state. True, according to his theory all state welfare payments and provisions are illegitimate under conditions approaching the ideal. But, as he admits, in the actual case, "these issues are very complex and are best left to a full treatment of the principle of rectification. In the absence of such a treatment applied to a particular society one cannot use the analysis and theory presented here to condemn

any particular scheme of welfare payments, unless it is clear that no considerations of rectification of injustice could apply to justify it. Although to introduce socialism as the punishment of our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them." (ASU, p231)

Even here Nozick clouds the issue with laissez faire rhetoric. Presumably, by "socialism" he means something like "Stalinist tyranny", otherwise just how great would the past sins have to be, from the point of view of libertarianism, to merit socialism as a punishment - worse than say the slave trade and the destruction of all the native civilisations of North America? It is important to be clear what is the fundamental issue. For example, Norman Barry claims that identifying the victims of past injustice is a "major difficulty" for the principle of rectification. If one restricts the scope to those who can show a link to named victims of injustice, rectification would be limited to a small number of relatively recent injustices. (Barry, 1986, p155) Barry then points out that whether or not to compensate social or ethnic groups, such as Blacks and Indians, is a political issue in the U.S.A. (Barry, p156; also Lyons, 1982, passim.) This, he argues, is contrary to Nozick's individualism because it treats "fictitious entities" as bearers of rights and duties. Moreover, it would involve unjust punishment of individuals innocent of the wrongs in question.

"Yet paradoxically, Nozick virtually concedes this case [for compensation]." (Barry, p156): "... lacking much historical information, and assuming (1) that victims of injustice generally do worse off than they otherwise would and (2) that those from the least well-off group in the society have the highest probabilities of being the (descendants of) victims of the most serious injustice who are owed compensation by those who benefited from the injustices ... then a rough

rule of thumb for rectifying injustices might seem to be the following: organise society so as to maximise the position of whatever group ends up least well off in society." (ASU, p231)

Barry is right that social and ethnic categories, such as "the poor", Blacks and Indians cannot bear rights consistently with libertarian individualism, and that Nozick seems to forget that he is an individualist when he suggests his "rough rule of thumb". But in addition to this it illustrates another mistake, also made here by Barry. The principle of rectification is supposed to be part of the entitlement theory of justice in holdings; the primary focus must be the status of property - whether it is in rightful hands - not the compensation of victims or their descendants. Property injustice, such as wrongful transfer and acquisition, is one category of rights violation; wrongful punishment is another. Rectifying, from bad to good histories of property, is about restoring the just status of property, not the absurd punishment of one set of people, say modern whites, and the compensation of another set, say modern Blacks, because the whites' ancestors enslaved the Blacks' ancestors. The problem is that on the one hand the entitlement theory implies that the historical facts, of slavery, genocide, imperialism and so on, are enough to negate the justice of present exclusive property rights; on the other hand, it fails to provide a blueprint for saving the situation. Perhaps current holdings are so arbitrary from the point of view of proper entitlement that we might as well borrow Warhol's famous media prophecy and turn it into a principle of economic justice: "everyone ought to be super-rich for a day". If there was a perfect version of history with which to guide rectification, the resulting dismantlement and reconfiguration of civilisation would be for the sake of restoring a "natural order" of property transaction, not for the purpose of punishment or compensation of living individuals. That the resulting dislocation would seem like a dreadful punishment (and unjust compensation?) to a

great many of those individuals is partly why it would mean catastrophic moral horror.

Moreover, notice how easy it is to speak of "natural order" and "blueprint" when referring to the history of ideal transfers, despite Nozick's denunciation of "patterns". He would reply that there is an indefinite number of possible just histories of libertarian entitlements; given some set of initial conditions, constituted by legitimate original acquisition, then there are any number of ways things could go consistently with libertarian entitlement theory. Thus the principle of rectification does not presuppose one "natural order" or blueprint to which history should conform. But this would be to admit that even without all of the problems we have seen, libertarian entitlement theory alone could never be an adequate theory with which to order the affairs of political economy. Appeal to other considerations would have to be made in order to decide which of the possible natural histories to steer towards.

Chapter Five: The Foundations Of Nozick's Libertarianism

5:1 Dignity and Self Shaping

We have seen grave problems with the application of the libertarian background, we turn now to Nozick's reasons for accepting the background itself. Locke explained the foundation of his account of natural rights: a proper understanding of the bible shows that human beings have the rights he describes. (Wolff, 1991, p27) We have seen that Nozick makes use of some important Lockean ideas - the state of nature, the proviso on acquisition, the formal notion of liberty - but he would not want to make biblical authority the foundation of his views. Furthermore, Locke's interpretation of divine intention is that humankind is to be "preserved as much as possible", and he derives his natural rights from this. This interpretation would not support Nozick's rights as negative and as side constraints, for if general preservation is the aim, then this presumably will generate positive rights (of survival) and the anti-side constraint injunction to maximise the good (of preservation). (Wolff, ibid)

Nozick in fact makes very little progress in the difficult task of clarifying the foundations of his concept of rights in Anarchy, State and Utopia. He admits that this is a shortcoming: "The completely accurate statement of the moral background, including the precise statement of the moral theory and its underlying basis, would require a full-scale presentation and is a task for another time. (A lifetime?) That task is so crucial, the gap left without its accomplishment so yawning, that it is only a minor comfort to note that we here are following the respectable tradition of Locke, who does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his Second Treatise." (ASU, p9)

This is misleading and unfair to Locke. The 'respectability' of the Lockean tradition on natural rights, insofar as this latter is Lockean, might well be the result of its theological foundation, and its sanctioning intuitively attractive judgments on positive rights and on maximising preservation. Nozick's view of the unsatisfactory nature of Locke's foundations presumably reflects his view that they are not respectable. But Locke does give an explanation (although not one convincing to Nozick, or to many modern philosophers). Whereas Nozick hardly does at all. And it is Nozick's rights as absolute side constraints which are particularly startling and in need of explanation. It is with respect to the issue of making counter-intuitive claims about rights in the absence of a clear and precise moral foundation, that Nozick most departs from the respectable tradition of Locke. In this chapter I examine the few fragments Nozick offers.

Nozick points to the Kantian themes of treating people as ends in themselves, rather than means; as autonomous beings, rather than things or tools. He picks on Kant's second formulation of the Categorical Imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end." (Kant, 1948, p96) Nozick's view has affinities with this. He asks why it is inappropriate to treat people as means or tools; what characteristic grounds their being ends in themselves. This characteristic is supposed to be important in explaining why it is that individuals have such strong rights to non-interference. (ASU, pp31-33) 16

16. For more evidence of Nozick's cavalier treatment of Locke, see Darwall's account of Locke's later, revised and almost Kantian, view of moral obligation as internal to the rationality of autonomous moral subjects. (Darwall, 1990, pp143-45)

Many philosophers have concentrated on rationality, free will and moral agency to explain the mistake of treating people as means. Nozick argues that none of these is sufficient to show that possessing it justifies such special treatment. For example, possessing free will does not in itself imply that a being should be allowed to act freely. (ASU, pp48-9) Instead he argues that most important is "the ability to regulate and guide its life in accordance with some overall conception it chooses to accept." (ASU, p49) The combination of this ability with the traits of rationality, free will and moral agency produces "something whose significance is clear; a being able to formulate long term plans for life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others, and so on." (ibid)

We might ask why the possession of this "self shaping" feature is sufficient to show that it is wrong to treat any being with it as a means. Nozick suggests it is "connected with that elusive and difficult notion: the meaning of life". (ASU, p50) So his argument seems to be: a meaningful life should be treated as an end in itself, rather than as a means to some other end; a self shaping life is a meaningful life; therefore, any being capable of living a self shaping life should be treated as an end in itself. But this argument just begs the important questions. Firstly, Nozick does not say why we should treat any being capable of a meaningful life as an end in itself. Secondly, he does not explain the connection between having this capacity to live a meaningful life and the possession of his full blown libertarian rights. He does not say, for example, whether possessing such rights is a necessary condition of living a self shaping life, or whether possessing them simply gives the best chance to shape one'

life. He says "I hope to grapple with these and related issues on another occasion". (ASU, pp50-1)

Perhaps it is not so surprising that Nozick does not spell out why meaningful lives should be treated as ends in themselves. It might be thought that if possessing freewill does not imply a right to act freely, then neither does the capacity for a meaningful life imply a right to exercise that capacity. Presumably, allowing people to shape their own lives just is to treat them as ends in themselves. But why should they be allowed to do so just because they can? Nozick seems to be assuming, not unreasonably, that if anything is an end in itself then it is a being capable of determining for itself its own ends - a being capable of determining the shape of its own ends life. Hence the reference to Kant. However, this still leaves the question of why anything should be treated as an end in itself in the strict sense of it never being allowable to treat it as a means to some other end.

This returns us to the question of why the capacity for self shaping meaningfulness requires possession of rights understood as overriding negative side constraints or personalised total trumps. We shall see now that although a strong case can be made for the possession of (at least some) personalised negative rights as a necessary condition for a self shaping meaningful life, it is implausible to take such rights, considered as total trumps, to be either necessary or sufficient. If J's right to X is a personalised constraint, then it is not to be violated so as to minimise overall violation of rights to X (or of any other right). One would have thought that Nozick should be guided always by calculations of the minimum probable number of rights violations; i.e. he should be concerned to maximise the total amount of self shaping. Any consequentialist concerned to maximise what she takes to be the good must, it is often assumed, place no restriction on her calculations to that end. So Nozick seems to rely on the mere

conceivability of rights as personalised constraints, when the most consistent position for him appears to be some kind of consequentialist "utilitarianism of rights".

To show how Nozick might resist this line of thought I will adapt an argument developed by Philip Pettit to show that a consequentialist can recognise rights. The conclusion we are watching for is that someone concerned with Nozick-style self shaping meaningfulness must go for rights as personalised constraints. It is not necessary to give all the details of Pettit's argument; a condensed relevant version goes as follows. Assume that C is a benefit secured for individuals by their possession of rights as restrictions on consequentialist calculations, and that it is undermined when the rights bearers either know an empowered consequentialist is calculating over the benefits, or they do not know she is not so calculating. The situation is like that of children who enjoy the benefit of emotional security only if they know their parents will recognise some of their claims without calculating the general consequences. Thus an important task is to identify some such benefit C. (Pettit, 1988, pp51-2)

Pettit claims "dignity" fits the bill. This is because dignity presupposes "dominion" (some degree of individual sovereignty) which has three necessary conditions: freedom from interference in certain areas and circumstances of choice; these "must be publicly salient, so that your freedom from interference is not at the mercy of another's definitional sophistry. If circumstances are required to be normal, for example, it must be clear what counts as normal and what not"; finally, you must have a reliable basis - for example, legal - for believing this area is secure from interference. (Pettit, p52)

Presumably, these (or something like them) are also necessary conditions of a meaningful self shaping life as

Nozick understands this in Anarchy, State and Utopia: a meaningful life must at least be a dignified life. Pettit argues that a non restrictive consequentialist will be unable to secure the dominion, and therefore the dignity, of those she deals with. The overall good is always on her mind, they know this and so also that she will interfere whenever she thinks this is best overall. Even if she is benevolent and wise, they will recognise their status as mere pawns in her benevolent schemes. (Compare the child who knows her parents are unrestricted consequentialists in their dealings with her; she will not feel loved for herself, rather at best she will feel at the mercy of worthy do-gooders.) (Pettit, p53)

Pettit's argument, for a protected sphere of rights within a consequentialist framework, is not based on contingent difficulties with consequentialism per se, such as the calculative fallibility of moral agents. (Pettit, p42) It is based on a concern for human dignity, which it shows can be guaranteed by the consequentialist only if she publicly commits herself to a rights based calculative restriction. Thus dignity requires that the rights are privileged - they must be known to trump at least some wider considerations. It is easy to see that dignity also requires that rights be personalised constraints, i.e. not such that some may be violated when occasion demands in order to minimise overall violations. If dignity is undermined by an awareness that ones choices might be interfered with on grounds of overall consequences, then it will be undermined also by an awareness that considerations of minimising overall rights violations will be taken to justify such interference. Thus dignity requires rights as personalised side constraints.

There is then material to fill some of the gap between Nozick's notion of the meaningful life and his conception of rights. But since the argument is available to (indeed designed for) the consequentialist, who might also be concerned

to maximise certain other goods, it does not show that the desired rights as personalised constraints must also be Nozick's desired rights as total trumps. That A's right to X is not subject to the overall goal of reducing violations of people's right to X in itself implies nothing about the status of such rights in relation to other considerations. (Pettit, 1987, p9) Nozick distinguishes his side constraint view from an alternative called "a goal directed view with constraints added: among those acts available to you that don't violate constraints C, act so as to maximise goal G. Here the rights of others would constrain your goal directed behaviour." (ASU, p29) The argument from dignity does not preclude a "goal directed view with constraints added".

Thus the argument that individual dignity requires a sphere of personalised rights, shows that this sphere will have some, perhaps the greatest, weight in considerations of political morality, and that the extent of its importance - when and by what it will be overridden - be publicly known; it does not show that the sphere covers the whole landscape. The extent of the sphere will depend firstly upon what sort of choices should be left to the individual in order to preserve dignity and secondly upon the relative importance of individual dignity and other goods. In Nozick's terms, there remain open questions as to how much self shaping is required for a meaningful life, and as to the relative value of a meaningful life in this sense of a self shaping life.

It is important not to be misled by terminology here. We have said that a meaningful life, in Nozick's sense, must contain dignity. But it is not clear that human dignity as such requires only "self shaping" in the sense of freedom from interference. For example, it is not obviously false that such "dignity in self shaping" only becomes possible above a certain level of material prosperity, at least relative to others in the same society. The proletarian wage slave living

in squalid urban poverty at the mercy of the factory owner might not, on Nozick's account be suffering any rights violation, but neither might he have much dignity. Thus a concern for dignity can motivate reducing the sphere of rights to non interference from the absolute maximum favoured by Nozick so as to accommodate, through taxation say, positive rights to poverty relief. This is enough to make us doubt both the necessity and the sufficiency of Nozick's total trumps conception of rights to his notion of a meaningful life.

The Nozick of Anarchy, State and Utopia would reply that this is to fall prey to a maximising end state mentality: "distribute resources so as to maximise the number of fulfilling (meaningful/dignified) lives". But his alternative itself might be thought of as a kind of maximising view: minimise the amount of interference with any given life so as to maximise the amount of self shaping meaningfulness exhibited by that individual life. If we are not to conceive of self shaping meaningfulness as an infinitely weighted good to be maximised at all costs, albeit within someone's life rather than as an overall social goal, then presumably we must think of it as an extremely precious but infinitely fragile commodity, instantly destroyed by the slightest hint of interference. It is hard to see how else self shaping meaningfulness could entail the absolutely privileged status of the negative rights Nozick defends.

Neither conceptions are very plausible. Few will agree that maximising this feature within any given individual outweighs all other considerations, including that of redistributing resources to allow others a minimally dignified existence. Instead most will take it as justifying some constraint upon the amount of interference an individual should be subject to for the sake of others. Probably even fewer will see self shaping meaningfulness as something which disappears the moment any interference begins; any more than

will see visions of forced labour at the slightest mention of taxation. Interference is a matter of degree and relatively less interference seems consistent with relatively more autonomy; "... there is a big difference between suddenly expropriating half of someone's savings and attaching monetary conditions in advance to activities, expenditures, and earnings - the usual form of taxation. The latter is a much less brutal assault upon the person. Whether this kind of limitation of individual liberty should be permitted to acquire resources for the promotion of desirable ends, is a function of the gravity of the violation and the desirability of the ends." (Nagel, 1982, p199)

So the absolutely privileged status of Nozick's rights, their complete domination of the landscape of political morality, has not been demonstrated as required by any such notion as that of a meaningful, self shaping, dignified life as an end in itself. Neither is it required by the bare notion of a natural right; natural positive rights are not obviously incoherent.

The only way to fill the gap, between dignity as an autonomous self shaper and possessing rights as absolutely privileged side constraints, seems to be simply to define proper dignity as a fully realised self shaper to be what essentially requires such rights; a true person is subject to no principle of political morality other than the respecting of rights of others. Libertarian John Wayne would not be contradicting himself by doing this, although he would be legislating himself into an uncompromising minority. We shall return to this legislative definition in the next chapter.

5:2 The Separateness of Persons

A closely related but distinguishable theme in Nozick's discussion of the moral foundations of Anarchy, State and Utopia, is that of the "separateness of persons". This is not entirely distinct from that of people as Kantian ends in themselves (qua capable of self shaping meaningful lives); people must be separate to constitute different, distinct, ends in themselves, and they have to be separate ends in themselves for the fact of their separateness to have much moral significance.¹⁷ But the separateness of individuals - each having his own life to live - is important for Nozick, even though it is the self-shaping function which ultimately grounds the possibility of a meaningful life and makes the individual an end in itself. We are separate; I am separate from you, so what is good for me may not be good for you and vice versa.

Perhaps more importantly, there is no "overall social good" made by adding together a number of individual goods, which then can outweigh the value of our lives considered separately. It seems that the sort of value we have as separate individuals is not the sort that can be combined together to form something that would ground an end state type moral view. Presumably, as I am separate from you, so my

17. When Nozick comes to quarrel specifically with Rawls' Difference Principle, one of his arguments suggests that he takes the separateness of individuals and their being ends in themselves to be the same fact about them. His argument seems to be as follows. Rawls' principle forbids the well off from getting better off unless the position of the worse off would be improved also. This is to use the richer (or at least their talents and assets) as a resource or tool for the poorer, and so justifies the charge, which Rawls himself makes against utilitarianism, that he "does not take seriously the distinction between persons". (ASU, p228, pp122-3)

value is meant to be separate from your value in a way that precludes them being combined to form a greater value, which might be taken to constitute a distinct, greater, end in itself. If, say, happiness is the greatest good, so that what is of value about our distinct lives is the amount of happiness each contains, the door is open for views which treat total happiness, distributed across all individuals, as an end state to be maximised regardless of what this implies for the usage of particular individuals.

Sometimes, Nozick stresses this separateness: "The moral side constraints upon what we may do, I claim, reflect the fact of our separate existences. They reflect the fact that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall social good. There is no justified sacrificing of one of us for others. This root idea, namely that there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints, but also, I believe, leads to a libertarian side constraint that prohibits aggression against another." (p33; see also p32)

However, even if we reject the notion of a social good as some kind of distinct entity over and above individuals, we cannot infer "the fact that no moral balancing act can take place among us", straight from "the fact of our separate existences". Thomas Nagel has pointed out that to resist this inference "all one needs is the belief, shaped by most people, that it is better for each of ten people to receive benefit than for one person to receive it, worse for ten people to be harmed than for one person to be similarly harmed, better for one person to benefit greatly than for another to benefit slightly, and so forth. The fact that each person's life is the only one he has does not render us incapable of making these judgements, and if a choice among such alternatives does

not involve the violation of any rights or entitlements, but only the allocation of limited time or resources." (Nagel, p197)

Thus the distinctness of individuals does not imply Nozick's libertarian side constraint. Furthermore, it is hard to see how any amount of atomism in itself could imply his conception of individual rights; we would still need some explanation of why even utterly distinct individuals should be absolutely inviolable ends in themselves. It might be better then to interpret the separateness of people theme as stressing the fact that given that we do possess Nozick's libertarian rights, then we are separate individuals in a sense that makes appropriate his use of the metaphor of an individual's having (or perhaps better owning) a "moral space" with a boundary or border not to be crossed without compensation or permission. (see especially pp57-8, pp75-6, pp86-7) This hardly amounts to a demonstration of his theory of rights, but it is more acceptable than inferring it directly from a prior metaphysical atomism about human beings.

Unfortunately, as we have seen, Nozick's key attempts to introduce considerations of compensation (in his defence of the minimal state, and in the justification of the original acquisition of exclusive property) fail to convince. So, relying only on consent, Nozick's "separate individuals" will be eyeing each other warily, monitoring any likely cross border activity, "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." (R.P.Wolff, 1982, p87) Robert Wolff probably exaggerates the degree to which such individuals would be immobilized by their concern to respect each other's rights. Even hard libertarians presumably could come to at least some temporary ad hoc voluntary arrangements, allowing them to interact without too much moral trauma. Still, our response to

Nozick's talk of separate persons, each with their own life to live, whether it is interpreted as an argument from atomism to libertarianism or a reference to how people ought to think of each other, should be that it fails in itself to make his conception of rights convincing.

5:3 The Experience Machine

The themes of self-shaping and separateness come together in Nozick's case against what he calls "experiential ethics" as presented through his experience machine thought experiment. The experience machine is introduced in *Anarchy, State and Utopia* as a counterexample to utilitarianism, the chief theoretical opponent to the libertarian moral foundation. Actually it is the most notable of several counterexamples to experientialism; the others are to be found towards the end of his paper *On the Randian Argument*. (ORA, pp220-21) This use of the experience machine provides one of the more consistent themes through Nozick's works. (ASU, pp42-45; PE, pp594-5; EL, pp104-8) Experientialism says "the only facts relevant to moral assessments of actions are how these actions do, or are intended to, affect the experiences of various persons. The only morally relevant information (though other information may be relevant via being evidence for this kind) is that about the distribution of experiences in society. Theories will differ about which experiences they pick out, or about the criteria of optional distribution of experiences, but they will agree that all of the considerations have to do with such experiences and how they feel from the inside." (ORA, pp221-22)

Counterexamples to experiential ethics as such are impotent against non experiential consequentialism. Thus the experience machine has no effect on forms of utilitarianism which deal in preference satisfaction, welfare maximization and so on. (Singer, 1982, pp52-3) Only classical, or hedonistic,

utilitarianism is vulnerable. We shall see that the example does not refute experientialism at all; in fact not only does the experience machine fail to ground the libertarian side constraint, it sits badly with the surrounding arguments and positions within Anarchy, State and Utopia. The thought experiment begins like this:

"Suppose there were an experience machine that would give you any experience you desired. Superduper neuropsychologists could stimulate your brain so that you would think and feel you were writing a great novel, or making a friend, or reading an interesting book. All the time you would be floating in a tank, with electrodes attached to your brain. Should you plug into this machine for life, preprogramming your life's experiences?" (ASU, p42)

Nozick says that our answer is no, we should not plug permanently into such a machine. But it would be too quick to infer immediately that we do not believe experientialism. For example, a lifetime in the machine might be inconsistent with classical utilitarianism because of the consequences of permanently depriving everyone else of one's company and assistance. Certainly someone might know his permanent absence from the scene would have no adverse effects on the experience of others, and yet still not choose to maximise his own pleasure through a lifetime in the machine (he would not see this as his best possible life). But a utilitarian would probably view with indifference the possibility of someone whose presence or absence made no difference to general utility, and deny moral relevance to his actions. (This anticipates a point made by Peter Singer, to which we shall return shortly.) More helpful to Nozick is the thought that if everyone could choose to live permanently in the machine, programmed to give the illusion of pleasurable interactions, still they would refuse. (In The Examined Life version, he claims that we would not choose a permanent artificial

experience, even if we knew we would all share it.) And, as he says, this would be despite the fact that if all can plug in there would be no need to stay out to serve others, assuming that the machines are self maintaining.

But Nozick's main strategy is to identify the kind of goods which the experience machine prevents. It is important not to misinterpret this; a recent discussion by David Brink exemplifies a certain ambiguity at this point. Given the choice we would not decide to spend a lifetime in the experience machine. Brink notes that Nozick says this is partly because we each want to be a certain kind of person, and do certain things, rather than merely having experiences as if we were such people doing such things. (ASU, pp42-3; Brink, pp223-4, 1989) But Brink immediately draws this somewhat misleading conclusion: "This ... shows that a valuable life involves certain character traits, the exercise of certain capacities, having certain relations with others and to the world and, hence, that value cannot consist in psychological states alone. And this shows that hedonism must be false." (Brink, *ibid.*) Brink neglects to mention what Nozick goes on to say:

"We learn that something matters to us in addition to experience by imagining an experience machine and then realising that we would not use it. We can continue to imagine a sequence of machines each designed to fill lacks suggested for the earlier machines. For example, since the experience machine doesn't meet our desire to be a certain way, imagine a transformation machine which transforms us into whatever sort of person we'd like to be (compatible with our staying us). Surely one would not use the transformation machine to become as one would wish and thereupon plug into the experience machine! So something matters in addition to one's experiences and what one is like. Nor is the reason merely that one's experiences are unconnected with what one is like.

For the experience machine might be limited to provide only experiences possible to the sort of person plugged in. Is it that we want to make a difference in the world? Consider then the result machine, which produces in the world any result you would produce and injects your vector input into any joint activity. We shall not pursue here the fascinating details of these or other machines. What is most disturbing about them is their living our lives for us. Is it misguided to search for particular additional functions beyond the competence of machines to do for us? Perhaps what we desire is to live (an active verb) ourselves, in contact with reality. (And this, machines cannot do for us.)" (ASU, pp44-5)

So, although Nozick is fairly tentative in his identification of the fundamental goods exposed in this thought experiment (he is less so in the EL version), it is clearly not meant to be that of being a specific sort of person with a particular character disposed to exercise certain capacities, form certain relationships and produce certain effects in the world. Presumably we do want these things and part of what is wrong with the experience machine is that it prevents them. But that is not the whole story, because of the possibility of other machines that could "plug some of the gaps" left by the experience machine. The gaps which machines cannot plug are the desires to be in "actual contact with reality" (the machines prevent this), and to "live one's life oneself" (rather than have machines do it for you). These can be combined to form the fundamental complex desire to "live one's life oneself - in touch with reality" (call this the desire for "active reality contact" for short).

To be sure, active reality contact must involve exercising capacities, having dispositions and so on. Most trivially, it implies the capacity for active reality contact, a disposition to care about the world to some extent, and perhaps for some minimal creativity. But these allow for many different modes

of contact, caring and creativity. We might say that the general, abstract Good of being in touch with reality in itself does not imply a single specific set of these latter, substantive goods; it is neutral with respect to them. To some extent, ethics qualifies this neutrality by insisting that fairly substantive ways of being plugged into reality are necessary components of an ethical life. In the terms of Nozick's later account, we are to form actual relationships with others and behave in ways that are responsive to their value, and to our own.

Active reality contact combines "living one's life oneself", with "having actual contact with reality". But these two elements do not imply one another. The desire to live one's life oneself goes some way to serving Nozick's purposes in Anarchy, State and Utopia by providing a sense in which we each might want to be a "sovereign individual": just as we do not want machines to live our lives for us, so we do not want an overblown or intrusive state to live our lives for us; actually, we do not want any external entity, whether it is the state or some individual or group of individuals, to do it for us. This "doing it for us" might occur in a spirit of coercion, or in a spirit of over enthusiastic benevolence (the "nanny state", the overprotective parent, and so on). Either way, against this, "one must focus upon the fact that there are distinct individuals each with his own life to lead." (ASU, p34) Notice that this does not amount to a justification of the uncompromising absolute liberal side constraint; sovereignty does not have to amount to absolute sovereignty, anymore than dignity as a self shaper requires a sphere protected by rights. But the point here is that it is possible to imagine someone who is leading his own life in this sense, but who also is radically detached from reality, subject to persistent illusions, which he integrates into a false world view. This picture would be impossible only if individual sovereignty were identified with some conception of

liberty taken to be negated when action is inspired by illusion. From the standpoint of full scale Kantian autonomy, for example, the effects of illusion should be placed amongst the heteronomous influences to be transcended in the exercise of true freedom.

The desire to have actual contact with reality obviously is satisfiable in the absence of being able to live one's life oneself. The concentration camp prisoner may be only too fully aware of what is happening to him; but it is happening to him - the life he is leading is one imposed on him. The two components of active reality contact thus are quite distinct. There is even some tension between them. Or at least there is tension between some of the ways each can be glossed. This is illustrated by Nozick's abandonment of libertarianism, which we shall see seems to be a matter of the "organic unity as intrinsic value" (PE and EL) gloss on the actual reality contacted winning out over the uncompromising, absolute "sovereignty of the individual" (ASU) gloss on living one's life oneself.

The experience machine example does not establish the truth of libertarianism. Neither does it rule out experientialism. Peter Singer considers the view that we would not all plug in permanently, even if we all had the chance. He wonders what would be left to do in that situation other than to plug in. Given that the point of acting in one way rather than another - say kindly - or of being one sort of person rather than another, is to improve the experience of those concerned, and this can be achieved in the machine, then resistance would be pointless. (Singer, p52) This is a powerful response for the experientialist, who precisely does believe that the only point of life, beyond experience itself, is the possibility of improving experience. It shows that the experience machine example does not refute experientialism. However, the example shows that we do not believe

experientialism, if we are inclined to agree with Nozick's reaction. Let us take it that Nozick is right and see what happens.

Firstly, we should agree that "really being kind" would no longer have any point, if the only point it ever had was as a means to pleasant experiences which could be generated, presumably more reliably, within the machine. Still, we should not believe that a lifetime in the machine is for the best if we think that a central component of an ethical life is to be plugged into reality in the sense of actual immersion within the complexity of real relationships of the sort which can be characterised by kindness. If we think that such real involvement is intrinsically valuable, then we should not want to give it up completely, if we can help it. However, we might want to rest occasionally and the experience machine presents itself as an ideal form of temporary escapism; one could share the experience with loved ones, or not as the case may be. Thus it is important to distinguish between temporarily plugging in to the machine for recreational and perhaps therapeutic purposes, and permanently plugging in. (EL, p108) Unless for some special reason life otherwise would be a perpetual torture, we should not plug in permanently. This judgement will be hardest for those most profoundly depressed by the course of actual events.

Do we have any idea of how the experience machine might work? Extrapolations from current "virtual reality" technologies aside, it is pure science fiction. But we can distinguish different strategies which the machine must follow to preserve the illusory sense of reality internal to different sorts of chosen experiences. One such strategy is altering the memory of the subject; another is changing her conception of the world. The machine produces any experience you want for as long as you want it. Whilst inside, you are unaware of the fact; you think it is really happening, and this at least

requires that you forget you plugged in. In many cases the machine must be able to construct a conception of the world and of the self in the mind of the person consistent with the experience. Given that the experience is chosen by the subject prior to plugging in, the new conception must be a development of that held on the outside, at least to the extent of being an imaginative possibility from that standpoint (unless you want to trust the machine to select an experience for you).

For example, what if the person chooses a perpetual experience of a limited, specific type of event, say that of an indefinitely long comedy routine? Once in the machine and plugged into the experience, the person either must be unaware of the perpetual nature of the routine - his memory must be altered progressively as the routine progresses so that he "forgets" that the routine has been going on unusually long - or his world conception changes so that although aware that the comedy programme has gone on so long, and that he has not needed to sleep or attend to any bodily functions, he is not concerned about this, for these circumstances are consistent with his new, artificial conception. The memory tampering strategy is more than simply being made to forget plugging in; it is internal to the programme, as earlier artificial experiences are forgotten at the time of later ones. The experience as whole might consist merely in the endless repetition of a single joke.

For the conception altering strategy to work, the artificial conception of the world necessary to prevent any suspicion that the experience of perpetual comedy is illusory, must not be so removed from the person's original conception that it significantly impacts on the content of the experience which made the subject choose it in the first place. The jokes in the comedy routine must be consistent with the artificial conception - they must not be about the world

conceived in a way that will undermine the illusion that perpetual comedy routines are normal or even possible ("did you hear the one about the experience machine inhabitant who chose perpetual comedy and forgot how to laugh....?"). Yet the content of the illusory routine must be such that the person chooses it from the standpoint of his pre-machine conception of the world (otherwise he would not be choosing that set of experiences).

It looks likely that at least in cases where the subject chooses perpetual experience of a limited specific type of event the machine will take the memory tampering approach and leave the subject's world conception relatively intact, so that the resulting artificial experience will be close enough to the one desired on the outside. Here, the actual world, x , is not replaced in the subject's mind with a preferred conception of world, y ; he is simply made to forget that his chosen experience of x type events has been so impossibly repetitive or intense. Still, the machine has these distinct strategies open to it to preserve the illusion. Presumably, in producing some chosen experiences (for example, those involving relatively complex life stories) the conception altering strategy will predominate over memory tampering, ie the world is made to be y rather than x ; although the subject still forgets that this has happened, he remembers what has happened in his y world.

We can now use the experience machine as a device to summarise and highlight the shortcomings of Nozick's libertarianism as a moral and political philosophy. Because the hypothetical "explanation" of the minimal state leaves the libertarian state merely conceivable, the only way it can be experienced is as an experience machine programme. Thus the historical impossibility of a rightful minimal state makes the experience machine attractive to the libertarian, but his absolutist commitment to "live one's life oneself" will make it

difficult for him to give himself up to an artificially induced illusion, other than for strictly self rationed periods of relief. Even short libertarian episodes will require the full capabilities of the machine. Assuming that it cannot alter the entitlement conception of justice, memory tampering will be used to make the subject forget the lack of rightful original acquisitions, and the fact that current holdings are tainted by past injustice. Alternatively, world conception alteration will make available ideal histories to allow rectification, or provide a new history of the "actual" world, including a record of "initial conditions" of voluntary acquisition and of subsequent generations of libertarians voluntarily agreeing to respect exclusive property rights. This latter conception (of world history) altering strategy is probably better, because it avoids the problem of deciding which ideal history to choose, and it can be made to coincide with the "invisible hand" emergence of a minimal state, for the sake of which independents voluntarily relinquish rights of punishment and self defence. Otherwise the subject must be made to forget the existence of libertarian John Wayne types; reactionary types are automatically excluded from the programme.

PART TWO

UTOPIAN NEUTRALITY

Chapter Six: Saving the Libertarian

6:1 On Both Sides of the Maginot Line

Nozick's libertarianism leans on a Lockean conception of liberty as the right to do what you have a right to do; you may do what you want with yourself within the natural law; i.e. do what you want without interfering with others. Freedom here is undermined only by actions which limit options by violating rights. Thus the natural rights are fundamental, which is why Nozick cannot establish his entitlement theory by simple appeals to liberty, or by the simple complaint that all rivals negate liberty. Without a demonstration of the rights involved, this strategy just begs the question. We have seen that there is a gap between Nozick's rights and his intended foundation for them - the self shaping meaningfulness of separate individual lives. The only way to close this seems to be to define proper self shaping meaningfulness, or true human dignity as that protected by Nozick's side constraints. It is only the freedom guaranteed by libertarian rights which allows the true distinctness of individuals to be realized; that is the only real sense of individual freedom.

This suggests Isaiah Berlin's distinction between "positive" and "negative" liberty. Negative liberty marks the extent to which the individual is to be "left to do or be what he is able to do or be, without interference by other persons". (Berlin, 1969, pp121-2) Positive liberty is concerned with the question "what, or who, is the source of control or interference, that can determine someone to do, or be, one thing rather than another?" These are distinct issues, even though answers to the questions they pose may overlap. (Berlin, p122)

Although both notions are consistent with such a line of thought, positive liberty is often associated with overcoming internal as well as external obstacles to freedom. Thus thinkers such as Rousseau and Marx, who treat overcoming such things as lower forms of attachment to others and false consciousness as necessary conditions of true freedom, are taken as quintessentially "positive" theorists. Still, the negative theorist can recognise the need to overcome internal obstacles to freedom as well as the more obvious external obstacles, such as oppressive legal or political institutions and coercive individuals and groups. For example, Charles Taylor has pointed out that they can distinguish inauthentic desires from the authentic purposes of the true self, where the individual should have the space to realise his own unique self. But he argues that those concerned with negative freedom often embrace a crude definition of liberty as the absence of legal obstacle and physical coercion, because they fear any concession towards a positive account will bring the identification of an individual's "true self", whose realisation is true freedom, with some collective entity, such as the general will, or an economic class existing "for itself". Not wishing to be forced to be free, the crude negative theorist resists the Totalitarian Menace by avoiding discussion of what internal obstacles might be preventing individuals from exercising a capacity for positive freedom. Instead they dig in behind a Maginot Line definition of negative liberty in pure opportunity terms: "being free is a matter of what we can do, of what it is open to us to do, whether or not we do anything to exercise those options". (Taylor, 1986, pp102-4)

I think that if we assume "self shaping meaningfulness" is confined, by definition, to what is protected by Nozick's rights conception, then we can see libertarian John Wayne riding the range on both sides of Taylor's Maginot Line. Soon we shall see why he is on the negative side, but first we

should see the evidence for him on the positive side. This is how Berlin describes the typical aspiration of someone seeking positive freedom:

"I wish to be a subject, not an object; to be moved by reason, by conscious purposes which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody; a doer - deciding, not being decided for, self directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realising them ... I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for his choices and able to explain them by reference to his own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realise that it is not." (Berlin, p133)

All this is open to a variety of interpretations, for instance as to what it is to be a subject, moved by its own reason. But I think we can take it that the wish to be a subject described by Berlin - the wish to be "one's own master" - is the wish to be in some sense a self shaper. Self shaping meaningfulness can be interpreted radically as being master in all things to do with the self (and perhaps its property), or that which is protected by the strongest individual rights. Thus True Freedom, or Radical Dignity, is achieved when these rights are respected: their counter intuitiveness to many - the apparent gap between the notion of a life which is meaningful because self shaping and the side constraint conception of rights - can be explained away as a kind of false consciousness, no doubt caused by excessive state nannying: "Liberate your true self!", says libertarian John Wayne.

Taylor describes two steps leading from the crude negative to the feared opposite pole of positive freedom. The first is from freedom as lack of external obstacles to what you want to do, to freedom as being able to do what you really want. The second represents the belief that individuals cannot do what they really want, or act in accordance with their true will, "outside of a society of a certain canonical form incorporating true self-government".(Taylor, p104) If we allow the gap between Nozick's rights conception and his intended foundation for them to remain, then the former seems just plucked from the air, and it is hard to see Nozick as seriously advocating anything. If we close the gap between self shaping meaningfulness and the side constraint rights conception by defining it away, then we can represent Nozick as advocating a canonical form of society as necessary for true self government. The society he has in mind is not collectivist or totalitarian, but a laissez-faire minimal state. Although, as we have seen, what he almost certainly gets with his strong conception of rights is libertarian anarchy, in which it is not even clear there will be justified private property. Potential "internal obstacles" to this state of positive freedom would be the aforementioned false consciousness; ie false beliefs about what it takes to achieve true self government; in particular the belief that negative freedom must be curtailed for that end. A clear minded view of one's own priorities, unclouded by the debilitating effects of the "dependency culture", compulsory benevolence, or the fear of unjust punishment, reveals precisely that they are one's own priorities. If everyone can clarify what they each want as distinct individuals, then it becomes possible to arrive at a set of truly voluntary contracts.

Nozick's individualist, Lockean notion of liberty also suggests the other, negative, side of the Maginot Line. It has been pointed out that Nozick's failure to ground property rights might be reversed by adopting the Hegelian view that to

be a person is to be a property holder and to be recognised as such, but that this would be to leave the door open to end state principles justified on the same Hegelian grounds. (Knowles, 1979, pp263-5) Similarly, any view which treated the person and her rights and duties as defined in terms of some conventionally recognised social role or position, would be ignoring the way individuals are separate ends in themselves each with their own lives to live, around which the crucial boundaries of political morality have to be drawn.

Moreover, although Nozick presupposes an individual's capacity for unique self realisation when he stresses both meaningfulness as self shaping and the distinctness of individuals, his position is inconsistent with the notion of a "form of the self" unique to each individual which has to be realised in order for the individual to count as properly free. Taylor is sympathetic to what he calls the "Post Romantic" notion of freedom whereby acting upon inauthentic desires against the interests of the true self is to prevent the realisation of that self and so to delay true freedom. Nozick's Lockean view implies that freedom can be negated only by acts violating rights, whatever the authenticity of the desires furthered or thwarted. Nozick is able to accept some version of "post romantic freedom" only if he denies it relevance to political morality. The freedom protected by true political morality is not undermined simply by giving in to "inauthentic" desires. This is consistent with important distinctions between authentic and inauthentic desires. For example, it might be that my desire to smoke is "inauthentic" in not reflecting my deepest interests and aims, so, in a sense, indulging my craving for nicotine negates my freedom. But this cannot be relevant to the libertarian concerned with political morality, unless I was coerced into developing that craving. The same is true for all the consumerist cravings to which free individuals might be subject. The important external obstacles to negative freedom consist in the coercive

behaviour of others acting either as private individuals or as agents of the state. Such coercive activities include attempts by the agents of a would-be state to monopolise force, particularly in relation to punishment; forcible attempts to realise end-state patterns of distributive justice (unless under some valid principle of rectification). These examples we have seen, but another major source would be activities aimed at forcibly realising some non-libertarian definition of positive freedom.

That the libertarian is on both sides of the Maginot Line does not imply that he is a moderate in any sense. According to Nozick's libertarianism, all rights violations curtail freedom. This has consequences which can seem highly counter intuitive as we have seen and which I want to re-emphasise here. For example, insofar as preventing someone from practising the religion of their choice, and making a driver stop at red traffic lights both violate side constraints, then they equally negate liberty. Faced with this thought, most people will agree with Taylor when he speaks of the difference between traffic restriction and religious restriction: "One's religious belief is recognised, even by atheists, as supremely important, because it is that by which the believer defines himself as a moral being. By contrast my rhythm of movement through the city traffic is trivial. We don't want to speak of these in the same breath. We don't even readily admit that liberty is at stake in the traffic light case." (Taylor, pp104-5)

Nozick tries to respect this kind of intuition, and to distinguish between important and trivial cases of prohibiting actions, in his discussion of risky activities and his principle of compensation, and epistemic principle of border crossing. But we have seen that these principles are inadequate, and will be unacceptable to an independent-minded libertarian John Wayne type. The lack of any clear and

general guideline about how to deal with risky activities might lead to the situation of immobility described by Robert Wolff, or it might not; most libertarian car drivers might agree that a voluntary undertaking to obey traffic signals is required to reduce the riskiness of driving to an acceptable level.

Those who take an independent line on traffic signals are in an interesting position. They have no positive right to drive, only the negative right to be allowed to drive provided this violates no rights of others. Imagine a society of libertarian motorists in which everyone else have agreed to a kind of driving contract: "provided we each stick to the highway code, then we each voluntarily forego the right not to be put at risk by the driving of others" (assume there are no adult non drivers). In this case, it appears that the would-be independent driver does not suffer any loss of liberty by being made to stop at red lights, since the others are within their rights to protect themselves. But this does not necessarily follow. The case against the independent driver is that he is likely to harm others if he is not confined to the highway code, and the difference between this and religious restriction is that being so confined is not a significant type of interference. But neither of these claims need be true.

We simply have to imagine that the independent driver is highly skilled, or at least a competent enough driver to judge when to obey signals and when to ignore them, so that it is a real issue whether it is his driving in the way he does which creates danger on the highway. Moreover, it is not that much of a stretch of the imagination to think of someone to whom being an unimpaired driver is of central significance to his self understanding. Skilfully driving his car on the open road and through the tangle of city traffic is what gives his life meaning; if you like, this is his religious experience. He has no death wish; when the roads are busy, he will go with the flow and obey the restrictions along with everyone

else. But any serious attempt to make him stop at every red light will severely undermine his most profound experiences. This is what he thinks and reports, and, as it is his life, his meaning, who are we to disagree?

The point is that it is up to self shaping individuals to decide their own purposes. Given that the resulting actions are not especially dangerous, as they are not in the case of the skilled independent driver (it is not his fault if others are not so skilled), the significance of prohibitions and restrictions will reflect these purposes. It is not for anyone else to decide his purposes, or their significance. An absolutely non-coercive society is necessary in order for individuals to exercise a capacity for true self-shaping meaningfulness.

6:2 Depoliticising Libertarianism

We can look at it that way if we define true dignity as that which the libertarian side constraints preserves. The claim would have to be that True Dignity has lexical priority over any other good, apart from when catastrophic moral horror threatens. But at the end of the day this is just legislation; it is not determined by the meaning of the key terms - liberty, dignity, right, good, and so on - apart from as these are interpreted as part of the libertarian's very own unified package. This package is wildly implausible as a political philosophy to determine the proper size and range of the state's coercive apparatus. Two of the main reasons for this can be couched in terms of neutrality.

Firstly, there are the problems internal to Nozick's account on its own terms. It is not neutral with respect to the hard line characters conjured up by the strong rights conception which forms the libertarian background. The

minimal state and the institution of private property are not welcoming to the hard libertarian, nor to John Wayne, the independent punisher. These characters cannot be ignored or just dismissed as irrational given the libertarian background.

Secondly, Nozick's account is problematic as the foundation of a state whose citizens do not all subscribe to the key legislative definition. That the libertarian background is highly controversial is most clearly demonstrated by its application through the entitlement principle of justice in transfer. The account cannot support a state which is neutral in the key sense of not privileging one of the plurality of substantive moral conceptions within its power. And this is on the assumption that libertarianism is one of the encompassed plurality.

Because of this failure as a political theory, the problem is not one of filling in the details of the libertarian vision of political society as a whole, but of how to cope with what libertarians there are, if there are any. Having abandoned libertarianism as a political theory, Nozick suggests in the Examined Life that non frivolous conscientious objectors to certain state policies should be allowed to withhold tax payments for them (provided that they pay more for other state schemes of which they do approve, as a sign of seriousness; anarchist objectors to all state programmes have to give the money to charity). (EL, p290) More immediately important to us here is his account of the "framework for utopia" contained in part three of Anarchy, State and Utopia.

Nozick presents the framework as something we should find inspiring because it is what "best realises the utopian aspirations of untold dreamers and visionaries", and "preserves what we all can keep from the utopian tradition and opens the rest of that tradition to our individual aspirations". (ASU, p333) The framework is meant to be equivalent to the minimal

state (ibid), and so it is the minimal state, under its description as the framework, which Nozick takes to be inspiring in this way. However, the arguments in Part III are meant to be independent of those in Parts I and II. (ASU, p309; p333) The different arguments, in the different parts of the book, are supposed to converge upon one conclusion - the minimal state - but they are meant to be distinct arguments.

It is vital that the case for the framework is distinct in this way. As a whole moral and political package, the libertarian background and its application through the entitlement theory is fit only for the experience machine. But a modified "de politicised" version could be the constitution for a small community of consenting libertarians; the gatherings of "muscle bound rights freaks" spoken of by R.P. Wolff. This requires the universal and political scope of the rights to be detached from the rest of the package. What is left will be no longer "rights" at all in the strict sense of obligations and liberties legitimately enforceable by the state; they will be enforceable only through membership of the libertarian community. Any member may do what she wants, provided that this does not involve unconsented interference with other members. The attractiveness of this comprehensively contractual way of life might bring new members. Thus an independent case for the framework would also be a case for a context within which libertarianism might be taken seriously by some as a possible principled way of life. So it will be important to see how non-libertarian is Nozick's case for the framework; the framework is to be neutral between the "utopian aspirations of untold dreamers and visionaries", not all of which will be specifically libertarian aspirations.

Nozick's account of utopia begins with a discussion of an idea of utopia as the best possible world. He starts by pointing out the impossibility of simultaneously and

continuously realizing everything which might be taken to count as a social or political good. (In this he is echoing Isaiah Berlin in a way that remains important in his later work.) This suggests that the best possible world must be without at least some such goods. Moreover different individuals favour different goods, so what I would take to be my best possible world, in which I would most like to live, would not be the same as your best possible world. Yet utopia "must be, in some restricted sense, the best for all of us; the best world imaginable, for each of us". (ASU, pp297-8) As we shall see there is some tension between the idea that a utopia must in some sense be the best world for everyone, and the idea that everyone will have a somewhat different notion of utopia. Nozick starts to build a model of possible worlds (as a model of utopia) with both ideas in mind.

He asks us to consider a possible world consisting of an "association" as opposed to an "east-berlin". Every rational being within an association has the right to imagine (and leave for) a further possible world (in which all rational beings have these same rights). So an association is a possible world where the inhabitants have the right to choose to leave. An east-berlin is a possible world in which some rational inhabitants are not given this right. (ASU, pp299-300) Thus the model of possible worlds is supposed to let you choose any world you want, subject only to the constraint that the other inhabitants of your world may do the same and choose to leave it; what we are supposed to be imagining and choosing are associations.

There is free competition between the associations; in a sense they compete for membership, and thrive, or go to the wall, depending on their success at attracting and retaining a membership. Fair conditions of competition thus are very important. We shall see that Nozick's emphasis on this element of the model raises serious questions about its

universal appeal. In the meantime, one immediate consequence is that certain kinds of cheating must be prevented. You have imagined your fellow inhabitants, and they have not imagined you. Your imagination should be constrained to reflect the fact that it is not the only one: an imagined world cannot be such that it logically follows that one or more of its other inhabitants most want to live in it, or most want to live in a world with a certain kind of person (i.e. you). Neither can an imagined world be such that the imaginer knows it to follow causally that one or more inhabitants most want to live in it, or in one with a certain kind of person, although this is to apply only to known effects. (ASU, pp302-4)

Nozick argues that stability must be a component of the best possible world. A stable association, "satisfies one very desirable description by virtue of the way [it has] been set up"; "no member of a stable association can imagine another association, which (he believes) would be stable, that he would rather be a member of". (ASU, pp299-300) This will not do as a definition of stability, of course. A non-circular version would be that a stable association contains noone who can imagine an alternative association which: 1) he would prefer; and 2) contains noone who would prefer to be elsewhere.

Nozick's abstract model of the best possible world consisting of stable associations is supposed to be "projected onto the actual world" to produce the framework.

Chapter Seven: The Framework for Utopia

7:1 Arguments for the Framework

Nozick's account of the framework for utopia has some prima facie affinity with our informal ideal "Amsterdam of moralities". His "utopia of utopias" is a stable collection of associations. We will find something of a sense of freedom here which reflects the presence of diverse moral possibilities, rather than a prior concept of universal rights. Moreover, he thinks of the framework as a "process", rather than as a fixed entity for which he would be obliged to specify a blueprint. (ASU, p332) That each element finds the framework inspiring might suggest that they welcome the diversity. But this is perhaps to expect too much, for they each might welcome the framework (rather than the fact of diversity) because it offers the opportunity to realise their own particular utopian vision.

Nozick claims that his has two general advantages over other kinds of utopian description. Firstly it will be acceptable to almost all utopians at some future time, whatever their particular descriptions. Secondly, it is compatible with the realisation of almost all utopian descriptions whilst not guaranteeing the universal realisation of any particular description. The "almost" qualifications reflect the framework's unacceptability to utopians praising force or domination. (ASU, pp318-19) Given that any utopian will see 'good men' as those who voluntarily choose to live under his favoured system, he will see the framework as an appropriate one for the society of good men. "And most utopians will agree that at some point in time our framework is an appropriate one, for at some point (after people have been made good, and uncorruptible generations have been produced) people

voluntarily will choose to live under the favoured pattern."
(ASU, p319)

Thus he believes that the common ground, brought by different utopians believing the framework to be an appropriate path to their different visions and permissible after their realisations, might encourage cooperation to bring about the framework. This is even if the utopians are aware of each other's differences; conflict is necessitated only when the different hopes involve universal adherence to a particular pattern. He distinguishes some relevant utopian attitudes (ASU, pp319-20). "Missionary" utopians want to persuade everyone into one pattern of community, without coercing them. Their universal aspiration will prevent them from admiring wholeheartedly the framework's endorsement of simultaneous realization of many diverse possibilities. Still they will support it because of their view that voluntary agreement with the preferred pattern is vital. "Existential" utopians hope a particular pattern will exist viably, so that individuals may choose to live in it, but do not necessarily want universal adherence. Such utopians may wholeheartedly support the framework and cooperate in realizing it, content in the differences between particular visions. Still, all of the diverse associations within the framework are supposed to agree that its neutrality is appropriate, so they should each be prepared to at least negatively tolerate their diverse neighbours.

He also distinguishes a third utopian attitude: imperialist utopianism. These hope to force all into one preferred pattern and will oppose the framework as long as others disagree with them. (ASU, p320) Now, both the missionary and imperialist utopian must hold expressivist theories. The missionary's ideal might even involve extreme organicism, although a belief in the desirability of a highly expressivist state doesn't imply an imperialist attitude. But

insofar as the imperialist has a theory at all to justify his desire to force everyone into his favoured pattern, this will be an expressivist theory. Thus a neutralist case which involves minimising expressivism, though more urgently made against the imperialist, will also be a critique of the missionary's position qua expressivist. In this important sense, unless the missionary can be persuaded to "de-politicise" his ideal in the way suggested earlier for the libertarian, there will be no common ground between (non-imperialist) utopians. It might be that the anti-expressivist neutralist is able to appeal to common elements in the various ideals held by different utopians which, when properly understood, point in his direction. Both Rawls and the later Nozick make this kind of appeal, but in very different ways.

However, in part three of *Anarchy, State and Utopia*, Nozick does recognise that the presence of people unwilling to allow the operation of the framework might be a problem. In fact opposition might be motivated by self interest as well as by moral considerations. He reacts to the first kind of motivation in the course of a discussion of some well known objections to utopian treatment of means as they apply to the framework. Many such objections focus on the utopian tendency either to ignore the means to desired ends or to concentrate on inappropriate or inadequate means. Particularly relevant is criticism of a utopian reliance on voluntary action within existing conditions to bring forth the envisioned state. Critics have pointed to the naivety of assuming that those with vested interests in maintaining the status quo can be persuaded voluntarily to relinquish privileges by rational appeals to their better natures; and of assuming that even when voluntary action to achieve a utopian vision is possible given an existing (unjust) framework, those whose privileges are threatened will not intervene violently to prevent change. (ASU, p326)

Although aware of these criticisms, Nozick places his faith (as well as great value) in the voluntary action of individuals. The framework is meant to be desirable and appropriate for people both ideal and less than ideal: "[I believe] with Tocqueville that it is only by being free that people will develop and exercise the virtues, capacities, responsibilities, and judgements appropriate to free men, that being free encourages such development, and that current people are not close to being so sunken in corruption as possibly to constitute an extreme exception to this." (ASU, p328)

Certainly this does not necessarily amount to the naive view that people with vested interests in maintaining injustice may be persuaded voluntarily to relinquish their illegitimate privilege. But Nozick admits that he does not discuss what tactics might be legitimate and appropriate in such circumstances, and claims "readers hardly will be interested in such discussion until they accept the libertarian framework". (ibid) So he discusses this issue as if it were a problem for libertarianism. That this is unfortunate now goes without saying. In fact the best case to be made against those who believe it is in their material self interest to oppose neutralism, is to point to its possible benefits in terms of social stability.

The problem of moral opposition is more interesting. Nozick admits that even if objections to the naivety of his utopia fail, some will still object on the grounds that people are too corrupt to be allowed to pursue their own version of goodness. People would cooperate to establish justice and the good life if they were not corrupt. Therefore, they must be forced into the good pattern, and all opposing influences should be silenced. Nozick says that he cannot give this view the extended discussion it deserves, but offers this thought: "Since the proponents of this view are themselves so obviously fallible, presumable few will choose to give them, or allow

them to have, the dictatorial powers necessary for stamping out views they think are corrupt." (ASU, p327)

But this response is unfortunate, because it ignores the possibility that such a critic has wide support for a conception of the good life, which he and they believe will be ignored by a substantial number of corrupt people left without forceful encouragement. Such critics and their supporters presumably count as "imperialistic" utopians. Less sophisticated examples would be those we referred to earlier as "reactionary John Wayne types"; they would like to force everyone into one preferred pattern. So would more sophisticated, theory laden, examples who might hold some version of organic expressivism.

Apart from asserting solidarity with Tocqueville, and his faith in the voluntary transcendence of corruption, Nozick also says of the imperialist's disapproval of the framework "Well, you can't satisfy everybody; especially if there are those who will be dissatisfied unless not everybody is satisfied." (ASU, p320) It is a lame response to say that those who will oppose the framework, because they think that it is their duty to prevent voluntary (or any) deviation from a specific lifestyle or restricted range of lifestyles, will just have to be dissatisfied. Such imperialists or reactionaries might, as Nozick says, base their objection to the framework on scepticism about what they see as corrupt people, voluntarily choosing to live the good life. But they may object to the voluntariness itself, believing that the fundamental moral and political concepts are obligation or obedience, say to God or to Tradition. These critics of the framework will be more than simply dissatisfied by its imposition. For Nozick's utopia to function in the way he wants, it is necessary to assume either that they will not exist at all or in negligible numbers.

Assuming that they do exist, does Nozick have any real argument to try to win them over for the framework? It is worthwhile seeking out and examining what fragments there are. To begin with, a model is not an argument, but we can interpret his account of the possible worlds model of utopia as an attempted argument for the neutral framework. A first approximation would go like this:

1. Everyone's best possible world is not the same;
2. The best possible world has in some sense to be the best for everyone;

therefore

3. The ideal or truly best possible world is a coexisting collection of stable associations.

This clearly will not do. The first thing to notice is that "best possible world" does not mean the same thing all the way through. In the first premise, it means something like a specific ideal community; in the second and the conclusion, it means the best possible world overall. So the argument is that everyone's ideal community is not the same; the best possible world overall has to be in some sense the best for everyone; therefore, the best possible world overall is a collection of stable associations.

The first premise is ambiguous between "everyone does not share the same view of the ideal community", and "there is no such thing as the ideal community for everyone". Nozick believes both of these, and both must be incorporated in the argument: people have different views of the ideal community; there is no such thing as the ideal community for everyone; the best possible world overall has to be in some sense the

best for everyone; therefore, the best possible world overall is a collection of stable associations.

Now the third premise in this version looks like an irrelevant tautology: given that "the best possible world overall" means the best for everyone, it just says "the best for everyone has in some sense to be the best for everyone". People committed to their own ideal community can agree with this without finding it interesting or relevant to their vision of utopia. Even if they accept that there is no such thing as the ideal community for everyone, they need not care about other people's ideals. The tautology must be supplemented with a substantive thesis to make it relevant.

The obvious candidate would be a principle of equal respect, but the notion of equal respect in itself is not substantive enough. For example, it is ambiguous between outright neutralist and expressivist interpretations. Equal respect might be afforded to individuals as interpreted within a comprehensive moral doctrine, treating them equally being a matter of treating them according to their place in the ideal community. For example, the Brahmin and the Untouchable are each treated as they ought to be treated according to the doctrine. Further along the dimension, away from the highest expressivism, comes libertarianism, with people being treated equally as bearers of natural libertarian rights. In fact, the failure of libertarianism suggest that equal respect here should involve neutrality between conceptions such as the libertarian package, rather than between individuals already "moralised", for example as rights bearing persons, by those conceptions. Supplementing the third premise seems therefore to require a commitment to (non libertarian) neutralism.

Taking these considerations on board, the model argument is as follows:

1. There are different views of the ideal community;
2. There is no such thing as the ideal community for everyone;

therefore:

3. The best possible world overall is neutral between the different ideals;

therefore:

4. The best possible world overall is a (neutral) framework of stable associations.

This argument is clearly invalid. Premise three is not implied by the first two premises, precisely because of the change in subject from my (or some limited "our") ideals, to what is best for everyone. It is not inconsistent to hold one and two and regret the fact of plurality or hate being confronted with difference. Therefore it is possible to hold one and two and to deny that the best possible world for everyone is neutral between ideals. For example, one could be a relativist about ideals, believing there to be no "absolute truth" about them, and yet xenophobic enough to regret the realisation of any but one's own. It spoils things for me to be reminded of other possible ideals, and so neutrality in the face of plurality is not the best possible world overall; it is not the best for me. Moreover, three does not imply four, at least not until the meanings of "neutrality" and "framework" have been further clarified. For example, if the framework is identified with a non interventionist minimal state, as Nozick intends, then it is not implied by forms of neutrality concerned with the equal viability of all the moral communities involved in realizing the plurality of ideals. If neutrality is meant to characterise the best possible world for everyone, then it is not obvious that it should never be embodied by a

more than minimal interventionist state. We shall return to this point.

But what about the imperialist utopian? He is the real enemy, not mere curmudgeons and xenophobes for whom the appropriate response might well be just "you can't please everyone all the time." Does the argument not at least prove that the imperialist, who wants to force everyone into the "true" pattern, is irrational? No, because it just begs the important questions. We can emphasise this by looking at some of the claims which Nozick makes when he projects the model onto the world to produce the framework, and seeing how these relate to the argument as it stands. In particular, he sketches three "mutually supporting theoretical routes" to establish the framework as reasonable and desirable as a projection of the model. We shall look at each briefly in turn.

Two of them pick up points from the possible worlds model. The first builds on the differences between people and their values. He distinguishes two theses connected to these, claiming that both point towards his desired conclusion. One says that although there is one kind of life that objectively is best for each person, the differences between people rule out any one kind of life as objectively best for everyone, and the different kinds of life objectively best for each are different enough to rule out any one kind of community as objectively best for everyone. The other thesis says that "for each person, so far as objective criteria of goodness can tell (insofar as these exist) there is a wide range of very different kinds of life that tie as best; no other is objectively better than any other. And there is not one community which objectively is the best for the living of each selection set from the family of sets of not objectively inferior lives." (ASU, p310)

These theses are both forms of objectivism about 'bestness'. Nozick does not explain what objectivism amounts to in this context; presumably he at least thinks that utopians in general don't think of their vision as subjective in the sense of what they themselves just happen to prefer. He lists some famously different individuals, and diverse social arrangements, to support his view that one of these theses must be true (he doesn't try to show which one), and so support his comment that "the idea that there is ...one best society for everyone to live in seems to me to be an incredible one. (And the idea that, if there is one, we now know enough to describe it is even more incredible)." (ASU, p311)

So this theoretical route is an expansion of premise two above: there is no such thing as the ideal community for everyone. His evidence for this is a list of different famous people and ways of life; that is, his evidence restated premise one above: people have different views of the ideal community. But one certainly does not imply two; for the imperialist it will be evidence of widespread and notorious corruption. We do not need to see Nozick's list to see this point; I quote from it in a later chapter, in the context of a more profound case against the imperialist.

The second, related, theoretical route builds on the point that because all potential goods cannot be realised simultaneously, at least some tradeoffs will be necessary. There is little reason to expect unanimous acceptance of one unique balance of trade offs. So there is good reason to promote a range of communities representing various mixes of goods which allows individuals to choose the one closest to their preferred balance. (ASU, p312)

This connects with Nozick's view that some of the ways in which the model and actual framework must diverge make it more desirable than any other realizable alternative. His example

is that there can be only a relatively small number of actual communities, so many people will find that none exactly match their own values. Given the framework, individuals choose the most congenial (or least uncongenial) community. If it is true that no community exactly fits someone's values, this is only because people disagree in their value judgments. If only one set of values were to be satisfied, then only one person could have his values satisfied; everyone else would be more or less satisfied. "But if there is a diverse range of communities, then (putting it roughly) more persons will be able to come closer to how they wish to live, than if there is only one kind of community." (ASU, p309)

It is worth noting that this rationale for a neutral framework - it makes for more preference satisfaction - is at odds with the anti consequentialism of the rest of Anarchy, State and Utopia. This theme of the impossible simultaneous realisability of all values, what Nozick later calls the "strong pluralism" of value, has an important role in his later account of objective value, and we shall discuss it further in that context. In his case for the framework for utopia, the fact that different people prefer different tradeoffs suggests premise one: people have different views of the ideal community. But the facts that some tradeoffs of goods will always be necessary, and that unanimity over one unique balance is unlikely, do not imply that there is no ideal community for everyone (or narrow range of such communities) representing one objectively best pattern of tradeoffs.

In *The Examined Life*, Nozick talks of "multiple competing values that can be fostered, encouraged and realised in the political realm", not all of which can be "pursued with full energy and means" or "adjusted together into a harmonious package". These include "liberty, equality for previously unequal groups, communal solidarity, individuality, self reliance, compassion ... the fullest education for all,

eliminating discrimination and racism, protecting the powerless, privacy and autonomy for all its citizens, aid to foreign countries, etc." (EL, p292, my emphases) He endorses the democratic practice of political parties seeking power for programmes based on different, "roughly consistent" packages of such goods. The democratic "zig zag" between competing parties ensures that the various goods get political coverage over time. (EL, pp292-6) Given that the parties never become identified permanently with the state, the state itself is neutral with respect to the packages of goods.

In these terms, the libertarian precisely is committed to a fixed hierarchy of tradeoffs: liberty, individuality, self reliance, privacy and autonomy; nothing else must stand between these and libertarian John Wayne. In this sense, the first two thirds of Anarchy, State and Utopia, although intended in missionary mode, is a form of definite expressivism which might be adopted by the imperialist. But the important point here is that the fact of a plurality of preferred tradeoffs does not in itself show there is no one uniquely best package.

The third "theoretical route" assumes, for the sake of argument, that there is one kind of community that is best for all people. Given this assumption (which Nozick believes to be false), then how are we to find out what this society is like? (ASU, pp312-13) Nozick considers two methods; the use of "design devices", and the use of "filter devices". A design device allows the construction of some single object (or a description of it) in a way which does not necessarily involve the construction of others of its type (or their description). When the object is the best society, the design procedure is simply to think about it, come up with a description, and then pattern everything on that. (ASU, p313) Nozick rejects this method because the complexity of people, their relationships and institutions, makes it "enormously

unlikely" that the ideal society could be discovered a priori.
(ibid)

Filter devices are processes which eliminate many from a large set of alternatives. The results of such a process are mainly determined by the nature of the filter involved (and what it selects against), and that of the alternatives operated upon (and how they are generated). Filter devices are particularly appropriate in cases of limited knowledge (especially limited knowledge of desired objects), because they allow what knowledge there is of specific favoured conditions to be used in building a filter to prevent their violation. Although it might turn out to be necessary to design filters to help design the most important or appropriate filter, producing such a filter, even one resulting in one kind of object, will generally require less knowledge than would constructing the object from scratch. (ASU, p314)

People arriving at what they take to be a description of the best society by considering many different types - criticising some, eliminating some and modifying others - would be one possible filter process. Nozick points out that any design process would involve this procedure, so design and filter devices are not mutually exclusive. (ASU, p315) But this will not do because it is impossible to tell which person has the best ideas prior to trying them out in practice. Some ideas relevant to the process would not even be available without post facto descriptions of "what patterns have evolved from the spontaneous coordination of the actions of many people". (ASU, pp315-16)

The actual trying out of ideas is the filter process Nozick favours. It amounts to a situation of diverse communities operating different patterns, where those which people do not like, having tried them, are abandoned or modified (filtered out). The process relies on the voluntary

choices of individuals; a description of a way of life to which all will conform is the desired end product, but not an appropriate starting or intermediary position, given that the specified life is to be the best for everyone: "the result will be one pattern if and only if everyone voluntarily chooses to live in accordance with that pattern of community." (ASU, p316) The various communities involved in the process have to be conceived, and so design devices will be involved at the stage of inventing patterns to be tried out, although often this will amount to building upon what communities are already there - in existence or in history books - rather than coming up with purely new inventions.

Thus, in terms of the earlier argument, premise two ("there is no such thing as the ideal community for everyone"), the step which most obviously begs the question against the imperialist, is reversed. The imperialist is granted the fact of a uniquely ideal community. The rest of the argument is kept intact and supplemented with an epistemological claim: the ideal cannot be discovered a priori, only by a voluntary filter process. Moreover, Nozick thinks that once the false assumption is dropped, and we "stop misconstruing the problem as one of which type of community everyone should live in", his case for the framework is even stronger. (ASU, p318)

Unfortunately this is not going to convince those who believe they can describe the ideal pattern of society or who believe that it, or at least its general features or blueprint, already has been designed, for example, by God. Most people who believe that there is one objectively best kind of society also believe that they know what it is.

To be sure it is interesting to pull these things apart and take it that although there is one best kind of society we cannot be sure that we know what it is. There are echoes of Mill's "experiments in living here", although Nozick doesn't

advocate experimentalism as a universal attitude: conservative associations are not excluded. But he handles this issue badly, perhaps because he does not believe in an objectively best community. Mill argued for experiments in living and free speech partly as a means to a "many sided truth" that could not be captured by one kind of community, and partly as a means to avoid the press of "dead dogma", which can be stifling and limiting, even if true. Nozick's claim in effect is that if after a voluntary filter operation one kind of stable association is left standing, then that can be taken to be the objectively best community. But why suppose this unless "objectively best society" is identified a priori with "one that has most survival capability under voluntary conditions"? Such a move would hardly be acceptable because in Nozick's argument here the voluntariness is justified in turn by the extreme unlikelihood of designing the ideal society a priori.

Why suppose that, if there is one community objectively best for everyone, this is most likely to be attained through the voluntary arrangement represented by the framework? The notion of voluntariness here still seems to be the Lockean one in which coercion is understood as intentional rights violation. The right is the right to choose an association, but it is not the right to receive the resources and cooperation that might be necessary to make the chosen association viable. A given society might be voluntary in this sense and yet, from the standpoint of objective bestness, have been driven into a state of corruption by economic pressure, clever propaganda and advertising, a general lack of imagination and so on.

Thus Nozick has no argument to persuade the imperialist (or missionary expressivist). Apart from the concession involved in the last "theoretical route", his case consists in denying the existence of an "objectively best" kind of community, and stressing the plurality of ideals. But his

simple denial just begs the question, and no amount of actual plurality and disagreement can entail a neutral political framework on their own. They can form part of justificatory arguments to make neutralism reasonable however. One example of a neutral justification of neutralism is the pragmatic concern for civil peace as a context for the solution of practical problems. It is reasonable to expect this concern to be shared widely by people with different ideas of the good. Rawls current position relies on a consensus about "The Reasonable" to underpin his account of justice as fairness, although he does not present this consensus as merely pragmatic. Since Rawls is the most influential current neutralist, in the next chapter we shall discuss his position as a possible improvement upon Nozick's.

7:2 Biases in the Model

There are further problems with Nozick's account of the framework, in addition to these argumentative deficiencies. He sets certain conditions on stable associations which appear to reflect his own preferences, and so compromise its neutrality. He also identifies the framework with the minimal state and emphasises the voluntariness of the associations. Thus it is not clear that we have really moved on from a state which is merely expressive of libertarianism.¹⁸ Moreover, his abstract, hypothetical treatment of the issues raises the suspicion that we might still be doing "explanatory political

18. To be fair to Nozick, he does not argue that the framework should exemplify a definitely non-libertarian neutralism, and he can't be held responsible for inconsistencies between his account and my interpretation. But to be fair to me, I am emphasising neutralism partly to try to salvage something from an otherwise completely discredited political philosophy.

philosophy" inside the experience machine. In this section we look at the biases, in the next the "hypothetical" problem.

In his discussion of the possible worlds model, Nozick offers some further (he says "intuitive and over simple") arguments to show what desirably stable associations are like. For a start, a stable association has to satisfy this condition: "if A is a set of persons in a stable association then there is no proper subset S of A such that each member of S is better off in an association consisting only of members of S, than he is in A. For if there were such a subset S, its members would secede from A, establishing their own association." (ASU, p300) He admits that this is to ignore considerations both of whether an S would stay in A when agreement about the division of goods between members of S is not forthcoming, and of whether there might be several overlapping subsets whose complex interactions lead to everyone's staying in A. These considerations would have to be dealt with in a complete statement of this condition. (ibid)

The remaining conditions also are presented as applying to stability in general and so presumably are meant to be part of the structure of the model of utopia. But it is hard not to see them as biases reflecting Nozick's own preferences. The first is that from no A will I be able to get something worth more to the other members than what I contribute is worth to them. (ASU, p301) Given that there are many associations which are in a position to compete for my membership, Nozick claims that "we seem to have a realisation of the economists' model of a competitive market ... many associations competing for my membership are the same structurally as many firms competing to employ me. In each case I receive my marginal contribution." (ASU, p302) Although, because the inhabitants of A are free to choose their way of life (it is their best possible world), they might unanimously consent to some other principle of distribution (possibly atrocious from our point of

view). And if they do each receive their marginal product, some might transfer it to others who then receive more than their marginal product. (ASU, p304)

The second dubious condition is worked up from the fact that someone may receive more from his membership of A than his fellow members give up to him. A possible world might endow someone with goods more valuable to him than the worth to the other inhabitants of what they give to him. "A major benefit to a person may come, for example, from coexisting in the world with the others and being a part of the normal social network. Giving him the benefit may involve, essentially, no sacrifice by the others. Thus in one world a person may get something worth more to him than his payoff from the stable association which most values his presence. Though they give up less, he gets more. Since a person wishes to maximise what he gets (rather than what he is given), no person will imagine a maximally appreciative world of inferior beings to whose existence he is crucial. No one will choose to be a queen bee." (ASU, p306)

Finally, Nozick also claims that a stable association will not "consist of narcissistic persons competing for primacy along the same dimensions. Rather it will contain a diversity of persons, with a diversity of excellences and talents, each benefiting from living with the others, each being of great use or delight to the others, complementing them." (ibid) He believes this because he also thinks that "each person prefers being surrounded by a galaxy of persons of diverse excellence and talent equal to his own to the alternative of being the only shining light in a pool of relative mediocrity. All admire each other's individuality, basking in the full development in others of aspects and potentialities of themselves left relatively undeveloped." (ibid)

These conditions embody two types of bias. One is that Nozick seems to be legislating for (or indulging in wishful thinking about) specific moral personalities. Thus he says that inhabitants of stable associations will not be queen bees. But it is not clear why someone choosing an association cannot be the sort of person who precisely does maximise what he gets by being a queen bee. Neither is it clear why we should assume, a priori, that noone would choose the required servile drone role in that association. Similarly with "narcissistic" persons and associations. Some people might choose a possible world with a focus on competition along a narrow range of dimensions, and containing a minimum of diversity. If the people involved prefer things that way, then there seems no reason to suppose that cannot be the possible world from which they would get the most, and that it cannot be stable.

The other kind of bias is perhaps more interesting and important. Nozick sums it up himself when he claims that a very attractive feature of his possible worlds model is that it "constitutes an area for the application of the most developed theories dealing with the choice of rational agents (namely decision theory, game theory, and economic analysis)." (ASU, p306)

That building in such theories (decision theory, games theory and economic analysis) of rational choice suggests continuity with libertarianism, is illustrated by a critique made by Robert Paul Wolff of *Anarchy, State and Utopia* as a whole. "Most seriously of all", he writes, "its language and methodology encourages us to treat as already rationalised those spheres of human experience that have not yet been subordinated to the dehumanisation of quasi-economic rationalisation, and that ought to be protected at all cost from such subordination." (Wolff, 1982, pp100-1) Wolff's complaint is that throughout *Anarchy, State and Utopia*, Nozick promotes the rationalisation written of by Max Weber, whereby

"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". (Wolff, p98)

In his presentation of the model, and generally throughout *Anarchy, State and Utopia*, Nozick simply assumes that the more the behaviour of associations and individuals is rational (or explicable) in this way the better. Hence the stress on marginal products and contributions and the possible world model of utopia as a model of a competitive market. Many writers on liberalism and pluralism have talked of a "cultural marketplace", but Nozick isolates and stresses the notion of marketplace to the detriment of neutrality. This is not to deny that the marketplace involves a kind of neutrality; it is neutral between individuals conceived as buyers and sellers within a market place under conditions of "free trade". But this marketplace conception is not neutral between itself and other conceptions of ideal human activity. Thus, although it is far removed from a state of maximum expressivism, it is also removed from a state of minimum expressivism.

Because it privileges the role of contractual agreements for negotiating issues of rights violation, libertarianism is a convenient background for the view that says that people will naturally seek to maximise their bargaining position in a market for their cooperation. R.P. Wolff illustrates nicely the inappropriateness (in his words, the "weirdness" and "creepiness") of Nozick's overall approach from certain possible moral perspectives. "Consider simply the notion of compensating someone for a "boundary crossing". Some 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 proper 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." (Wolff, p100) Notice that the judgment that "honor can have no market price" can be made from within a moral community or tradition with no imperialist ambitions of its own. It is not that the neutrality-compromising expressivism of Nozick's libertarian-free market bias may be exposed only from a position of greater or equal expressivism.

Despite Nozick's enthusiasms, the ideal essential to the possible worlds model - that of stable associations and the choosing and emigration rights involved - cannot be equivalent to the ideal operation of his favoured theories of rationality.¹⁹ But it is important to be aware that Nozick's account of stability is only necessarily biased in relation to pure neutrality. In practice, a framework state would not need to be purely neutral - neutral with respect to every conceivable contestable ideal. In principle, it needs to be neutral only between actually contested matters, provided it

19. In *The Nature of Rationality*, Nozick notes that "rationality has reshaped the world in line with Weberian analysis, and that "those cultures whose traditions are unreceptive to Weberian rationality have fared less well." This is in the context of a discussion of (mainly instrumental) rationality as a trait of evolutionary significance. Rationality, he says, is remaking the general environment to its own advantage as against "other traits". "In that environment, the marginal product of rationality increases, that of other traits diminishes; traits that once were of coordinate importance are placed in an inferior position. This presents a challenge to rationality's compassion and to its imagination and ingenuity - can it devise a system in which those other traits can live comfortably and flourish - with the opportunity to develop their rationality if they choose - and will it?" (NR, p.180) It is entirely unclear how "rationality" can do this whilst unremittingly blowing its own Weberian trumpet, as it does in *Anarchy, State and Utopia*.

stands ready to be neutral vis a vis newly appearing associations. (Larmore, 1987, pp66-7) If in practice all associations agree with Nozick's views about "economic rationality", then there will be no question of unacceptable bias if the framework state also promotes those views. Thus the situation in the possible worlds model must be different to that in the framework which is a projection of the model onto the real world. The model structure must remain purely neutral so as to reflect the absence of imposed limitations on imagination and choice. So even though some philosophers claim that decision theory, theories of economic rationality and the like might be defended in some universally appealing way, as long as they are not universally appealing they cannot be part of a purely neutral structure.

In part two of Anarchy, State and Utopia Nozick briefly discusses the neutrality of the minimal state as supported, he thinks, by libertarianism. (ASU, pp271-4) He considers there the thought that because the minimal state "enforces contracts, prohibitions on aggression, on theft, and so on, and the end result of the operation of the process is one in which people's economic situations differ", it is "nonneutral with respect to its citizens". His answer is that the presence of such differentials would be "sufficient to condemn [the minimal state] as non neutral only if there were no independent justification for the rules and prohibitions it enforces. But there is." (ASU, p273) The "independent justification" is libertarianism. We have removed that "justification" and any replacement must be a less expressive form of neutralism. But still it might not be obvious yet that the framework for utopia is really distinct from Nozick's earlier libertarianism. After all that also involved a framework within which a variety of personal visions of the good life might be pursued as long as they don't involve rights violations.

Nozick goes on to try to reassure people unimpressed by his libertarianism that the framework has "many of the virtues and few of the defects people find in the libertarian position". He says that the operation of the framework must be distinguished from the universal practice of libertarianism. The laissez faire nature of the overall system even allows for the possibility that there will be a complete absence of capitalist institutions. (ASU, pp320-1) But it is also true that the notion of voluntariness /freedom/liberty here looks like the same Lockean notion that Nozick uses throughout Anarchy, State and Utopia, in that it is negated only by a rights violation; it is not negated for example by being prevented from dictating an "east-berlin", or by being unable to find enough people to make a desired association viable. Liberty here then is still "the right to do what you have a right to do": the right to choose an association (and to leave one for another).

So all associations enshrine their members' right to choose to leave. Does this mean that the associations must all subscribe to Nozick's libertarianism at a fundamental level? No, the right involved can be interpreted as too thin for that. It is a right which trumps all other considerations in the model, and in that sense it works as an absolute side constraint (no east-berlins are allowed), and reflects a thoroughgoing voluntarism shared by libertarianism. But this need not be full blown libertarianism (contra Wolff, 1991, p134). It is the right to choose to leave an association, or the right to choose to live in the best association (you can think of). However this need only be the right not to be pressed into an association chosen for you by the state. The earlier full blown libertarianism also made the right prior to the good. But we have seen that although Nozick's libertarianism is not demonstrated as uniquely true, it is possible to imagine people holding a specific concept of human dignity or meaningfulness which requires a recognisably

libertarian way of life. In this case then, according to the possible worlds model, there need be no stable libertarian association to choose to enter (or to leave for); for example, negotiating the terms of an association with libertarian John Wayne might well be too forbidding a prospect. Thus, unlike libertarianism, the neutralism we are ascribing to the model doesn't favour a specific, substantive picture of a dignified or meaningful way of life.

This is reflected by the fact that the "minimal state" has very different roles when represented by the model and when featured as the intended end point of the earlier libertarian arguments. The latter "nightwatchman state" is limited to the protection of citizens against fraud, theft, broken contracts, aggression and so on. But the purely neutralist state, considered just as such, might have only the even more refined duties, firstly to refrain from privileging the ideals constitutive of a particular association, and secondly to prevent associations from committing acts of imperialism. The mere idea of this neutralist minimal state doesn't support the policing of fraud, theft, or the honouring of contracts in relation to goods and services, because it does not specify any theory of property, private or communal, which it must promote.

We saw earlier that Nozick fails to give a convincing libertarian account of exclusive property rights, but given the neutralism of the model then, in principle, there is nothing to stop people choosing an association in which absolute property ownership figures in the way he intends. But notice that there would be no repeat of the conflict with the minimal state as represented by the structure of the model (later the framework): the right guarded by the neutralist minimal state does not support independent punishment; independent minded punishers would have to confine their activities to associations with other consenting libertarians. The voluntariness of the model may be taken to express the thought

that utopia must be the best possible world for everyone. That this is not equivalent to full scale libertarianism, or any other comprehensive moral conception, reflects the thought that everyone's best possible world is not the same. 20 However, it is important to remember that although we can distance the framework from libertarianism in this way, we have not seen a convincing argument to rebut imperialist criticism.

7:3 Utopian Pioneering

We turn now to the hypothetical nature of Nozick's framework. We shall approach this issue through so called "communitarian" criticism of liberalism. Because it seems to involve a form of "abstract individualism" Nozick's model looks like a prime target for such criticism, and it shares this apparent vulnerability with the earlier libertarianism. We can distinguish different strands of communitarian objection. One strand accuses abstract individualism of misconstruing justice as a question of the rights universally held by individuals irrespective of social or historical circumstances. Alasdair MacIntyre for example criticises the way liberalism ignores the Aristotelian view of justice as rooted in "a community whose primary bond is a shared

20. We should be reminded here of Paul Feyerabend's critique of universal, rationalist prescriptions. He argues, informally, as part of his general critique of the imperialism of "western rationalism", for a political respect of plurality; different cultures should be respected and left to run their own internal affairs and their own beliefs. Relations between these should not be subject to any fixed institutional arrangements, embodying any western universalist principles; they should be ad hoc and subject to local conditions. (eg, Feyerabend, 1987, ch12) But Feyerabend never satisfactorily explained the move from the "relativised epistemology" that makes rationalist science only one tradition amongst many, to the claim that all traditions should be respected by "Western rationalists".

understanding both of the good for man and the good of that community." (MacIntyre, 1981, pp232-33) We have interpreted the neutrality of Nozick's utopia as requiring only the right not to be subject to a state sponsored notion of the good life. Although much thinner than the set of natural rights involved in the libertarian background, this right is still taken to be held universally. More strikingly, it is precisely the right not to be treated as if MacIntyre's organicist understanding of political justice were true. The force of this line of criticism of the model, as we have interpreted it, relies on the argumentative deficiencies discussed above. If the case against the imperialist, and for neutrality between conceptions of the good were secured, then the "universal rights" at issue could be derived from that without recourse to ahistorically moralised abstract individuals; the "right to choose" an association would merely reflect the neutrality of the state between moral conceptions.

Still Nozick's model is full of individuals making choices in the abstract. Another communitarian strand attacks the notion of the self as capable of choosing its own ends and hence as prior to them. Michael Sandel for example argues that this ignores the fact that the self is partly constituted by its ends in the guise of its communal attachments. (Sandel, 1982, pp64-5; 168-73; cf. Chaplin, 1993, p39) In a similar line of criticism Charles Taylor charges abstract individualism with ignoring the fact that the possibility and value of autonomous choice requires a surrounding cultural historical context. In this way it embraces a "facile empiricist moral psychology", according to which "human agents possess the full capacity for choice as a given rather than as a potential which has to be developed."(Taylor, 1985, p197)

Taylor specifically cites Nozick's account of Utopia as flawed in this way: "The aim of Nozick's utopian framework is to enable people to give expression to their real diversity.

But what if the essential cultural activities which make a great diversity conceivable to people begin to falter? Or are we somehow guaranteed against this? Nozick does not discuss this; it is as though the conditions of a creative, diversifying freedom were given by nature. In this respect the standard utopian literature, which as Nozick says is concerned with the character of the ideal community and not just with a framework for any community, is more realistic. For it faces the question of what kind of community we need in order to be free men, and then goes on to assume that this is given non-coercively." (p206, n7)²¹

This communitarian line can be overstated as an objection to liberal political doctrine. Nozick might well agree with this response of Will Kymlicka's: "Liberals think people naturally form and join social relations in which they come to understand and pursue the good: the state is not necessary to provide a communal context and is likely to distort the normal process of collective deliberations and cultural development. It is communitarians who seem to think that individuals drift into anomie without the state actively bringing them to pursue the good. The question is not whether individual's values and autonomy need to be socially located, but whether the social relations are necessarily political ones." (Kymlicka, 1989, pp904-5)

With this thought in mind, Nozick's model can be interpreted as containing individuals which, by hypothesis, are fully formed with preferences, articulated concepts of the good and so on which allow them to choose a favoured association. The abstractness of the model then might simply represent the bracketing out of all sources of coercion - particularly

21. Communitarian writers, including Taylor here, think of Nozick as a target only qua libertarian.

political or state coercion - which would distort the otherwise free association of people choosing their most desired lifestyle. In this case, the model is importantly different to Rawls' original position, which, as an abstract contract situation, has been perhaps the most influential recent manifestation of neutralism and the most popular target of communitarian criticism. Individuals in the original position are meant to agree on the principles of political justice which are to hold sway in public society and apply to the basic structure of society within which concrete socialised individuals live their lives. To remove bias and unpack the principles of justice as fairness, individuals in the original position are placed behind a "veil of ignorance" which brackets out their social position, natural talents and personal conceptions of the good. But Nozick's model does not necessarily involve such "radically disembodied" individuals; his subjects can be assumed to choose on the basis of full knowledge of their preferences and ideals. The model simply describes the abstract, ideal operation of free association under a neutralist framework; people in the model simply have the ideals they have and simply form the stable associations they form.

This will not silence criticism. It is not clear why a hypothetical situation representing the ideal operation of neutralism should impress anyone not already inclined to favour it. The telling criticism now is not that of a lack of proper context for choice, or of selves shorn of social attachments, but that people in the model ex hypothesi can and do choose, in the light of conceptions of the good which they possess fully formed, to set up and live in stable associations. This hypothetical situation, like that of Nozick's hypothetical explanation of the minimal state, need not impress anybody. Thus if we assume that the Sandel/Taylor criticism is dealt with by hypothesis, or behind the scenes as

it were, in the model, then we succeed merely in emphasising the extent to which it is hypothetical.

Considerations connected with projecting the model onto the world underline this problem. We have seen that Nozick recognises the impossibility of realizing every possible good, and makes it a virtue of the framework that it doesn't enshrine one fixed pattern. He also recognises various problems. Overcrowding will lead to difficult relations between communities. (ASU, pp323, 329-30) We might be unable to persuade enough people to live in our favoured community. Obtaining information about alternative communities can be expensive in the real world, as can travelling to reach them. Actual communities may try to keep their members ignorant of alternatives and prevent them from leaving. (ASU, pp307-8) But he puts such difficulties aside to be resolved at some future date. In fact they are fundamental to the plausibility of his account. It is deeply unrealistic to expect a diversity of voluntary communities with truly different ways of life to develop as Nozick hopes, unless for instance there is plenty of space fairly rich in natural resources, and not many people.

Without these conditions, economic and geographical pressures will too often be the real deciding factors. For example, take a community set up on redistributive principles. Could such a community "survive the departure of the wealthy members whose moral principles are weaker than their desire for wealth? Could it withstand the pressure of applications to join from the down-and-outs left to starve in neighbouring communities run by ruthless capitalists?" (Singer, 1982, p38) Again, "could a community maintain its dedication to an austere way of life of virtue if it were surrounded by the flashy temptations of American capitalism?" (ibid.) As Singer knows, Nozick insists such a choice - between austerity and the flashy temptations - must be left to the individuals concerned. But although some individuals will no doubt be able to maintain the

life of austerity, keeping their capitalist participations to a minimum, the likelihood is small that many communities of such people will survive if surrounded by neon. The chances would be increased dramatically by the presence of less capitalist individuals and more distance from them.

Nozick also ignores the fact that sometimes choices may be irreversible. "If the members of our little self-sufficient rural communist community decide to sell up to try their hands as corporate raiders they may find that when they decide to return to their former style of life, land prices - owing say to the explosion of the 'Golf Village' style of utopia - are beyond their reach." (Wolff, 1991, p135) This undermines Nozick's vision of people freely moving about from one way of life to another until they find their personal utopia. To prevent such irreversible choices, it is necessary to think of the framework operating in an environment with usable land in much greater supply relative to demand than in fact it is. Failing this, we should agree with Jonathan Wolff's suggestion that the framework is likely to end up presiding over a situation of increasing homogeneity as many utopian experiments fall prey to a law of economic natural selection. (ibid) This re-emphasises our earlier criticism of a voluntary filter as a means to discover "objective bestness".

He does recognise that there are problems in relation to education or information in the framework. (ASU, p308; p.330) For the framework to work there must be a free flow of information between and within the various utopian communities. Each person needs to be aware of the available alternatives for his choice to be informed. This applies to everyone, but most especially to children, whose experience is most likely to be limited to the community of their birth. There are two practical problems with this. The first is one of actually gathering knowledge about the range of past and present communities, and what conditions are like in them. The second

is that information about some ways of life might be presented in such a way as to distract from the possibilities of alternatives. The noise of some might simply drown out reports of alternatives. "Is the free flow of information sufficient to wash away the encrusted muck of billions of dollars worth of advertising a style of life devoted to the acquisition of consumer goods and the elimination of stains and odours?" (Singer, p38)²²

Ideally the information should be presented neutrally, but at the very least, for the framework to operate as Nozick hopes, it is necessary to assume that no one, or small numbers of, ways of life are able to dominate the channels of information. Again, this seems to require a degree of geographical space, so as to allow some distance between noisy neighbours. But also required is some kind of reliable communication system to ensure the desired dissemination of information. The state qua framework must be responsible and find the resources for something like a comprehensive telegraph system connecting all communities.

A more profound problem connects the issues of education and moral opposition. Some, perhaps many, morally introspective communities will be unwilling to allow their children, maybe even fellow adults, to be exposed to the possibility of alternative, sinful, ways of life. (Wolff, p135; Chaplin, p36) For example, there will be those who agree with Chomsky's view that to acknowledge certain ways of life as possibilities, even to admit the legitimacy of debate

22. Perhaps these problems, and that of reduced opportunity for choice through homogenisation, are lessened by the interpretation of the framework as neutral between moral conceptions rather than between abstract individuals conceived as essentially bearing natural rights to choose.

about certain issues, is already to have lost one's humanity. (Chomsky, 1969, p11) Chomsky had in mind fascist dictatorships and their methods, which, because of their combination of profound expressivism and imperialism, would not be tolerated within an operating framework for utopia. But the same attitude can be expressed towards any kind of association. For example, some might think it compromises their own moral identity to present sexual permissiveness as a possibly viable way of life.

To be sure, when these problems are bracketed out, the ideal framework world represents a recognisable hypothetical human social situation. This is a kind of pioneering environment with a few idealistic settlers and much land. Nozick seems to think the actual world is like this, or sufficiently close to it for enough people to find it inspiring. But short of this, liberal neutralism has to face the complicated issues of material distribution and education; preserving pluralism and promoting autonomy are not necessarily entirely harmonious ends. Outside the experience machine the circumstances of justice cannot simply be put to one side, or dealt with hypothetically. Insofar as he faces these issues Rawls' approach is more realistic, although I shall argue that it is unconvincing.

So in order to envisage Nozick's "utopia of utopias", with a true diversity of communities allowing free experimentation subject to consent, it is necessary to make certain assumptions. At the least, these are that there will be plenty of well resourced space relative to the size of the population, there will be efficient non-monopolised communication, and there will be insignificant numbers opposed to the framework, either for reasons of self interest or for principle. Thus we have a very American utopia, an image of an idealised pioneering situation, with continuously plentiful land, a state confined to preserving the neutralist right to

the free pursuit of dreams, information transmitted without any distorting effects of over commercialism and an absence of significant interference with existing or aspiring communities by unscrupulous or reactionary parties. (By significant, I mean more than could be dealt with by a framework state that is barely noticeable.) Nozick's utopian programme seems to involve a rerun of the history of the United States, but without the more unfortunate aspects. Moral opposition including that of reactionary John Wayne types is more or less bracketed out, as are those libertarians who are unwilling to confine their assertions of natural rights to libertarian gatherings.

In the actual case, only certain kinds of community could survive the frontier conditions. The example of the Mormons, "the most successful cooperative experiment" in American history, illustrates the necessary qualities. (Brogan, 1985, pp238-51) In addition to Joseph Smith's "dynamism and good looks", his new creed answered to the questions and needs of many of his pioneering contemporaries; it had the required air of Scriptural Authority, claiming that the Garden of Eden had existed in Missouri; it addressed medical needs through faith healing and, in a time still much given to Puritanism, addressed sexual needs through polygamy. (Brogan, pp238-9; Brogan reports that the "intricacies of Mormon polygamy strikingly resemble those of twentieth century American divorce, especially as to wife-swapping, p239n) Perhaps most important was economic organisation, a form of cooperativism under the autocratic rule of the Prophet. Other attempts to hold land in common, such as by the Pilgrim Fathers and Owenite socialists, were undermined mainly by the general desire for individual property. The Mormons' enduring success in this was probably largely a function of their persecution; their initial cooperativism brought high (collective) profit and an ability to acquire the best land. Those who were repelled by the Mormon practices thus had extra motivation for hostility at

a time of economic crisis. (Brogan, pp240-41) Mounting persecution, culminating in the lynching of Smith and his brother who had been jailed for destroying the press of an apostate Mormon newspaper, forced the migration West under Brigham Young to find the "White Horse of Safety" foretold by the Prophet. The success of the Utah settlements was a testament to the collective determination and discipline of those who made the journey and to the ruthlessness and organisational ability of Young. Crucially, it also reflected the relative lack of other settlers in the Great Basin area, the introspective unity of the church, and the opportunities brought about by the Louisiana Purchase. (Brogan, pp242-9)

It might be thought that we are being unfair to Nozick by developing this criticism. After all, his explicit intention is to outline utopia, and this word has connoted the unattainable since it was first coined. (Manuel and Manuel, 1979, p1) He is arguing for what he believes to be right in principle, and describing what he believes to be inspiring in fact. The problems we have seen, which make the framework world hypothetical as described, are contingently important, but still it might be appropriate to be guided by the right principle, even though their utopian implementation is unattainable. Nozick says that although there are problems with the operation of the framework, he is making a case for moving in the direction of its implementation. (ASU, pp308-9)

The view that the unattainability of a utopian conformity to principle P does not make the promotion of P irrational, has some general plausibility. If it is believed that lying is generally wrong, then it does not follow that because lying will certainly continue whatever anyone says, it is a mistake to condemn it. One objection to Mill's promotion of free speech has been that he tried to apply to society at large a muddled version of the norms appropriate to the academic community, and thus he ignored the fact that "society is not a

debating chamber". (Willmore Kendall, 1986, p138) But actually Mill was perfectly aware that society is not a debating chamber, and it is reasonable to argue that, insofar as society is a moral (as opposed say to an economic) enterprise, then to some extent it should be more like a debating chamber.

But there are problems with this move in Nozick's case. If we are going to avoid merely contemplating an obscure, unfocussed picture of individuals making decisions about the good in the abstract, divorced from the social reality which formed them and informs the context of their imaginable options, then we have to bear in mind social or historical context. We have seen that the "projection" of Nozick's possible worlds model only produces the goods under fairly extreme counterfactual conditions; those of the utopian frontier: his utopia truly is "utopian" in the pejorative sense. Adopting this utopian context is one way of escaping the most abstract individualism; one with the dubious advantage of being a direct projection of the model by mirroring the assumption there that individuals actually do choose their stable associations having already developed a meaningful capacity for choice. Thus the social conditions of the utopian pioneering situation are simply assumed to provide the context for socialising individuals with a (utopian) capacity for choice.

We can now see the hypothetical charge more starkly, for the utopian route obviously is inadequate as a way to escape abstract individualism: it makes the alternatives accepting an implausible concept of the person or embracing a socio-historical fantasy. The other escape route is to treat the potential citizens of the framework as present in the actual non-utopian world. Once this is faced, then the issue of whether it is reasonable to try to move society in the direction of the framework, qua minimal state, cannot be

decided by simply registering the existence of some plurality, appealing for universal voluntarism and quoting Tocqueville. (Singer, ibid)

It is clear that the movement Nozick favours is in the direction of the libertarian nightwatchman state. We have seen that the libertarian state is not equivalent to a state embodying the neutralist framework. But Nozick thinks that it is, and therefore will believe any reduction of state activity, down to the point of minimalism, is a step in favour of the framework. But this is a view informed by the discredited libertarian background. De-politicised libertarians will not dictate the nature of the framework. It might be that the other associations agree with Peter Singer: "We do not enable people to govern their lives by giving them a "free" choice ... while refusing to do anything about the contexts in which these choices are made. To say this smacks of paternalism and has unpleasant totalitarian associations. But what if the choice lies not between paternalism and freedom, but between making a deliberate attempt to control the circumstances under which we live and allowing these circumstances to develop haphazardly, permitting only an illusory sense of individual liberty?" (Singer, p39) If the libertarians cannot bear this then maybe some form of opt out arrangements can be made just for them.

Chapter Eight: John Rawls' Justice as Fairness: Reasonableness Without Foundations?

The most influential current theory of political liberalism is Rawls' justice as fairness. In a line of development starting with "A Theory of Justice", and culminating in his recent book "Political Liberalism", Rawls has emphasised the distinction between liberalism as a political conception of justice and as what he calls a non-public comprehensive moral doctrine centred on the individualism and autonomy associated with Mill and Kant. He rightly sees liberalism in this latter sense as another sectarian doctrine of the morally good life, and he wants to establish justice as fairness as representing a unifying consensus of political liberalism encompassing the moral plurality. (see for example the preface to Political Liberalism)

We have seen that Nozick's over utopian disregard of certain factors - particularly those pertaining to the "circumstances" of justice - undermines his account of the framework. Rawls' approach, in drawing out the implications of a consensus to establish political principles comfortable with plurality suggests itself as a possible plug for some of the gaps in Nozick's case for the framework. However, in this chapter I try to show that Rawls fails to locate justice as fairness convincingly on the non-sectarian side of his distinction. He therefore fails, I think, to provide a convincing non-pragmatic case for the neutrality thesis. Firstly I try to summarise in a relevant way what is a highly complex position capable of supporting a variety of interpretations and emphases. Then I go on to criticise Rawls on the basis of that summary. The conclusion I reach suggests a route through the issues taken up in the next part, which is

about Nozick's post-Anarchy, State and Utopia theories of ethics as responsiveness to value, and intrinsic value as degree of organic unity.²³

Rawls now presents justice as fairness as a non-sectarian, non-comprehensive moral doctrine because, unlike liberalism based on individualism and autonomy, it is a form of political liberalism the aim of which is to develop an overlapping consensus of basic ideas between rival moral conceptions within democratic societies; these ideas therefore must not rely on controversial metaphysical, religious or moral doctrines. (pp.xxv-xxx)²⁴ His method is to develop and clarify the basic neutral - "reasonable" - ideas appropriate to such a consensus and apply them to a social contract situation so as to unpack the substantive principles of justice to shape the basic structure of constitutional democracies. The ultimate authority of the deliverances of people behind the veil of ignorance in the original position, is to be understood as resting on the consensus to which they give expression, or which they represent.(p24) The principles issuing from the original position are not only consistent with, but are formed under conditions required by an appropriately public conception of what it is reasonable for such principles to reflect.

Thus justice as fairness is meant to be a bridge between a developed consensus of basic intuitions and the basic structure of society, where the basic structure of a society is its "main

23. Page references for Rawls are to his 1993 Political Liberalism. But I am indebted to Jean Hampton's 1989 discussion and criticism of the development of Rawls' views.

24. However, it is unclear whether he thinks justice as fairness is a form, rather than the form of political liberalism. (Hampton, pp799-800)

political, social and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next". (p11) The basic structure, the public culture and diversity of democratic society will form a fully coherent whole when justice as fairness is articulated and enacted. This is what it is for democratic society to be governed by the Reasonable. So certain important ideas are implicit in the procedures reasonable people engage in within democracies. This is the sense in which there might be a latent consensus within the democratic tradition: a public criterion of reasonableness.

These ideas concern elemental notions of moral personhood and a well ordered society. Rawls sums up Reasonableness by specifying "two of its basic aspects as virtues of persons". Firstly, reasonable people are "willing to propose fair terms of cooperation and to abide by them provided others do". (cf. pp49-54) Secondly, they are willing "to recognise the burdens of judgement and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime." (p54)

Rawls also refers to "reasonable persons" as those "who have realised their "two moral powers" - capacities for a sense of justice and a conception of the good - to a degree sufficient to be free and equal citizens in a constitutional regime, and who have an enduring desire to honor fair terms of cooperation and to be fully cooperating members of society. Given their moral powers, they share a common human reason, similar powers of thought and judgment: they can draw inferences, weigh evidence, and balance competing considerations." (p55) The "burdens of judgment" accepted by reasonable people are "the sources or causes of disagreement between reasonable people so defined". (ibid.) Examples of these include such things as complexity of evidence,

indeterminacy of concepts, the influence upon judgment of background and experience, and difficulties in giving overall assessments in the face of different normative considerations applying to the same issue. (pp56-7)

Thus people have their own non-public comprehensive moral conceptions in the light of which they live their lives. For Rawls this is the sphere of "the Rational" - the application of practical reason to social cooperation with a view to formulating and advancing a favoured conception of the good.(pp50-51) But in addition to this is the Reasonable public sphere of political justice, which political liberalism seeks to promote as an overlapping consensus between reasonable conceptions.

In these terms, Nozick's notion of The Rational - the organisation of voluntary associations around particular conceptions of the good - is served badly by his framework for utopia. External circumstances of material distribution (including land space relative to population) need to be addressed. These are dealt with (or at least approached) in Rawls' account, because of its focus on the basic structure of society as the subject of justice. But more important is the way he takes his position to be justified by an appeal to The Reasonable. If this appeal works then it promises to support the structure of an extended state and remove the obstacle of moral opposition which beset Nozick's framework. We might say that Rawls' account tries to solve the external problems of justice via a solution to the internal problem: deliverances from within the original position represent a consensus between people holding different and often otherwise incompatible moral conceptions. In this way he embraces the artificiality of justice as well as a neutralist framework for moral diversity.

Unfortunately Rawls' account remains seriously vulnerable to criticism. My basic line will be a criticism of his particular appeal to consensus as a justification of neutralism. To begin with we should question his emphasis on the connection between reasonableness and stability: An acceptable notion of justice has to be feasible, and feasibility in the sense of allowing stability under pluralistic conditions, requires reasonableness to yield justice as fairness. This is his solution to the internal problem, but it is unsatisfactory prima facie if only because stability, although presumably in some sense a good for most people, is ambiguous between unity in diversity and just uniformity. Even if stability really were the sole end of political justice then why go for the unity in diversity interpretation unless there were some convincing reason to believe that pluralism is naturally inevitable no matter what?

Now, Rawls thinks that a reasonable plurality is inevitable given the operation of human reason within free institutions. (eg p xvii) Indeed this is a consequence of the burdens of judgment. There are two important claims here. One is that free institutions are desirable; the other is that given these then reasonable pluralism is inevitable. Both of these might be questioned rationally. Some will take the inevitability of plurality under free institutions as a reason not to have them; an imperialist utopian, or a reactionary John Wayne type might be happy to be unreasonable in Rawls' sense as long as he feels secure in the rationality of his own comprehensive doctrine. Moreover, even given free institutions it is possible that a particular conception catches on to the extent that homogeneity occurs voluntarily. (Hampton, pp805-6) Although as we have seen, contra Nozick, this would not be conclusive evidence of "objective bestness".

Rawls believes that the basic intuitions of reasonableness are embedded in the modern democratic tradition which has grown up since the Reformation under conditions of increasing pluralism. However, there is a problem in deciding how to interpret "the fact of pluralism under modern conditions" and its relation to the consensus on the reasonable. When Rawls talks of a plurality of conceptions encompassed by an overlapping consensus, he means a "reasonable pluralism" rather than plurality simpliciter. (eg. p144) But it is not entirely clear whether he means there is a consensus on the relatively substantive notions involved in justice as fairness, or on the desirability of a stable, cooperative and pluralist society, to which the former are instrumental. It is possible to interpret him as moving from the former to the latter position through his writings in the 1980s. (Hampton, p796) In Political Liberalism he seems to put the matter almost hypothetically when at various points he says that political liberalism tries to answer the question "how is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical and moral doctrines?" (p133)

The position here seems to be that if you want an answer to this question then political liberalism provides one: build an overlapping consensus on the reasonable in order to enact justice as fairness. So to say that political liberalism, or justice as fairness, is appropriate for modern democratic society or embedded in the democratic tradition, now seems to mean that there is a consensus on the terms of this question. That is Rawls seems to assume a political conception is already shared, at least to the extent of a shared desire for some kind of liberal solution to the (internal) problem of stability in the face of plurality. His solution is that given a reasonable plurality, then justice as fairness (or some other

political liberalism) is possible as the public face of a stable and just pluralistic society.

In the previous chapter we saw how Nozick must be led to ask how a neutral framework can encompass a plurality of moral conceptions under actual conditions. But it is highly unlikely that everyone (or nearly everyone) in democratic societies is exercised by this question. One immediate problem is that it is not clear whether Rawls is thinking specifically of America. But even in America public metaphors of the "cultural melting pot" and the "patchwork quilt" have been in opposition, and variously interpreted as means both of embracing and discouraging differences. So either there has been no consensus on what operating such policies means, or there has been no consensus on whether to operate either of them at all. A plurality of different forms of protestant Christianity is one thing, a plurality of religious forms as such is another. Given this, it is highly questionable whether there is or has been a consensus of the sort Rawls needs. Two alternatives seem more realistic:

Firstly, it might be that a significant but incomplete consensus of the sort Rawls points to does exist within the democratic tradition. Even if this were true it is not enough just to point to it as the basis of justice as fairness without showing why such concerns have particular authority. Even if significant, the consensus cannot be absolute and eternal; there will be waverers and minority oppositions within the tradition, as well as opposition from non-democratic places. These need to be shown why the intuitions internal to Rawls' (and perhaps 'our') concept of justice should have any force for them. To see this point, consider one response Rawls makes to the criticism of the abstract non-historical nature of the Original Position. As reasonable people, it is a "considered conviction of ours" that to occupy a certain social

position is no reason to accept, or expect others to accept, an account of justice favouring those in that position. The "veil of ignorance" around the original position expresses this conviction. But by the same token we can ask why the mere fact (if it is a fact) that justice as fairness accords with, and so favours, certain historically and socially specific ideas should be a decisive reason for others to accept it.

Secondly, it seems likely that what social cooperation there has been within democratic societies does not reflect any significant consensus of Rawlsian intuitions. Instead, there are various different views of the ideal state essentially bound up with comprehensive ideals. For example, some favour libertarianism founded on Lockean and Kantian principles of individual autonomy. We have seen that the version defended by Nozick in *Anarchy, State and Utopia* is probably not consistent with any state at all, despite his intention to justify the minimal state. This application of individualism and autonomy is inconsistent with Rawlsian justice as fairness; even if the latter is not presented as a comprehensive moral conception, it will be another rival sectarian political doctrine from the libertarian point of view. The same will be true from the perspective of any desert based view of entitlement, whether or not allied with characteristically (sectarian) liberal ideals of individualism and autonomy. Such rivalry does not exist only on the level of philosophy; the principles of distributive justice or justice in holdings which emerge from the accounts of Rawls and Nozick serve as rational reconstructions of positions familiar within modern political debate. (MacIntyre, 1981, p246) Moreover, not every moral conception in the democratic cultural/political market place is equally committed to toleration, or to other components of Rawlsian justice, for example, equality of opportunity.

It seems much safer to cite a pragmatic consensus around such views as that democracy is not an ideal at all, but because it is likely to produce a power executive less removed from the wishes of the governed, it simply is less awful than any realistic alternative; all or most are likely to agree to a form of government preventing one group from monopolising power. Thus democracy is favoured because it is more likely to be safe and stable. But this is a more Hobbesian consensus based on an assessment of self or group interest in the face of opposition and competition, rather than a moral consensus featuring a commitment to a moralised notion of the person (as free and equal) and of society (as an enterprise guided by fairness and cooperation). Traditionally, when the principle of toleration has been defended in terms other than as a consequence of a comprehensive moral or religious doctrine which stresses the value of autonomy, it has been advanced on general pragmatic grounds: too much sectarian conflict is bad for business. (Kamen, 1967, pp224-7)

This is not necessarily to denigrate pragmatic grounds for toleration or neutralism. We should be ready to face the possibility that such grounds are the only realistic solution to the internal problem. Rawls distinguishes his idea of an overlapping consensus from that of a modus vivendi. The reasonable comprehensive conceptions within an overlapping consensus support the moral component of the public political conception - ideas of free and equal personhood, the virtues of tolerance and respectfulness and so on - because in their own way, for their own particular religious, moral or philosophical reasons, they all intersect on these features. The consensus is inclusive. The neutrality of the political settlement involved consists in the fact that none of the particular comprehensive doctrines is singled out as its ground; all are involved in its construction. A modus vivendi, on the other hand, encompasses parties which support a cooperative system

for contingent reasons such as lack of power, exhaustion and so on. If these contingencies change, then the reasons for the modus vivendi might disappear. Thus a truly overlapping consensus is inherently more stable than a modus vivendi. (pp146-48) However, pragmatically motivated modus vivendi are crucially important historically as providing the space in which an overlapping consensus can develop. (pp158-168) But at the end of the day, Rawls still looks to be presenting a pragmatic, Hobbesian case for developing an overlapping consensus: it will bring greater stability to democratic pluralist societies. (Hampton, pp806-807)

However, given the terms of his account it is hard to see how he can expect to carry off the move from modus vivendi to consensus on justice as fairness. At one extreme there is a purely pragmatic modus vivendi; a situation of grudging negative toleration between would-be imperialists biding their time whilst participating in what they hope is (or wished was) a temporary liberal settlement. On the other hand is an overlapping consensus of Reasonable intuitions grounding justice as fairness. But between these there must be at least one intermediate position: a non-Hobbesian consensus on the desirability of a permanent liberal settlement. There is no Rawlsian overlapping consensus. But more fundamentally there seems to be no intermediate consensus either, and without this there is no prospect of the other.

The most serious obstacle to the intermediate position is simply the continued existence of what Rawls himself calls the dominant tradition in political philosophy. This says "there is but one reasonable and rational conception of the good. The aim of political philosophy - always viewed as part of moral philosophy, together with theology and metaphysics - is then to determine its nature and content." (p135) Rawls mentions here Plato, Aristotle, Augustine, Aquinas and the

classical utilitarians, but insofar as Anarchy, State and Utopia is libertarian, then it too is an example of the dominant tradition (along with the liberalism of Kant and Mill). This "dominant tradition" occupies various places towards the end of maximum expressivism. In terms of Nozick's distinction between types of utopians, it consists of various ways of being either a missionary or imperialist utopian.

Without a consensus of the sort Rawls needs, his model of justice is only one of the competing plurality. Because his main opponents - I mean particularly non-liberal expressivists within the "dominant tradition" - take it as an alternative version of the good life in a good society, involving a particular version of the liberal separation of public and non-public aspects of morality, they criticise it as such. This helps to explain the real force of the familiar criticism that justice as fairness relies on a non historical and over thin notion of the self; such critics do not accept the public/private separation involved in setting up Rawls' contract situation. To be in the Original Position is to represent, fairly, free and equal persons cooperating in matters of political justice. Communitarian critics have questioned the appropriateness of the detached and shrivelled notion of the self involved in this procedure. There seems to be little of relevance to actual decision making within actual communities in trying to decide what would be agreed by purely hypothetical and abstract rational agents ignorant of their own natural abilities and social position.

We have traced the route which takes Nozick's choosers from a position of abstract hypothetical irrelevance into the arms of an extended redistributive state, via a utopian pioneering situation. Rawls of course doesn't believe that people can live as if they really were abstract individuals.

For him the point is not to try to decide what is the content of the good life by working out what would be agreed by people removed from the conditions necessary to any realised conception of the good life (perhaps any human life) - full embodiment in a social world. Rather the point is to establish the content of public impersonal justice - the shape of the basic structure as a fair background for public cooperation - and not to establish a blueprint for the whole of life. Furthermore, as we have seen, the basic justificatory ideas for this procedure are supposed to be connected to the public culture of the democratic tradition. That is, ideally the procedure is to be sanctioned precisely by a socially given notion of what is reasonable.

But the important point is that this answer is not going to satisfy those who see differently the relation between public and private. These will not agree to take seriously judgments from the Original Position. It is not so much that these judgments are impossible because only unreal, abstract quasi-humans could make them, it is more that they have no moral force because they get the direction of justification the wrong way around. The fundamental criticism would be that the task of political philosophy is not primarily that of securing agreement about a public realm of cooperation consistent with a plurality of non public conceptions of the good; rather political philosophy is bounded by moral philosophy, proper political practice by ethics: the public, or political, is to be an extension of the very same morality which is to inform the private or personal. The non-liberal expressivist could accept that if the construction of a neutral liberal space was an appropriate goal of political philosophy, then the original position is an intelligible way of going about it, although he might not. But of course he does not accept that goal; he remains to be convinced of it. In this case political philosophies reflect an underlying lack of

moral consensus. Thus Rawls needs to show why the consensus he wants to exist ought to exist. Put another way he needs to explain what it is about moral philosophy which makes that kind of consensus a proper objective for political philosophy.

This is to say that to satisfy its moral critics, the reasonableness of justice as fairness needs a moral foundation. The problem now is that to do the job the moral foundation must itself be non sectarian in the sense of not issuing from a specific conception of the good. An example of the sort of move Rawls needs to make would be to identify some feature of the general notion of a comprehensive conception of the good life aspiring to objective authority which requires that particular determinate conceptions tolerate and respect rivals. The notion of political justice building on this would be morally grounded, without being a comprehensive moral doctrine specifying a concept of the good life, beyond public cooperative virtues of toleration and respect. Something like this, which must be distinguished carefully from libertarianism, is needed to secure Rawls' vision of the task of political philosophy under conditions of pluralism. At least it is needed to provide Rawls with something to say when confronted with disagreement about the task of political philosophy or the relation between moral and political philosophy. This disagreement itself is a further manifestation of the internal problem of justice.

An important aim therefore is to describe a highly general theory of morality which both points away from expressivism towards neutralism, and involves a plausible claim to wide inclusiveness. This would show that a political philosophy "bound by moral philosophy" need not be highly expressivist, in the sense of insisting that politics institute a particular substantive ideal of the good life. It is with this modification of the Rawlsian project towards the ideal of an

Amsterdam of moralities in mind that we move beyond Anarchy,
State and Utopia.

PART THREE

VALUE AND COMPLEX RESPONSIVENESS

Chapter Nine: The Zig Zag of Politics

Nozick finally announces his abandonment of libertarianism in a chapter of *The Examined Life* entitled "The Zig Zag of Politics". As a rider to his comments there he says "I do not mean to be working out an alternative theory to the one in *Anarchy State and Utopia*, or to be maintaining as much as possible consistent with the current theory either; I am just indicating one major area - there may be others - where that theory went wrong." (EL p287n)²⁵ Two main passages indicate the area of libertarian error.

"[Libertarianism is] 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, as a way of marking their importance or urgency, and hence of expressing, intensifying, channeling, encouraging, and validating our private actions and concerns toward them." (EL pp286-7)

"The libertarian view looked solely at the purpose of government, not at its meaning; hence, it took an unduly narrow view of purpose, too." (EL p288)

The libertarian view of the purpose of government was as defender of negative rights, enforcer of contracts and so on. The "meaning of government" seems to be its role in symbolising or expressing ties of social solidarity and humane concern, which Nozick thinks is continuous with, rather than necessarily

25. This should be kept in mind as a qualification of the post *Anarchy, State and Utopia* material considered as a criticism of the libertarian and "utopian" positions looked at earlier. Still it is worthwhile to try to understand the later material in terms of the issues we raised with the earlier.

opposed to, a concern for individual liberty and autonomy. (EL, p287) Thus the new, post libertarian, view of the purpose of government as an institution of collective action is to symbolize the joint consideration of humane issues, and express solidarity. Nozick also stresses that this involves actually getting things done: joint goals ignored by government tend not to be achieved or to receive little attention. (ibid.) So we can distinguishable two general purposes of government:

GP1 - Achieve certain goals, including humane goals. This is worthwhile in itself, but also serves to:

GP2 - Symbolise solidarity through having shared goals, including humane goals.

GP1 and GP2 are consistent with a libertarian minimal state. The nightwatchman state has goals, including goals a libertarian might want to call "humane" - the defence of rights and so on. And it symbolises shared libertarian values by its very minimal nature. Actually many kinds of state would satisfy both general purposes - eg theocracy - as long as state activity expresses shared values. It is necessary to be more specific about the goals and values shared which the government is to achieve. These particular purposes are necessarily inconsistent with the libertarian state:

PP1 - Achieve certain goals, including humane goals through redistributive activity if necessary. This is worthwhile in itself, but also serves to:

PP2 - Symbolise solidarity through having a shared concern for the material well being of fellow citizens.

This is the sense in which "joint consideration of humane issues and human solidarity were not knitted fully into the fabric of libertarianism"; it is the purpose relative to which

libertarianism must be "seriously inadequate". Thus we see reflected these points from parts one and two of the thesis: "self-shaping meaningfulness" is better achieved through a redistributive state; a viable diversity of moral alternatives will probably need to be maintained by a redistributive extended state. Nozick now seems to believe that the circumstances of justice favour redistributivism to foster self shaping and diversity; there is no point putting counterfactuals, such as universal voluntary benevolence, at the heart of a political theory.

We have seen that he now endorses the role of democratic electorates in driving the process of government; how extensive and intense relational ties of solidarity are to be depends on electoral consent (the zig zag of politics). This is said to be appropriate in the context of what in Philosophical Explanations he calls "strong pluralism" - the heterogeneity and (physical and theoretical) incompatibility of possible values/goods. He allies himself with Berlin in this respect. (EL pp292-3; Berlin, 1969, pp168-72) Moreover, in his discussion of the "ideological zig zagging" of democratic electorates he explicitly recognises that libertarian values (including the "entitlement" understanding of justice) are only part of the values held in pluralist democratic societies. (EL p292) Here he echoes Bernard Williams' criticism of Anarchy, State and Utopia - it takes one value and allows it to take over. (Williams, 1982, p34)

The claim is that the zig zag of politics is the best way of getting many values covered given they cannot be realised simultaneously (and given that the libertarian framework is no longer acceptable). Nozick correctly identifies his opponent on this point: "that the least ideologically committed voters may determine an election is abhorrent to the view that wishes politics to institute one particular set of principles, yet desirable otherwise." (EL, p295) Strong pluralism makes it

desirable. We have already seen, in part two, that the mere fact of strong pluralism does not refute expressivism. But we shall see that there is material in the account of intrinsic value in Philosophical Explanations to allow this argument:

1. The expressivist appeals to "the realm of value" (values that are objective at least in the sense of not reflecting mere personal preference) in thinking there is one set of principles - a blueprint - or one substantive conception of the good, which society must embrace or express;

2. Strong pluralism is a characteristic of the "realm of value" itself;

3. Therefore, appeals to the realm of value cannot ground one set of principles or hierarchy of values with which to order society.

Is Nozick's account of the zig zag of politics neutralist? It makes no pretence to absolute neutrality between democratic majorities and minorities; this would prevent the majority from expressing its solidarity. Moreover neutrality between the values of which there is a strong plurality is tempered by Nozick's emphasis on "solidarity of concern" which he extends to include "laws against discrimination" on the basis of race, sex, sexual preference, national origins etc." (EL, p291) Then this is in turn qualified by his view that the "intensity and extent" of the solidarity expressed through the political realm depends on the electorate. (El, p292) But the account is certainly neutralist in the sense of wishing to prevent the state from permanently enshrining one set of values or moral vision: the content of the concern expressed is determined by the majority of the concerned electorate, not by a preordained set of principles designed to secure a particular expressivist interpretation of the good. A concern to prevent society from

being dominated for long periods by a particular pattern of value (the effect of a permanent majority) might itself motivate measures to defend "minority rights".

We shall see that the democratic zig zag/solidarity state represents a combination of organicism and pluralism. In between it and the political theory of Anarchy, State and Utopia is the account of ethics as responsiveness to intrinsic value, where intrinsic value is degree of organic unity (unity in diversity). The expressivist opposition to this view has often been linked closely with organicism. This shared organicism puts Nozick in a better position potentially to convince such expressivists of strong pluralism and its neutralist consequences. This is part of what we shall call the "inclusivity" of his position; whereas Rawls tries to avoid metaphysics in order to side step controversy in building his overlapping consensus, we shall interpret Nozick as appealing to a deeper possible consensus behind metaphysical controversy.

Introductory Comparisons

Before looking at the details of his account, I shall give give a short advance summary of what to expect by very briefly distinguishing Nozick's views first from Kant's and then from organicist expressivism.

Kant wanted to reconcile reverence for the moral law - the experience of an external authority to morality - with autonomous legislation of moral imperatives. Certainly, this experience is a misrepresentation in Kant's view, for the demands of morality issue from the rational will and not from the external world; nevertheless, they have objective authority as demands of practical reason. Moreover, it is possible to choose to transcend empirical ends in favour of the moral demands of practical rationality constitutive of

autonomy; the moral agent does this when she conforms herself to the categorical imperatives which she simultaneously legitimates qua rational agent.

This is the Kantian notion of autonomy; i.e. "that property of the will whereby it is a law unto itself": the will "makes" the law, but also has to conform to the character of the law. Conformity to the moral law - the exercise of autonomy or transcendental freedom - is consistent with the pursuit of a variety of goods in the sense of empirically conditioned ends. Kant believed some happiness must be mixed in with autonomy in order to produce ones summum bonum, but the empirical goods constitutive of particular favoured notions of happiness must be consistent with the practice of autonomy. Indeed, this is the basis of Kant's version of political neutralism.²⁶

It is probably in his explanation of the ontological status of value that Nozick's position most resembles that of Kant. He too wants to combine the fullest autonomy with conformity to normative requirements which have the external authority in some important sense. He proposes a theory called "realizationism", according to which we choose the existence of value, but not its nature. (we shall discuss this in the final, critical, chapter.) Another similarity is that the strong pluralism exhibited by the external value realm allows the formulation and pursuit of diverse value packages, provided that they are consistent with a level of responsiveness to other values, particularly the value of other "value seeking agents". Finally, there is a similarity in that under conditions specified as ideal by Kant's moral theory - conditions of rational autonomy - what is specified as value

26. My interpretation of Kant here follows that of Larmore, (pp77-84), and Williams (1985, eg, pp190-92).

motivates and is experienced as motivating: one acts explicitly and consciously for the sake of the moral law. This conforms to Nozick's internalist "allure condition" on any candidate dimension of intrinsic value.

But the differences, of course, are more interesting and instructive. For Kant, the personal ideal is a matter of identifying with one's transcendental personhood. Attachment to empirically conditioned goods is inevitable, but these should not constitute the deepest attachment - some detachment is required. The deepest commitment should be to the moral law which, because it is empirically unconditional, is necessarily universalised. In this way, Kant makes the Right prior to the Good "all the way down": all rational agents are equally subject to the categorical demands of morality, which take precedence over hypothetical (because empirically determined) imperatives wrapped up with particularist goods, attachments and commitments. These latter are excluded from the domain of universal morality. Because it reserves deepest commitment to the moral law as a condition of moral agency, Kantian autonomy is compromised as a foundation for neutralism; like libertarianism it is a definite form of expressivism. (Larmore, eg pp91-2) Despite the importance which Nozick attaches to autonomy, the theory of value and ethics he defends in *Philosophical Explanations* is diametrically opposed to that of Kant in many important respects. As we shall see, Nozick builds particularism into the basic moral characteristic responsible for the generation of ethics, and this spills over into the particular modes of responsiveness it can be owed and which it can owe to others. This inevitable "hypothetical"²⁷

27. Hypothetical, in the Kantian sense of empirically conditioned, precisely not in the sense of "radically counterfactual" which we criticised earlier

or particularist strand is reinforced by the following points also contained in his account of ethics as responsiveness. What foundational principles there are don't determine one substantive ethical theory. Moral structures which sanction exceptionless principles of determinate content are vulnerable for that precise reason. Alternative moral structures will not provide algorithms for moral judgments. Rights are generated from the complex oughts and ought nots of responsiveness and anti-responsiveness; judgments about them will be subject to the same indeterminacy, and this includes judgments about fixing a domain of autonomy.

Universal moral imperatives which ignore these concerns are more like a negation of freedom than constitutive of it. Moreover, the particularities of responsiveness represent the full embeddedness of ethical life. Nozick admits that abstract principles can be important, but often responsiveness is a matter of responding for the sake of others, rather than for the sake of the moral law (or for intrinsic value abstractly conceived). In this way, Nozick is in the communitarian camp, against Kantian liberalism. In his terms, the Kantian moral law gives the moral push too much precedence over the moral pull. "Kant's view makes the moral law concerning him arise from me in a way that does not adequately recognize the depth of the moral pull from him." (PE, pp550-51)

Nozick's answer to Glaucon's question - "why be moral?" - is that the cost of immorality is a value cost. It is not primarily a cost to be measured in terms of irrationality. Instrumentally speaking, immorality can be perfectly rational, given immoral goals. The disvalue of irrationality itself is to be understood in terms of the disvalue of the disruption of organic unity involved in embracing contradiction or in fitting inappropriate means to ends. But generally speaking responsiveness to value is a form of responsiveness to the world; to ethical complexity. Although abstract principles

can be important ways of maintaining responsiveness, it is hard to square them with the complexity of responsiveness. Thus there is no universal injunction to seek to remain above natural and social contingencies. Moreover, moral principles may be supplemented as aids to responsiveness by the example of individuals. That other people can manifest the allure of value, in the sense of being inspiring, militates against the Kantian suspicion of authority figures. Obviously, not any old authority figures will be consistent with responsiveness and (true) value seeking, but the point stands that, even putting the complexity of responsiveness aside, "abstract moral law" is not the only proper source of moral inspiration.

Despite the often important role of authority figures, fundamental to the moral personality is a capacity to take seriously Moore's open question; but this is not the capacity for practical reason or rational autonomy. (Compare: "this act is required by the categorical imperative, but ought I to do it?") The open question cannot be forced closed by appeals to abstract value because of the strong pluralism exhibited by the realm of the latter. Moreover, there is an important "inductive" component in Nozick's explanation of intrinsic value as organic unity. Organic unity is not identified with value a priori; Nozick claims that it underlies the majority of our judgments of intrinsic value across a range of domains, and within diverse metaphysical contexts; hence the inclusiveness.

Expressive liberalism based on the detachment ideal of Kantian autonomy cannot represent the end of least expressivism, but because it allows significant neutrality (between empirically conditioned forms of happiness) it lies at some remove from the end of maximum expressivism. This is where the most comprehensively "organic" ideals reside; where for example there is James' dreaded seaside boarding house with absolutely no "alienating" distinction between public and private life.

We shall see elements in Nozick's account which can be interpreted as pointing in this direction. Ethics is built on a conception of value which applies across the board. The conception of value is organic unity, understood as unity in diversity. The other side of the coin of particularist suspicion of moral universals is that it can seem to involve a non-liberal notion of equality, whereby to treat individuals equally is to place them in relation to a single blueprint of the good, and there are parts of Nozick's account which could suggest this. The general principle that we should respond to value as such means that people should be treated differently - i.e. in accordance to their value; people have their place in the scheme of valuable things in a way that suggests the metaphor of the Great Chain of Being; a constraint on the general requirement for individuals to respond to value is their own value; political rights are formed out of the oughts of responsiveness to value; the boundaries around a person's life or biography are indeterminate - they may include many relationships with others. Conjoined with the theory of value as organic unity, this could suggest a more Bradlean than Bradley picture of "my station and its duties".

In my concluding criticism I argue that due to its vagueness Nozick's account does not ultimately rule this picture out. But before then we shall see that militating against it there are several deep elements which make up a general trend away from the notion of an organicist blueprint for society: the "realm of abstract value" exhibits strong pluralism rather than a deep harmony and this leaves some objective space for choosing which value packages should be realised; if there is no single abstract blueprint for realising value, there is no overarching, substantial good which the political order and diverse personal commitment must share in order to be valuable. Such a blueprint cannot be appealed to in order to settle where to draw the line about the principled or strategic pursuit of responsiveness.

Moreover, the particularism built into the core of the moral agent - "the unique I" - spills over into the unique pattern of responsiveness internal to particular relationships. So, far from being confined to society as a whole, organic unity applies to these and to individuals as "self reflexive beings" apart from their relationships. The "basic moral characteristic" - value seeking I - implies a capacity for moral questioning, makes a moral dialogue of central importance and generates a universal individual right to moral opinion as a minimum of responsiveness to that moral basis. Autonomy is an important good (its value also is grounded in the organic unity account), but no specific practical range is determined a priori; agreement is important. These liberal elements are derived largely from a combination of the strong pluralism attributed to the realm of value, and the posited basic moral characteristic held equally by all persons, at least as a capacity. In addition, there is the "autonomous choice" of value which we can all make in accordance with realizationism.

These compressed introductory comparisons with Kantian and organic expressivism are based on material from the next chapters, which consist of expanded discussions of the general theories from which the material is taken. I assess the overall plausibility of Nozick's distinctive position in the final chapter, where I also discuss his realizationism.

Chapter Ten: Responsiveness

10:1 Introduction

In *Anarchy, State and Utopia*, Nozick was sceptical about the notion of an "objectively best" kind of life, both for any given particular individual or for individuals in general. He argued for a framework for utopia which would allow a plurality of conceptions of the good. Unfortunately, he identifies the framework with the libertarian minimal state, although libertarianism is itself a particular conception of the good, prescribing an objectively best kind of life for individuals in general (and to some extent for each individual). Diametrically opposed to Nozick's intention in *Anarchy, State and Utopia* is what he calls the "imperialist utopian": someone who believes that there is but one non-corrupt pattern or way of life which, if necessary, everyone should be forced into. I have argued that libertarianism is itself a "way of life", but it would be to go too far to say that Nozick wanted to coerce everyone into libertarianism. Libertarian Nozick was a missionary utopian; although we interpreted his doctrine in terms of Berlin's notion of positive (as well as negative) liberty, presumably he did not want to "force people to be free". However, we will see that there is a sense in which positing universal libertarianism involves a constriction of the personal basis of ethics.

In *Philosophical Explanations*, Nozick re-endorses the view of the political realm as the arena of enforced morality. Political philosophy is concerned with the legitimate use of force in accordance with the wider sphere of morality. (PE, p499-504) He understands the notion of a right to something in terms of that for which one may legitimately demand or enforce compliance. So his (brief) treatment of rights emerges from his account of ethics and value. But we shall

see that because of the nature of both ethics and value, politics cannot reflect these through instituting one single conception of the good life.

This at least is my interpretation. In this part of the thesis, I emphasise this underdetermination whilst giving an exposition of Nozick's theories of value and ethics. The expository task in itself is difficult, since these theories are very abstract, wide ranging and often rather vague and schematic. So I take the fact that my account of them is coloured by a concern to pursue the themes of my earlier discussions to be a help, rather than a hindrance. My exploration is guided by my use of these themes as a compass; different compasses would lead to different places. In the preface of *Anarchy, State and Utopia*, Nozick says that there is room for words on philosophical topics other than last words. (p.xii) This must be true also for exploratory interpretations of large scale philosophical theories.

The theories of value and ethics are to a degree intertwined in *Philosophical Explanations*. Ethical behaviour is understood as a special case of responsiveness to value which itself is part of the larger category of responsiveness to reality. The specialness of ethics consists in its subject matter - us. Our intrinsic value is of the same general sort as that possessed by other things, but our "preciousness" - largely the same characteristics which constitute our capacity for "self shaping meaningfulness" - now marks the presence of very high concentrations of value. Furthermore, the preciousness of persons marks certain ways that the value is configured, in ourselves and in our lives. Behaviour which is appropriately responsive to this preciousness, taking in the urgency generated by the high concentration, and the complexity of configuration, is ethical behaviour. Our capacity for it is another aspect to our preciousness. Moreover, "being

responsive" itself is intrinsically valuable.²⁸ The theory of ethics focusses, schematically, on the nature of the preciousness, and what is responsive to it. The theory of (intrinsic) value focusses on the nature of the value shared by this (ethics generating) preciousness, and many other things. Although Nozick presents these theories together, they are distinguishable enough to generate two separate routes to what can be called the underdetermination of politics: politics is constrained by ethics, but neither the theory of ethics nor (what drives ethics) the theory of value can be represented appropriately on the level of politics by a substantive political blueprint. This chapter looks at the theory of ethics, the next looks at the theory of value.

10:2 Moral Basics and Moral Particulars

Nozick admits that libertarian rights were given insufficient foundation in Anarchy, State and Utopia. He suggests two general strategies for establishing one: work back from the rights; work up from the foundation. These tasks might be attempted simultaneously, like a transcontinental railway. This allows the possibility that the two lines of thought do not meet in the middle, leaving two separate transcontinental lines. Nozick says "I don't pursue that task far enough here to see if there are two lines or one." (PE, pp498-9n) But it is hard to see how considerations of responsiveness could yield a secure foundation for absolute side constraints. This thought is reinforced by what he says about rights in Philosophical Explanations.

28. None of this is meant to deny the possibility of other beings of equal or greater preciousness, or of others with lower but still significant degrees.

Rights are moral requirements for which one can properly demand or enforce compliance; in terms of Nozick's theory of ethics they are the enforceable requirements of responsiveness. Delineating a set of rights is then a complex business. Whether or not I have any (rightful) rights is a function both of the responsiveness owed to me in virtue of my valuable characteristics and of the responsiveness owed to others; is making a certain enforceable claim on them sufficiently responsive to their value? "My rights are constituted by the treatment you ought to give me that others ought to demand or enforce of you - or at least, it is not the case that they ought not demand it." (PE, p499)

Of course, ethical requirements that do not make it to the level of political rights are still important - Nozick warns against putting the state at the centre of the moral universe. (PE, p500, p503) He describes rights as "coagulating" from all the intricate sets of "oughts and ought nots, permissibilities and impermissibilities, on responses and anti responses to people's valuable characteristics". (P.E., p.500) They are a set of blunt instruments which well up from the complex minutiae of responsiveness and anti responsiveness. Because of this it is hard to see them generally as a set of natural rights, defining a fixed body politic, universal and prior to particular coagulations (although we shall see that some rights might have something like this priority). There are two inter-connected themes in Nozick's account of ethics and rights which undermine the possibility of an ethical justification for a single political blueprint - one set of rights or enforced way of life. The first is based on a deep rooted particularism; the second on the general epistemological problem of finding what any given coagulation of responsiveness should involve in terms of rights, for example how to delineate an appropriate realm of autonomy. My discussion here tries to draw these themes together.

One way to emphasise underdetermination then is to stress the importance of particularism in ethics. Nozick's account of ethics as responsiveness is at home in the particularist trend away from what Bernard Williams calls "morality, the peculiar institution", or "special system". (Williams, 1985, p174) In a critique not confined to institutions peculiar to Confederate cotton plantations, Williams challenges the notion of morality as a system of remorseless, categorical obligations, which allows no ethical place of refuge from its universal blame ascribing mechanism: "from the perspective of morality, there is nowhere outside the system, or at least nowhere for a responsible agent." (Williams, p178) Indeed, because it "encourages the idea, only an obligation can beat an obligation" the peculiar institution ignores the ordinary view that other, non obligatory ethical considerations may take ethical precedence. He gives the example of someone under an obligation to visit a friend as promised who is then "presented with a unique opportunity, at a conflicting time and place, to further some important cause. ... You may reasonably conclude that you should take the opportunity to further the cause. But obligations have a moral stringency, which means that breaking them attracts blame. The only thing that can be counted on to cancel this, within the economy of morality, is that the rival action should represent another and more stringent obligation." (p180) But it is not clear what this higher obligation could be. "We are left with the limp suggestion that one is under an obligation to assist some important cause on occasions that are specially propitious for assisting it." (p181)

The supposed categorical and overriding force of moral obligations ignores the good often attached to non-obligatory acts of ethical worth. Recognising that ethics is not exhausted by morality understood in this way, has important consequences. If there is no "special system" which one must follow to the letter to live an ethical life, then there is no

such system which politics must enforce in order to remain in touch with ethics. Politics might detach from ethics and justify the set of political rights and duties it is prepared to enforce at some remove from purely ethical considerations, such as by appeal to social stability. Or politics might remain connected whilst being a different kind of ethical expression, justifying an ethical state not in thrall to any peculiar institution.

Now, Nozick explains ethics as demarcating the "push and pull of the responsiveness to the value or preciousness of persons. My value fixes what behavior should flow from me; your value fixes what behavior should flow towards you." (PE, p400-1) His particularism reflects a view that beyond a certain fairly indeterminate level, the extent of my value and of your value commitment, the degree of push and pull, depends on the nature of the relationship. Indeed, his examples of properly contoured responsiveness incline to the particular. Responsiveness to value, qua the value it is, partly is a matter of shaping the contours of behaviour to the contours of the valuable objects of responsiveness. Nozick gives three non moral illustrations: "First, consider workmanship, wherein the artisan adapts his action to the variational details of his particular materials. Second, consider the way intimate sexual behaviour is contoured to the partner's general desires, passing pleasures, passions, and emotions as these are expressed also in subtly nuanced physical position and configurations, pressure, sound and rhythm, as well as to the reciprocal contouring of one's partner to oneself. Third, consider how a voice is contoured to the thought it expresses; consider the different modulations and nuances, tempos, hesitations, emphases, and changes of inflection whereby a voice shows intelligence." (PE, p464)

But the key feature for the generation of ethics, what Nozick calls the "moral basis" or "basic moral characteristic"

(BMC), must be described in abstraction from the particular "richly textured" value found in real individuals. (PE, pp457-8; pp465-6) This turns out to be a capacity for "teleological value seeking", or for being a "value seeking I". (PE, pp457-8) It is our being valuable specifically through possessing this capacity which gets ethics going in the first place.

Some individuals are more obviously value seekers than others (see the allure condition discussion below). It is the ability to take seriously Moore's open question that distinguishes a value seeking I from a being having only wants, preferences and desires. If it is really value that someone is seeking rather than merely factual characteristics possibly coextensive with value, "it must make sense for him to ask of something: although it has certain factual traits and I desire or want it, nevertheless, is it valuable, ought I do it?" (PE, p458)

It is not that only people who have read Principia Ethica (especially Chapter One) may be moral agents, or that these must accept particular philosophical doctrines, believing say that the question must always remain open upon pain of committing a naturalistic fallacy. (PE, p458; p731, n57) It is after all controversial what such "open questions" show, and especially whether they justify Moore's view that identifying characteristics of value with favoured factual characteristics is to commit a naturalistic fallacy. (eg, Harman, 1977, pp17-20) "The person need not actually philosophize or worry about the question; but it must be possible to make the question real and salient to him." (PE, p458)²⁹

This is interesting and important. Open questions showed

29. That the BMC doesn't single out specifically "philosophising I's" is important to an understanding of Nozick's notion of "coercive philosophy", which we discuss below.

the gaps between libertarian rights and their intended foundation in "self shaping meaningfulness", and between neutralism and the existence of plurality and the necessity for trade offs between incommensurable goods. Here, the ability of the individual to question as well as make value judgements is made fundamental to ethics - not just in the trivial sense that the academic discipline of ethics presupposes questioning - but in the substantive sense of grounding ethical practice. Ethical behaviour is owed (at least primarily) to those beings who are at least capable of wondering to what ethical behaviour is owed, or whether their current range of responsiveness is optimal. Despite some affinities, this is a significant shift in emphasis from the "self shaping meaningfulness" foundation of Anarchy, State and Utopia. There the ability to formulate one's own overall conception of the good life was supposed to support the libertarian side constraint. From the standpoint of the value seeking BMC of Philosophical Explanations it is clear that possessing libertarian rights is not necessarily required for an appropriate level of self shaping; or that individual self shaping is necessarily the supreme end under all conditions. This inbuilt capacity (not necessarily lived out) for moral questioning should be borne in mind when considering the essentially epistemological problem of discovering true coagulations of rights and obligations amidst the complexity of general and particular modes of responsiveness.

The pull of ethics is about responding to the value of people, where the value of each individual itself constrains ethics by offsetting the requirement to respond to every nuance of the positive and negative characteristics of others. (PE, p523) However, ethical responsiveness mainly is responsiveness to others' BMC as that characteristic; behaviour is to be "fitting". Truly responsive behaviour is not simply contoured behaviour, even contoured behaviour which stems from one's own BMC: such contoured behaviour might only

be isomorphic to what would be truly responsive: "this would be an absurd result, for the isomorphic behaviour could be a delicate dance with one's finger or a pattern of scratching one's face, provided it stood in a one-to-one correspondence with the ... responsive behaviour." (PE, p465) The substantive nature of the behaviour must be responsive to the other's BMC as that characteristic, what is appropriate to pass from one value seeking I to another. This had better be ethical behaviour, for then we have a "structure wherein the two components ethical behaviour and basic moral characteristic, dovetail perfectly ..." (PE, p466)

Ethical behaviour is explained as generated by, and as responsive to, an abstraction from the colourful scene, so it would seem natural that questions about what is the required behaviour should be answered with reference to equally abstract general principles. In Philosophical Explanations, Nozick does assign importance to some such principles, some of which are based on there being any BMC at all - for example, do not kill beings with the BMC, or cause them to lose their BMC. These principles serve to prevent avoidance of ethical demands by removing BMCs from the environment. (PE, pp460-62) Other principles are based on the nature of BMC itself, thus given that the BMC is "being a value seeking I", then the fundamental ethical principle is "Treat someone (who is a value seeking I) as a value seeking I". (PE, p462)

But such principles cannot be worked up straightforwardly into a peculiar institution of morality. To begin with, the ultimate principles of responsiveness to BMC - "treat value seeking Is as value seeking Is"; "do not treat a value seeking I as less than a value seeking I" - do not amount to a set of substantive obligations or moral requirements; one wants to know what it is to treat a value seeking I as a value seeking I and so on. Taken as a moral foundation, they allow for

significant disagreement. Nozick lists three types of disagreement:

- 1) whether a given sort of behaviour is responsive, neutral or anti-responsive;
- 2) whether, if anti-responsiveness is ruled out, (some degree of) responsiveness is mandatory or supererogatory;
- 3) about the legitimate enforceability of judgements and principles of responsiveness and anti-responsiveness.

(PE, pp467-8)

Many will agree in many cases about what counts as responsive, neutral, anti-responsive behaviour. As Nozick points out, it is not hard to begin lists of these things, for example: murdering, coercing, manipulating, using and lying; it is difficult to end them. (PE, p474) Extremely important also is that moral insight can always be improved. Moral progress can include coming to see as responsive or anti-responsive what was viewed as neutral (in the sense of neither responsive nor anti-responsive). Increased moral sensitivity involves seeing differently what was taken for granted as neutral. (ibid.) Nozick cites the progressive examples of feminism, children's rights, animals' rights and environmentalism. These are forms of "consciousness raising". (PE, p474n) But the real situation is more complicated than even this suggests, for what counts as progress or increased insight itself is a subject of disagreement. The cynical phrase "Political Correctness" is used to criticise perceived over-extensions of "consciousness raising" and over zealous pursuit of otherwise true improvements in responsiveness. Such controversies can take in all three of the above types of disagreement, as in the case of positive discrimination.

Apart from deciding the contents of the lists, there are issues about how (anti) responsive are the listed features. "any given action will have many features - some may be on one

of the lists, some on the other; is the action as a whole responsive or unresponsive? How does it compare with other actions available to the person? How are we to judge actions that are responsive to some people yet anti-responsive to others, and how to compare these other mixed actions? For an agent or a third party to make a moral judgement of an action, some weighing of these features seems needed, as well as a specification of a structure into which these weights are to enter so as to result in a determinate moral judgement of rightness of wrongness, of moral permissibility or impermissibility." (PE, p475)

Nozick considers three types of structure for this job. (PE, pp475-94; Moral Complication and Moral Structure, passim.) Firstly there is the deductive structure: i) "Act A is morally impermissible" follows from conjunction of factual premise ii) "Act A has features $F_1 \dots F_n$ " with moral premise iii) "Any act with features $F_1 \dots F_n$ is morally impermissible. (PE, pp475-6) Approaches to ethical questions which consist only in employing this structure mechanically to determine a set of obligations count as peculiar institutions in Williams' sense. Nozick claims it is presupposed by most philosophical discussions of morality. (PE, p476) But it is vulnerable to conflict between exceptionless principles. (ibid.) And does not capture the nature of actual moral thought, especially the unwillingness to abandon moral insight and judgement for exceptionless principles of determinate content. (PE, p477) He admits that his earlier libertarian side constraint view was structured deductively but, looking around for a suitable partner in crime, he points to Rawls' lexical ordering which gives liberty priority, so as to avoid conflict between exceptionless principles. (PE, p734,n74). Any exceptionless lexical ordering even employed to avoid such a conflict, offends against "actual moral thought" in this way. (PE, p478)

Proponents of exceptionless principles might reply that if this is the nature of ordinary moral thought then it shows only that extensive moral education is required. But the unwillingness to accept exceptionless principles of determinate content must stem partly from the particularity of the unique I which is the value seeker (BMC). This is in addition to an honest recognition of the general complexities confronting her. For example, the open question about the supposedly absolute libertarian side constraint noticed by the value seeker, is very likely to be answered negatively by the self respecting unique I unwilling to be subject to crude universal moral algorithms. Nozick argues that neither of the two traits he emphasises - being a value seeker and being a unique I - are sufficient on their own to constitute the BMC. A value seeking machine lacking subjectivity whilst behaving in accordance to value consideration would not do. The "fullest moral pull" would not emanate from such a thing, nor would it come from a unique subjectivity permanently indifferent to value considerations. (p457) Far from establishing a fixed space of moral sovereignty around each individual properly guaranteed by a set of universal absolute rights to non interference, "the separateness of persons" is now interpreted as inconsistent with the universal acceptability of any such "peculiar institution".

Nozick emphasises the particularity of the unique I. The moral basis must both contain a general characteristic shared by everyone, and be such as to allow particular bearers of the characteristic to be valued for being themselves. This rules out theories which concentrate only on the value of being a bearer of a general characteristic such as rationality, an ability to revere the moral law, or to experience pleasure. Although these are not excluded as ethically insignificant. The tension between the general and particular requirements can be resolved by the characteristic "being a unique, individualised I" which is both possessed by everyone (at least

as a capacity) and focusses attention on the individual bearer.
(PE, pp453-4)

To be sure, non-unique selves are possible: "being an I" does not imply "being a unique, individualised I". (PE, p454) Moreover, valuing something for being unique is distinct from valuing something for the particular uniqueness it has. (PE, p455) The idea is that "We value being a unique self, and come therefore also to value the particular unique self someone is. Valuing that there is a unique self spills over to valuing, for itself, that unique self there is. (The path of spillover follows the logical principle of existential instantiation.)" (PE, p455) He gives the example of loving ones child, which begins by loving the child as bearer of the characteristic "being your child" and develops into love for the child in its own individuality. (ibid.) In *The Examined Life*, romantic love is discussed in a similar vein. If in love we valued mere bearers of general characteristics, then it might always be rational to seek to "trade up" for better exemplars. But actually, "the feeling that there is just "one right person" in the world for you, implausible beforehand - what lucky accident made that one unique person inhabit your century? - becomes true ... due to the particularities you come to love, not just a sense of humour but that particular one, not just some way of looking mock-stern but that one." This is to reverse the Platonic picture of love as a movement from particular exemplars to the forms. (EL, p76; pp80-82; see also Gilbert, 1991, pp74-9.)

The controversial nature of "progress" is often a function of the collision between particularistic ties and imperialistic moral attitudes. Nozick points out that some moral views make particularistic ties "whether to family, friends or one's people", and the special demands and responsiveness to nuance involved something to be eliminated by moral advance. Crude utilitarianism is an example of this; and libertarianism said

that moral progress consists in denying political weight to such ties. Other views derive particularism from deeper level universalistic principles; an example of this being Pettit's argument for rights as personalised constraints within a consequentialist framework. But these "misconstrue the moral weight of particularist ties". (PE, p456-7) This weight seems to reflect the "unique I" side of the BMC. It is not clear why it must be true prior to a judgment of the weight of such ties - say those of family, or of one's people - that they cannot generate rightfully enforceable claims to certain forms of responsiveness.

Thus particularism is deeply entrenched in Nozick's account, in the very basic characteristic responsible for generating ethics. Still, principles are important. Accidental responsiveness is less responsive than responsiveness which is intentional through being principled. (PE, p473) Principles considered as rules of thumb can help maintain responsiveness, relatively non-controversial examples are: do not lie, steal, murder, etc. (PE, p471) But it must be remembered that principles are "an abstraction from the richness of the fine modulations of responsiveness". "When principles guide behaviour, this helps to maintain a certain degree of responsiveness; however, since principles are crude instruments, they also interfere with or ignore other more delicate responses. There is no reason to assume that all the modulations of responsiveness can be captured by moral principles of a complexity we can manage." (ibid.) The main role of principles is to help maintain inter personal responsiveness where the relationships are not close enough to require delicately nuanced responses. (PE, p470) but this does not require them to be exceptionless or absolute. Moreover, they are not the only kind of conscious device useful for this purpose; the inspiration of moral role models can be just as important. (PE, p471)

A rule of thumb distinction between public and private morality can be based on that between valuing things for being unique, and valuing them for their own particular uniqueness. The latter valuation generally involves personal, nuanced responsiveness, the former impersonal, principle dominated responsiveness. But this is not to say that whatever principles one has must always be left outside the home, or that the relation between principles and "impersonal" responsiveness can always be made clear. The second kind of disagreement mentioned above is most relevant here: given that a certain rule of thumb principle is an agreed aid to responsiveness, say "tell the truth", there need be no agreed principle to say whether or under what circumstances telling the truth is mandatory rather than supererogatory, or what to do when it conflicts with other rules of thumb.

Nozick adds extra complexity to this issue by pointing out that "a constraint on treating everything in accordance with its value is your own value. A due sense of proportion is to be maintained." (ASU, p523) We are to treat things in accordance with their value, but this need not be taken to extremes of self denial or sacrifice. A vegetarian may still view as extreme the behaviour of "the Jains of India, who wear gauze over their mouths and gently sweep the ground before them as they walk, lest they inadvertently swallow or step on an insect." (ibid.) The value of following a principle or strategy of responsiveness, including those one is reluctant to think of as (mere) rules of thumb, must be balanced against that of continuing a "normal life" - a life valuable to yourself (and perhaps others) and involving responsiveness to a range of values. Nozick says that it is "the mark of the fanatic who has lost all sense of proportion" to claim that no cost is too great compared to the slightest application of a principle. (ibid.) And he is concerned to show that he is not a fanatic, not only in relation to animal treatment, but in human political terms: "I do not think others should be taxed

to support my research, and hence do not apply for or accept government research funds; I do not want to participate in this system, even as a way of receiving back unjustly taken tax payments. Yet I do not try to disengage myself completely from all government activities that I wish would not take place, such as mail delivery and public transport. I am not required to sacrifice a normal life of normal activities in order to avoid all contact with illegitimate activities, especially those that preempt the existence of legitimate private analogues." (ibid.)

Calculating the balance marks respect for one's own value, reflecting both a concern to avoid evil and to preserve some semblance of a normal life and pursuit of value. To deny that such a calculation is morally allowable is to have no due sense of proportion. "Each of us will judge others by where they draw the lines, realising that good people can disagree about their location, yet holding that they must be located at some place other than the endpoints. The intolerant person is easy to identify - he judges that anyone who draws the line on one side of his own is so lax as to be immoral, while anyone who draws it on the other side is a fanatic." (ibid.)

Nozick acknowledges that by emphasising the inadequacy of exceptionless moral principles, he is following the tradition of Ross and Ewing. He endorses the notion of prima facie duties and rights, and adopts the terminology of "right and wrong making features". (PE, p479; Ross, 1930, Ch.2) "A moral structure without exceptionless moral principles will build on such lists of right making and wrong making features, morally relevant but not conclusive. It is a further hypothesis of ours that what underlies these two lists of features is responsiveness and anti-responsiveness to another's basic moral characteristic (or, more generally, to his value); if so, the right-making and wrong-making lists are specifications of responsiveness and anti-responsiveness. The moral structure

will contain as components two open-ended lists of features, but these lists can be utilized differently in different structures which we shall describe. The details are somewhat intricate." (PE, p479)

There is no need to pursue all the intricate details of the two other moral structures. It would take too much time and space for too little reward. The second structure is called the "simple balancing structure": the moral impermissibility of an action depends only on the inequality between the right- and wrong-making features of that action, without considering the alternative actions available or the larger courses of action of which the act is a part. (PE, pp479-82; p485) Nozick calls the third structure, incorporating principles to accommodate these wider concerns, the multi level (or complex) balancing structure. (PE, p494) But the important point is that, given stable lists of right- and wrong-making features, then even under the auspices of the (relatively) simple balancing structure there will be no algorithm to determine the relative weights of the relevant features applying to acts. Although we may rightly trust some persons' judgement more than that of others, room is left for the individual to fix the relative weights of features applying to types of actions so as to construct a moral view. (PE, p484)

We can sum up the situation by saying that in effect, Nozick's account emphasises the complexity of the process by which responsiveness generates obligations, secures judgements of moral permissibility and impermissibility; and then in turn, how these oughts and ought nots coagulate into political rights and duties. The second step is that by which moral blame becomes (legitimate or blameless) state sanction. In his recent book Moral Reasons, Jonathan Dancy quotes John McDowell's claim that "we neither need nor can see the search for an evaluative outlook which one can endorse as rational as the search for a set of principles." (Dancy, 1993, p56) He

argues that this represents the particularist point of view at its crudest. But he says that even this cannot simply rest on claims about the impossibility of reaching principles capable of deciding every question of what to do in particular cases. This is shown by Ross, who had this limitation of principles in mind when he distinguished knowledge of prima facie duties (expressed by moral principles) from actual duties. Dancy's claim is that "if it is to go beyond this", particularism "must give a strong sense to the thought that the moral relevance of a property in a new case cannot be predicted from its relevance elsewhere." (Dancy, p57) What he has in mind, and what his account focusses on, is the way changing circumstances alter the moral relevance of properties from case to case, "rather than merely overwhelm the moral tendency of a particular property. This is just like the ability of other mental states (the active background) to alter rather than to overwhelm the motivation of a motivating state." (Dancy, p56) My treading on a worm by mistake might be morally neutral; if I do it for pleasure (yours or mine) it becomes disvaluable: the fact that an action brings pleasure can be a reason for doing it, or for not doing it. (ibid)

Now the question is whether the complexity and indeterminacy involved in Nozick's account of responsiveness is a matter only of the impossibility of securing comprehensive principles, or whether it reflects this stronger particularism. The answer is that both are involved. It is important to distinguish different senses of "moral relevance of a property". If the relevance is relevance to determining obligation ("moral" in the sense of the peculiar institution), then it is a question of there being an algorithm to balance the property alongside other right and wrong making features (and so on) to see whether or not an obligation is generated. Once moral relevance is confined to this matter, the particularism proper fades into the background, and the issue becomes one of the general inadequacies of possible algorithms;

hence Nozick's discussion of "moral structures"; the issue of obligations raises that of a mechanically fixed peculiar institution of blame apportioning. "Moral relevance of a property" might instead be interpreted more widely in terms of ethical relevance, where this is understood as pertaining to the widest responsiveness to value in the guise of the preciousness of unique persons.

That the ethical relevance of properties can change from case to case is most obvious in the closest particularist ties of love and friendship. That is why they are particularist. My finding her sense of humour delightful impacts on the organisation of my responsiveness strategy, along with her way of being kind, gentle and so on. These are of great importance to my ethical life, but in and of themselves they do not necessarily involve moral obligations; I do not incur an obligation to wheel out my mock stern routine in response to her humour. Of course there will be obligations around, and some particular obligations might be generated by the loving situation: one might feel obliged to "do the right thing", as well as wanting to do that. People's lives are awash with such particularities, involving structures of responsiveness the relevant features of which "do not travel". Her sense of humour is ethically relevant to me, but not therefore to everyone else; no one else might get it at all, and I might not understand why they find so special about theirs. The same is true of many of the features that are highly relevant to the ethical life; in some contexts they are moving and obligating, in others they are not.

All this is going on beneath the formation of general moral obligations or principles. The problem of complexity and lack of algorithm presumably partly reflects the shifting nature of particularist responsiveness as a foundation and the clash between responsiveness to unique and to general properties.

15:3 Autonomy and Responsive Dialogue

There is then plenty to disagree about; a lot to show that what Rawls calls the "burdens of judgement" will bring moral disagreement. The third type of disagreement mentioned above - about the legitimate enforceability of judgements and principles of responsiveness and anti responsiveness - encompasses the first two types - about the responsive status of given behaviours. For example, we can see controversial questions about whether people have positive rights to aid from those not responsible for their needful situations "as stemming from a disagreement about whether non-aiding is anti-responsive or merely non-responsive, and about whether or not compelling such aid is anti-responsive to the valuable characteristics of the compelled party." (PE, p500) It is clear which side of this disagreement Nozick is on, at the time of Philosophical Explanations. But it can also be seen as a disagreement about whether aiding the disadvantaged is a mandatory or supererogatory form of responsiveness. That it can be mandatory rather than supererogatory is something like the position Nozick reaches in The Examined Life.

Another kind of disagreement, which Nozick does not address, is about whether any kind of enforced moral claims can be responsive to the value of people. A state operated aneurysm, which effectively kills off or seriously deadens the responsiveness of the general population, might result from a mistaken view of the rights - especially those of the governing party - formed from coagulated oughts. The Third Reich might be interpreted as such a clot in the moral blood stream; the state sanctioned Manifest Destiny of American individualists to obliterate the indigenous cultures west of the Mississippi might be another example. An anarchist might object to any form of government backed coagulation as a distortion of or obstacle to the natural free flow of responsiveness, even if the suggested rights are limited to the protection of citizens.

At the extreme end of this line of thought is the view which says that no enforceable claims are consistent with responsiveness, even for private individuals in a state of anarchy.

Nozick picks on autonomy - in the sense of an area of personal liberty - as an obvious candidate for connecting responsiveness and rights. (PE, pp500-1) If the value seeking I is capable of freely considering value questions and making her own decisions, then withholding autonomy seems anti-responsive and respecting a domain of autonomy responsive. Even here though, the situation is highly complex. The extent of the domain of autonomy is not fixed by pointing out that respecting some such domain is responsive. (PE, p500) It is an open question how much autonomy a value seeking I needs. Certainly to be worthwhile, autonomy must involve choices that are significant to those it is granted, for example choices about lifestyle, occupation, spouse, religion and so on. (ibid.) But "cultural variation" generates disagreement about which are the significant areas to be included.(ibid.)³⁰ Moreover, recognising the importance of autonomy is a relatively modern achievement, which again reflects the open-ended nature of the lists of responsive and anti-responsive characteristics. (PE, p502)

Again Nozick does not mention this, but whether a

30. This is an extremely important point for pluralist societies, where such disagreements are internal to society. Given the weight of particularist ties generated by "one's people", why should there be no arranged marriages? On the other hand, why should everyone not have the right to marry who they please? The answer cannot be just read off the ethics of responsiveness, certainly not as mediated by what would be question begging general principles. What would be most absurdly irrelevant would be to try to settle the matter by positing a natural libertarian right to choose whether or not to have an arranged marriage.

development such as recognition of autonomy reflects an increase or decrease in moral insight, progress or degeneration, tends to be a controversial question. At the extreme, the modern fashionable preoccupation with autonomy might reflect "Enlightenment heresy", rather than a breakthrough in ethical methods. Such a view is consistent with the general responsiveness account. Nozick himself points out that if rights are a function of responsiveness then it is possible for any given set to be transcended as particular individuals become more valuable and so pull a different level of appropriate responsiveness. (PE,p503) To concentrate on the rights held equally by all as a consequence of the autonomy due to any value seeking I might be to ignore the special rights owed to exceptionally valuable individuals. Conjoined with an appropriate story about relation to God's favour, this could even ground a system of hereditary Divine Right of Kings. Another version, nearer to some of Nozick's comments, would build on some notion of spiritual progress with the responsiveness one has a right to corresponding to position along a scale of spiritual achievement (and perhaps intellectual as in the Platonic version).³¹ The problem is that autonomy, understood as rightfully possessed by all value seeking I's equally, is not uniquely determined as the appropriate vehicle of responsiveness.

If granting general autonomy is an appropriate response to the BMC of others, then it needs to be a fixed domain. It needs to be reliable and secure enough to allow planning; a value seeking I needs to know what she can do rightfully without interference. It will be undermined if different parties respect different ranges of choices. As in Pettit's argument for publicly affirmed personal rights within a

31. We take up some related lines of thought in the chapter on organic unity.

consequentialist framework, agreement here is very important if autonomy is to have practical meaning. Given that granting autonomy is an important mode of responsiveness, then a further requirement of responsiveness is to "coordinate our specification of the respected domain with others, so that the person does have a generally recognised domain of authority, and also to publicly avow our respect for this domain, so that he knows he is autonomous within it and can count on that." (PE, p501)

Nozick goes on to claim that "there is much to be said for recognising the widest possible domain of autonomy, limited only by the boundary of not violating the similarly specified autonomy of another." (PE, p502) But he does not say what is to be said for this; presumably he said it in *Anarchy, State and Utopia*. He does admit that responsiveness to a value seeking I might not require respecting the maximum domain of autonomy, but he adds that any limitation of autonomy must be principled, thus allowing the possibility of judging whether general application of the principle would diminish autonomy to an inadequate level of responsiveness. But this assumes that autonomy is a necessary component of responsiveness, which we have seen reason to doubt, at least on the standard interpretation of autonomy as involving equality.

So far, the assumption has mostly been that rights coagulate from ought nots of anti-responsiveness. A rationale for this might lie in the very indeterminacy of the coagulation process. Not every ought, certainly not every particularist pull, can be translated into a right. There is not even a straightforward correlation between rights and what can seem to be the most important moral pulls: "You have a right to some actions, for example, another's repayment of a borrowed dollar, whose omission does not count as serious (except insofar as it is a rights violation)." (PE, p499) This is a reason to make the primary route to rights anti-responsiveness, rather than

responsiveness. The rights would then be understood better as at least generally negative rights not to be anti-responded to in certain ways. The right to the repaid dollar would derive from the negative right one has not to be robbed or have contracts flouted. Given a likely preponderance of negative rights, autonomy is all the more attractive as a starting point for delineating them.

Still, it is not clear that responsiveness does not coagulate more. A positive right to education looks a likely candidate for responsiveness to value seeking Is. Even if in general it seems easier to say what should not be done to people than it is to say what should be done to and for them, it is not clear that going for the (conceptually) easiest or cleanest option is what is required to preserve responsiveness. Simplicity has been suggested as an explanation of the appeal of Nozick's libertarianism. (Wolff, 1991, p140) But things are not that simple other than in the experience machine. This is especially true once the deductive structure for ethical views is abandoned.

Negative rights might be more securely derived by a different approach. Instead of trying to ground them in the minutiae of (anti-) responsiveness they might be connected with the general constraints on moral avoidance; those principles prohibiting avoidance of moral pull by removing BMCs from the environment or rendering them inert: do not kill value seeking Is or do not cause value seeking Is to stop being value seeking Is. These might generate rights not to be killed or seriously injured, which have quasi natural right status. But they do not get us very far, and even here there is room for disagreement: presumably there is a right to kill if necessary for self defence, but does one forfeit the right to life by committing acts of extreme anti-responsiveness or moral avoidance? "Once a value seeking I, always a value seeking I" implies a continuity of value rendering capital punishment

anti-responsive under any circumstances. But perhaps some premeditated crimes demonstrate a lack or loss of the capacity to be a value seeking I.³²

Agreement is needed on the question of when a value seeking I stops being a value seeking I in order to secure rights based on the second constraint on moral avoidance. Assuming that this goes beyond death and serious injury, then it tends both to support the central importance of autonomy and to underline the controversy about its proper extent. One certainly stops a value seeking I from being a value seeking I by killing her, by giving her brain damage, probably by locking her in a sensory deprivation tank, presumably by enslaving her, but what about by taxing her income (even if she is warned beforehand)?

I have deliberately emphasised the extent of underdetermination of politics by morality, when morality is understood as responsiveness to value (especially that of the BMC), and politics is understood as the enforceable expression of morality in that sense. This leaves enormous scope for sincere disagreement even if autonomy is of central importance. In itself, responsiveness does not yield one determinate conception of the good life, and its coagulation into a political realm does not fix one demonstrable legitimate enforceable concept of the good either. But this gives priority to the area of moral dialogue.

If being a value seeking I, especially a moral value seeking I, is the BMC ultimately responsible for the generation

32. Put crudely, Nozick's own view of capital punishment, suggested in the context of a general view of retributive punishment as "realignment with value", is that people as evil as Hitler do not deserve to live, but execution might be anti-responsive to run of the mill murderers. (PE, pp37-8)

of ethics, then the responsiveness owed to others as producers of moral opinion will be of central ethical importance. Moral objections to one's actions or plans generate prima facie requirements for moral answers. The requirement reflects responsiveness to the objector's BMC. To engage in moral dialogue is to perform a moral act, which is valuable as such, irrespective of whether the aim is to get at the moral truth, or to resolve moral conflict. (PE, p469) Thus moral dialogue is not merely valuable as part of a voluntary filter process to produce the best community, or as what characterises relations between Mill-style experiments in living. Moral dialogue, as opposed to violence or indifference, is intrinsically valuable as a form of responsiveness, rather than instrumentally valuable as a means to the truth or to conflict resolution. This is portrayed as a given, no matter what other judgements are made about the requirements of responsiveness.

Nozick says that it is possible for moral dialogue to be a "mutual value theoretic situation" (analogous to a game theoretic situation); "each participant is responsive to the other's basic moral characteristic, is aware that the other is responsive to her own, and is responsive to the other's responsiveness, is aware of the other's second level responsiveness and is responsive to it and so on". (PE, p470) Mutual value theoretic situations are desirable because only these reflect our own value and value responsiveness adequately. Hegel's account of the master/slave relation is a paradigm of thwarted mutual value theoretic situations. The master cannot compel responsiveness, and unless he shows responsiveness to the slave's BMC, relinquishing his master status, the slave cannot respond to that. (ibid.)

On the other hand, the duty to engage in responsive moral dialogue is only prima facie. If someone raises a moral objection to our activities or plans, then we owe a moral answer rather than indifference or violence, "however, we do

not have to expend our life's savings to track down the person who objected and then went off to travel in inaccessible places." (PE, p469) Despite the prima facie status of the general requirements to engage in moral dialogue, it is possible, given Nozick's account, to give lexical priority at least to the avoidance of intolerant suppression of moral opinion. Priority, that is, over other considerations of responsiveness about which the moral opinions differ. This does not extend to a universal right to maximum liberty of expression, as certain modes of expression under certain conditions will count as anti-responsive (e.g. Mill). The limits of free speech are as controversial as the limits of autonomy.

The comparison with autonomy is instructive. Nozick's stress on agreement about the size of the domain of autonomy presupposes a prior commitment to responsive moral dialogue. After all, a known domain could be enforced without everyone's agreeing that it is the correct domain. (Isn't this what actually happens?) The bottom line is that people retain confidence in the security of a particular range through an assurance that the state will defend it against disagreeing parties (and that the state will not arbitrarily change their rights). Given that no particular domain of autonomy - which set of choices is appropriately turned to rights - is determined by responsiveness, the clear responsiveness of allowing moral dialogue must be prior to "autonomy responsiveness" in that the right to be consulted with respect to the nature of those other rights is clear before those rights emerge. Although, as we have seen, this "right to be consulted" does not imply a universal right to unlimited freedom of speech; it amounts only to the right to one's own opinion as a minimum of responsiveness. This is abstract (like the BMC) but it can be important, for instance, when one's opinion is at odds with what is "agreed" generally.

Comparison with what we might call "elitist" approaches to responsiveness which downplay autonomy is also instructive. Some people's moral judgement is better, more reliable, than that of others. This might seem hard to square with the minimal responsiveness of the right to one's own opinion; why should this be respected in cases of false, absurd or heretical opinions? If there are moral or spiritual experts, then it is their opinions which matter, so decisions about who has which rights should be left to these "Guardians of responsiveness", even if in the end they agree to a significant amount of autonomy for the rest. In reply to this, it should be noted firstly that it is the value seeking I's right to her own opinion, not the opinion itself, which is to be respected as bearing the (minimal) responsiveness owed equally to possessors of the BMC. Secondly, the expertise, trustworthiness and proper role of moral and spiritual guardians, for example relative to the pull of autonomy, itself will be a subject of legitimate controversy. Some might be more adept at judgements of responsiveness and of how responsiveness does or should coagulate into political rights, but their methods or modes of insight (increasing the revolutionary potential of the proletariat, pragmatic conservatism, meditation, sexual abstinence, consumption of peyote or ganga, a rigorous education in mathematics, a clear exposition of the central tenets of one's own tradition, etc) may remain controversial in the absence of a deductive structure.

This seems the best context in which to approach Nozick's comments about "non coercive" philosophy (insofar as these are not intended merely as an ironic riposte to criticisms of Anarchy, State and Utopia). Nozick claims that philosophical explanation is a better response to philosophical questioning or objections than is proof designed to compel belief. Philosophy in this latter mode is conducted in an argumentative manner as expressed in terminology characteristic of coercion; arguments are "powerful", "compelling", "forceful",

"knockdown". (PE, p4) "Why are philosophers intent on forcing others to believe things? Is that a nice way to behave towards someone? I think we cannot improve people that way - the means frustrate the end. Just as dependence is not eliminated by treating a person dependently, and someone cannot be forced to be free, a person is not most improved by being forced to believe something against his will, whether he wants to or not. The valuable person cannot be fashioned by committing philosophy upon him."(ibid.) This applies even to knockdown arguments designed to end knockdown arguing. "It will not do to argue you into the conclusion, even in order to reduce the total amount of presentation of argument. Nor may I hint that I possess the knockdown argument yet will not present it." (PE, p5)

Rawls argues that political philosophy should aim at non coercive consensus rather than truth. Thus the modern, democratic philosopher is supposed to "apply the principle of toleration to philosophy itself as he theorises politically". But in relation to the rest of philosophy, he endorses what can be called "socratic philosophy" (after Hampton, 1989, pp808-14), central to which is a commitment to the truth. But this same commitment can be appropriate for political philosophers, because "to the extent that they are committed as Socrates wishes them to be to the truth rather than to the particular belief they are presently endorsing, they ought to be prepared to argue under the assumption that they might be wrong and, thus, prepared to change their minds if their opponents offer them better arguments for the opposing view than they have for their own." (Hampton, p810) Even if one cannot respect the opposing ideas, because one believes them to be false, one can respect another's holding of them. The principle of tolerance can apply to another's ideas or to another's holding of those ideas; socratic philosophising requires only the second kind of tolerance. (Hampton, p810-11)

Nozick's discussion of coercive philosophy seems to presuppose that the socratic view is impossible, or at least that intolerance towards the ideas, in the sense of trying to demonstrate their falsity, often involves or descends into coercion of the holder. He suggests that when confronted with "argumentative bludgeoning", then "for one's own protection it should not be necessary to argue at all, merely to note publicly what bludgeoning the others are attempting - intellectual satyagraha, to use Gandhi's term for non-violent resistance." (PE, p5) He seems to mean this to apply to philosophy in general, not just political philosophy.

Compare this with Locke's view of toleration, from his Letter on that subject. Locke argued that it is irrational to persecute unbelievers because coercion acts on the will, and belief is not subject to the will. Coercing someone into real belief, as opposed to lip service, is impossible; real belief is a function of the understanding guided by the "light of reason". (Locke, 1991, pp18-9) A powerful reply to this, made at the time by Jonas Proast, is that even accepting Locke's separation of the will and the understanding, it might still be rational to force heretics to consider arguments, thereby indirectly coercing true belief. (Waldron, 1991, pp118-9) Nozick's claim is that it is wrong (rather than just irrational) to change people's beliefs through subjecting them (the people and the beliefs) to argumentative (dis)proofs: it is coercive to make them see the light of reason through force of argument.

This is odd. Nozick does not define coercion here. The Anarchy, State and Utopia notion does not apply: seeing no option but to accept a philosophical proof of some belief one is unwilling to accept - say "that God exists" - is not a matter of having one's options reduced through an intentional rights violation, assuming that one has not been tied down and forced to consider the ontological argument. It might be that

to be coerced in the sense intended here is to have one's options curtailed through intentional anti-responsiveness. Maybe one cannot do philosophy, at least as it tends to be institutionalised through the activities of tough minded prover types, without finding oneself amidst a collection of warring camps, each trying to prove the other out of existence. Even this (exaggerated?) picture does not obviously generate a political notion of coercion. There is no automatic right to responsiveness as such, and one would want to know why any intentional anti-responsiveness involved in producing knockdown arguments should amount to a rights violation. It is best to interpret Nozick as wanting to avoid a certain kind of anti responsiveness, rather than to promote a form of philosophical "political correctness" (later he points out that we have no automatic right that philosophers refrain from denying the existence of our valuable characteristics).

Partly, it is a matter of instrumental irrationality, not only in the quasi-Lockean sense that the valuable person cannot be fashioned by committing philosophy on him, but also in the sense that "philosophical proofs" tend not to stay proved and so are of questionable utility to the socratic philosopher: "What useful purpose do philosophical arguments serve? Do we, trained in finding flaws in history's great arguers, really believe arguments a promising route to the truth? Does either the likelihood of arriving at a true view (as opposed to a consistent and coherent one) or a view's closeness to the truth vary directly with the strength of the philosophical arguments? Philosophical arguments can serve to elaborate a view, to delineate its content. Considering objections, hypothetical situations, and so on, does help to sharpen a view. But need all this be done in an attempt to prove, or in arguing?" (PE, pp4-5)

But it is also a question of the value of inclusivity, over exclusivity. Aiming argumentative proofs at

philosophical positions will provoke resistance; better to search for common ground. Rawls' political philosophy is like this, but his procedure is to bracket out metaphysical questions as far as possible. Nozick does not eschew metaphysics but also does not pursue it with a killer instinct, aiming instead at "philosophical pluralism": "I see the situation as follows. There are various philosophical views, mutually incompatible, which cannot be dismissed or simply rejected. Philosophy's output is the basketful of these admissible views, all together ..." (PE, p21) This is not to be confused with relativism though: "... some views can be rejected, and the admissible ones remaining will differ in merits and adequacy, though none is completely lacking. Even when one view is clearly best, though, we do not keep only this first ranked view, rejecting all the others. Our total view is the basket of philosophical views, containing all the admissible views." (pp21-22) He points out that this "total view" of a basketful of philosophical views is analogous to the framework for diverse coexisting communities, and that rejecting interpersonal proving in philosophy resembles interpersonal coercion in the political realm. Both are "applications of the strategy of avoiding conflict by embracing all the contesting participants." (PE, p654n5) This would be true if the framework and the accompanying notion of political coercion were not libertarian.

The underdetermination built into Nozick' account of ethics as responsiveness might disappoint those looking for a sharply delineated moral foundation for a political conception. The other side of this underdetermination is that, in principle, it can encompass many substantive views and traditions. It does this without collapsing into relativism: it does not imply that all are equally good, and leaves room for judgment about what responsiveness truly requires; obviously murderous, destructive and intolerant views are

excluded. But also rejected are "proofs" that particular coagulations are of universal application.

Nozick suggests two non-argumentative alternatives to coercive philosophy: firstly, philosophy might present itself as a "guide" - where the author gently leads the reader on an exploration of a mutually interesting topic - he admits to lacking the art to do this. (PE,p7) Secondly, there is philosophy as a search for explanations, especially explanations of how such and such is possible given other factors which apparently exclude it; explanations of how apparently inconsistent things may fit together: stable meanings in a world of change, free will in a determined system, the evil in God's world, and so on. (PE, pp8-9) We might add to this a successful explanation of how a state can exist consistently with absolute libertarian side constraints. He goes on to count this desirable activity - removal of tension, incompatibility, incoherence - as part of the inductive evidence for the theory of organic unity as the dimension of intrinsic value. This theory also explains the disvalue of irrationality in the sense of embracing inconsistency. "Exposing contradiction" is important according to the same theory of value which explains the disvalue of the anti-responsiveness of coercive philosophy.

Before we go on to look at Nozick's account of value, we should conclude this chapter with a brief summary. The deductive structure of morality and the interpretation of ethics as a universal peculiar institution have been rejected because they do not reflect the complexity and particularity of responsiveness. This goes with the problem of deciding how the oughts and ought nots of responsiveness coagulate into rights, even given comprehensive lists of right- and wrong-making features. This is illustrated by the indeterminacy of an appropriate range of autonomy, despite the prima facie importance of autonomy to the value seeking I. Abstract

principles are important, but there is no route from responsiveness to much in the way of universal "natural rights". In general, a more particularist approach is called for, involving agreement and reflecting ties, including those to "one's people"; possibly even to traditions for whom the moral example of inspiring individuals or the deliverances of moral/spiritual experts are at least as important as abstract principles. This is not to deny that one's people might have a tradition of respecting autonomy to libertarian proportions. But however paradoxical it might seem, value seeking is as such can be constrained by rights given a natural status in the name of liberty. Apart from those aimed at blocking obvious cases of moral avoidance through killing or maiming value seeking is, the only right with quasi natural status is the insubstantial right to a moral opinion.

Our discussion has been of the account of responsiveness to value seen in isolation from the account of value itself. Nozick presents them together. We have seen enough to tell that many different kinds of life are consistent with responsiveness, but we shall be in a better position to assess the anti-expressivist inclusiveness when we have added considerations of value. It might be that the general nature of value counteracts what anti-expressivist elements there are in the general nature of responsiveness.

Chapter Eleven: Intrinsic Value

11:1 Introduction

Kant's prioritising of the right over the good represents the triumph of deontology over teleology. Nozick admits to being biased in favour of deontology, (PE, p498) and that the Anarchy, State and Utopia libertarianism buried teleological considerations without explanation. (PE, p485) In Philosophical Explanations, he proposes a way of reconciling teleological and deontological concerns, by fitting the latter into a framework which seeks to maximise the overall good. Ethical choices are choices among various possible actions, not consequences; the injunction to maximise the good can be formulated as "do the act, the doing of which is best". Which act is the best is a function of the value (responsiveness) of the relationship constituted by the act as well as by the value of the consequences, and so does not vary directly with the latter. (PE, pp496-8) When different acts are possible in choice situations, the different verbs involved specify different relations to different consequences, rather than the same "verb-like" relation to different consequences. "For example, one will be a bringing on, another a preventing, one a causing, another an allowing to happen. Since these different action relationships will involve different degrees of unity with other people and end states, the goodness of the acts need not vary directly with the goodness of their consequences." Thus doing the best action in the sense of one with the highest score according to dimension D is not (necessarily) the same as maximising the future D score of the world. (PE, p497) A given act may have certain consequences with certain (dis) value. It must also be responsive to certain people to a certain extent, and may be unresponsive and/or anti-responsive to various others. The best act is the one which is the most valuable of those available once all the scores are in; hence

the complex balancing structure of morality, and also the thought that a constraint on the requirements of responsiveness is your own value.

This reconciliation leans on a conception of value taken to apply to (responsive) actions. Deontology - the rightness or wrongness intrinsic to certain actions - is still important, but slotted now into a general account of value with a much wider application. Ethics is responsiveness to intrinsic value, but the responsiveness of ethical behaviour itself is valuable; a kind of goodness. The whole account is driven by the "push and pull" of value: my value determines what responsive behaviour is to flow from me; your value determines what behaviour is to flow towards you. The driving force, therefore, is not primarily a notion of practical reason. In this sense, despite the importance of deontology, the right is constrained by the good. Moreover, Nozick answers Glaucon's question - "why be moral?" - in terms of the value cost to immorality which does not reduce to considerations of self-interest, unhappiness or irrationality. (PE, p409) "Being moral" is to be thought of as part of "leading the best kind of life" in the sense of the most valuable kind of life. So he needs to investigate the nature of value. (PE, p413)

Intrinsic value is the sort he means. It is non instrumental value, that of ends not means, that is the issue. (PE, p414) Nozick's account has two parts. First is the inductive task of discovering a basic dimension D, which underlies all or most of our considered judgements of intrinsic value across various realms or domains; for example, the aesthetic realm of art, literature and music; that of natural objects from stones to human beings; that of theories and explanations. This turns out to be "degree of organic unity". Inductive support for the view that D is organic unity comes from these areas amongst others. (PE, pp414-420) But this is

not just an empirical claim intended to fill in the blank in dispositional theories of value, saying that organic unity happens to be what we are disposed to value as a matter of fact. David Lewis, for example, accounts for intrinsic value in terms of what we are disposed to (second order) desire for itself under conditions of full imaginative acquaintance. (Lewis, 1990, passim) Certainly, Nozick does sometimes talk absurdly on "our" behalf in the manner of a psephologist, for example when he suggests that we should be happy if "domain specific intrinsic values", which are not organic unities. count for only ten per cent of total judgements of intrinsic value. (PE, p419)

We distance him from dispositional theories by bringing in the second part of his case, which is explanatory rather than inductive. This divides into two parts. The first task is to explain "why value is D", and this is achieved by showing how D satisfies the constitutive conditions of being a dimension of intrinsic value. (PE, pp428-9) The second explanatory task is aimed at the ontological issue: "why is D value (rather than just D)? Thus Nozick takes himself to be explaining intrinsic value in the context of a general account of how objective values might be possible. (PE, eg, p400)

This is puzzling. For example, it is not immediately clear why a concern for objective value should feed into the necessary conditions on intrinsic value. Nozick talks of intrinsic value in the sense of non instrumental and objective value in the sense of independent of subjective factors. But these are conceptually distinct notions. However, there is a traditional approach to intrinsic value which ties together non relativism, cognitivism, and a denial of both naturalism and subjectivism. Representatives of this tradition include Brentano, Moore, Ross and Ewing. (Lemos, 1994, pp3-6) Basically his account is traditionalist in these senses, hence the slide between objective and intrinsic. The claim that

there is one basic dimension of intrinsic value is also the claim that there is one basic dimension of objective value (in these senses).

To anticipate a later discussion: it does turn out to be partly subjective, though because at the end of a difficult, speculative treatment he explains the ontological status through a position he calls "realizationism". That there is value depends on us "choosing value", but once we have chosen it, its nature is not dependent on us. (PE, pp556-566) Therefore Nozick's intrinsic value is not something which objects might possess in "ontological isolation" in Moore's sense. (Moore, 1903 eg., p187). Apart from the case of a person existing on his own who values himself. It is unhelpful anyway to insist on ontological isolationism as a necessary feature of intrinsic value because some things might be intrinsically valuable even though they could not possibly exist on their own. (Lemos, pp10-11) However, as long as value has been chosen, so it exists, then whatever has intrinsic value has it irrespective of its relation to other things. The claim will be that intrinsic value is organic unity, so that given that there is value, then that of any particular organic unity is not contingent on anything else.

We shall leave discussion of Nozick's second explanatory task until the final chapter where we criticise his realizationism and platonic objectivism. The inductive case is the subject of the next chapter. In this chapter we look at the first explanatory route: why value is D. Nozick gives a list of constitutive conditions on being a basic dimension of intrinsic value, which any D must satisfy. (PE, pp428-41) There are two types of conditions. Some are externalist in the sense that they establish no necessary connection between awareness of value and motivation. Only one of the conditions which Nozick actually formulates is internalist in the sense of establishing such a conceptual link, but his discussion of

this anticipates the inductive case, and shares elements with dispositional theories. We shall look at the external conditions first.

11:2 External Conditions

The first external condition is a "formal ordering condition". "Value establishes an ordering (partial or complete) over things, actions, systems, states of affairs, and so on, so any dimension that is to be the basic dimension of intrinsic value also must establish such an ordering. This condition rules out as value those properties that do not establish any ordering at all, and those dimensions that do not establish an ordering over an extensive enough field; for example, the ordering dimension of height applies to things and objects, but not to actions or states of affairs." (PE, p429) That organic unity has a sufficiently wide range of application is the intended outcome of the inductive part.

It might be doubted whether it is a sensible aim to have one single dimension of value applying across such a wide range - "things, actions, systems, states of affairs, and so on" - that it covers pretty much everything. Operating is the view that one deep explanatory principle covering all phenomena is valuable. "A unified field theory of value" is the aim: this is a further application of organic unity. There is also an inclusive element to having a single D underlying disparate areas of evaluation which connects also with the wide ranging inductive task: if different kinds of goods are the same in some important sense - they are all goods - then this is something seekers after value in different areas will have in common and may respect as such. This inclusiveness is an important feature of Nozick's account. We shall see that there is a fundamental problem with this when it comes to

explaining why the domain of ethically responsive action should have priority over other kinds of value.

Most philosophers confine intrinsic value to a more narrow range. For example, in a recent study Noah Lemos ascribes it to facts or states of affairs that obtain as abstract objects, and denies it to other sorts of abstract objects (properties and states of affairs that do not obtain) and to concrete particulars such as "human beings, dogs, apples, and cars". (Lemos, pp20-1) Nozick's intrinsic value ranges all over this metaphysical terrain, including concrete particulars in Lemos' sense and states of affairs that do not obtain, for example imaginable possibilities. (PE, p526) He might be interpreted as saying that it is the fact that x has a degree of organic unity which it intrinsically valuable. Thus it could be the fact that certain imaginative possibilities can be represented in organic unities such as stories or fables (as in Nozick's invisible hand derivation of the minimal state), or as theoretical explanations (such as his theory of value). But this would be misleading: facts are not values and values are not amongst the facts. Facts may be valuable to the degree that they exhibit organic unity, and in so doing they model or instantiate the values themselves, which he calls "abstract structures"; but he means these to be abstract values rather than abstract facts. (PE, eg. pp568-9)

In fact, Nozick does not go in for much "metaphysics" in the sense of a painstaking clarification of the distinctions to be made between "fact", "property", "particular" and so on (abstract value structures exist "in whatever way abstract structures do", p424). He seems to be more interested in bolstering the inclusive, inductive project of establishing organic unity as a single unifying value dimension, rather than dividing up metaphysical space so as to be able to say which parts cannot possibly be intrinsically valuable. A huge variety and range of things are valued for themselves; what do

they have in common? This is not a Rawlsian reluctance to do metaphysics at all of course. Rather many will see it as an example of doing metaphysics in the sense of "nonsense to be dismissed", as opposed to metaphysics for clarification, or, to put it in a way more obviously damaging to Nozick, metaphysics for explanation.

It is important to notice in particular one apparently substantive difference between Lemos and Nozick. Lemos' account of intrinsic value gives "fitting emotion" a central necessary role: "p is intrinsically valuable" implies that "p is intrinsically worthy of love". (Lemos, p15) We shall see that Nozick also gives an important role to fitting emotion, but Lemos argues that the objects of attitudes like hate/love are always complex rather than merely concrete individuals. "If Mary says, "I want a little lamb", she may mean that she wants to own a lamb, or to play with a lamb, or to have a little more lamb on her plate." (Lemos, p29) Both Mary and the little lamb are concrete individuals and therefore not complex and therefore not intrinsically valuable. It is an important feature of Nozick's account that many such "individuals" are complex organic unities, indeed he envisages something like the great chain of being (intrinsically valuable), with stones at the bottom and human beings at the top. (PE, p415, p417) Perhaps again the point is simply that he does not bother to distinguish Mary the concrete individual from the fact that Mary exists as a complex organic unity. Certainly insofar as the theory of value is to ground a theory of ethics, this distinction is unnecessary because the question of how to respond ethically to Mary the concrete particular can never arise. Even Mary's unique particularities, for example her particular way of being kind to animals, important for bringing ethics down from the universal, are complex features. Concrete individualism (in the metaphysical sense) is perhaps more irrelevant than the "abstract individualism" condemned by communitarians.

The second (external) condition says that "a dimension D can be the basic dimension or (intrinsic) value only if, when some X is ranked highly along it, V-ing X also is ranked highly along it." (PE, p430) Nozick says that the first, "formal ordering condition" does not take us very far. We also need to know the function of value for us, what it is for, what living relationship we are to have with it. He says that the function of values is that we are to "V- them". "V-ing value" is the fitting or appropriate relationship we are to have with values, where this type of relationship is delineated by a class of verbs. Nozick gives a long list of V-verbs, many of which are near synonyms. (PE, pp429-30) There is no need to go through the list; we can understand what he means by it from this passage: "Values are to be brought about, maintained, saved from destruction, prized and valued (where this last is some descriptive term of psychology plus the theory of action). When no activity of ours can affect the value, value is to be contemplated and appreciated. That is what the function of value is in our lives, to be pursued, maintained, contemplated, valued." (PE, P429)

The point of the second condition on D is to unpack the "we are to" in the "function of values is that we are to V them". This is to be understood in terms of the "fittingness" or appropriate responsiveness to V-ing value. And this fittingness/appropriateness is captured by saying that the relation to a valuable X consisting in V-ing X is itself intrinsically valuable. Therefore it is a condition of any basic dimension of intrinsic value D, that if it locates X as valuable it also locates V-ing X as valuable.

So Nozick is in the Aristotelian tradition which tries to understand intrinsic value in terms of correct or fitting emotion or feeling. Value is not made to consist in our having certain emotions or attitudes, nor is it our having certain feelings or attitudes towards objects that singles them

out as valuable. The tradition posits a normative connection between values and, in Nozick's terms, our V-ing and anti-V-ing them. (Lemos, pp6-8) This is not to say that the connection is confined to passive feeling or emotion: the V-verbs also describe (emotionally charged) action. Furthermore, the ability to represent the value of V-ing value is a constraint upon the kind of thing that can count as a basic dimension. Nozick introduces a set of further conditions on D in the same vein, to deal with the disvalue of anti-V-ing value, V-ing disvalue, proportionate and disproportionate V-ings and anti-V-ings, and so on. (PE, pp430-33) He claims that since V-ing and anti-V-ing establishes relationships of unity and disunity, this condition is satisfied by degree of organic unity. (PE, pp432-3) However, he admits that these conditions do not uniquely determine degree of organic unity as D.

A further external (meta) condition is that the existence of value and the basic dimension itself has to figure as valuable along D. "The basic dimension D of (intrinsic) value is such that

- (a) the situation of there being something with a high degree of value along D is of value;
 - (b) when $C_1 \dots C_n$ are the constitutive conditions (of the sort we are listing) on value (other than this very condition?) then it is valuable (according to dimension D) that there be some dimension that satisfies these conditions."
- (PE, p435)

Nozick explains this condition as answering to "the philosopher's quest for a basis for (and theory of) objective values, to ground them and understand them", which he says, "itself involves a value judgement: it is better that there be objective values." (PE, p434) Because it motivates his activity, the philosopher is not in a dialectical position to

question this value assumption. Neither is it a matter of a desire which he might want satisfying without thinking it better that it be satisfied: the philosopher thinks it is better that there be value. (ibid)

Still this condition will seem strange. It is supposed to help narrow things down further to one dimension, but it requires "the philosopher" to be interested in a usage of objective/intrinsic value that many will find unintelligible: the fact that certain things are valuable is itself valuable. One way of understanding it is as helping to explain the motivation behind one kind of objection made against the elimination of the concept of intrinsic value in favour of "factual - non evaluative - characteristics". For example, Lemos reports Blanshard as arguing that goodness cannot be eliminated in favour of fitting emotion because it is the intrinsic goodness of X that explains why it is a required object of love. Lemos is not in favour of elimination, but he argues that the Blanshard line falsely assumes that only the value of something can make it fitting to favour it. He claims that because other sorts of evaluative features are possessed in virtue of factual characteristics (a good apple) and because what has intrinsic value has it in virtue of factual characteristics, it is hard to see why being worthy of favour cannot also be a matter of factual characteristics. (Lemos, pp18-19)

If we accept that the intrinsic goodness of X is in some sense dependent on X's factual characteristics, then it is reasonable to say that the appropriateness of V-ing X also is dependent on those characteristics: if X was not like that, it would not be a fitting object of V-ing. But there must be more to say if you think also that it is valuable that X is valuable in this way. In Nozick's account this draws in the previous condition as well: If Mary's devotion to duty is intrinsically valuable, then so is John's admiration of Mary's

devotion to duty. There are two occurrences of intrinsic value here: Mary's devotion and John's fitting admiration. We now add that it is valuable that Mary's devotion to duty is valuable, and that it is valuable that John's admiration is valuable. Thus there are four occurrences of intrinsic value involved. If one believes this, then presumably it will be hard to accept that the factual characteristics of Mary's devotion and John's admiration can do the work unaided.

Nozick explains valuable objects as partial instantiation of abstract value structures (these latter being the values themselves). Assuming that D is degree of organic unity, Nozick explains that the relation of realisation between value (structure) and valuable fact itself is an organically unified relation; hence the "fact" that F is intrinsically valuable itself is intrinsically valuable. (PE, pp567-8) Moreover, the value attaching to the satisfying of the conditions on D, i.e. the existence of a basic dimension of intrinsic value, is another manifestation of the desire for a "unified field theory" of value. The "realm of value" is unified by a single dimension of intrinsic value which applies across the board. We shall see in the next chapter that it is a very important feature of Nozick's account that the realm of abstract value is not perfectly unified. And we shall look at the issue of the ontological status of this "realm" in the final chapter.

The point remains that a philosopher trying to make a theory of intrinsic value work does not have to understand his value judgement - "it is better that there should be intrinsic value" - as better in the sense of more intrinsically valuable as this features in D. "The philosopher" might just find it more interesting, satisfying or comforting. The point about this condition, especially given Nozick's general aim of explanation rather than proof, should be: given that some philosophers think it valuable that there should be value, this should be reflected in a condition so as to increase the

theory's overall explanatory potential. (The theory can even accommodate people who believe that!) Those philosophers not impressed with this, or not interested in the issue can just pass it over. This condition should be seen in the light of the inclusiveness of Nozick's approach.

11:3 Internal Conditions

Although satisfied by organic unity, the above conditions do not uniquely determine it as D - further conditions are necessary to narrow things down. (PE, pp435-6) Nozick accepts this as a problem and the need for internalist measures to tie value closely to motivation: "the conditions we have listed thus far ... are external conditions, touching the surface only. Some further condition is needed that gets inside value, or inside how we link with values. The external conditions do not capture the allure of values. Values inspire us. Although the previous conditions hold that it is valuable that values inspire us, that we V values, they do not dig into how or under what conditions this inspiration occurs." (PE, p436)

Nozick begins to unpack the notion of the allure of value by describing the effects of individuals who embody values. Values themselves do not have causal powers according to Nozick. Nor do objects that realise values have causal power qua realisations of value. "Value is inert other than through the responses and searchings of people or perceivers of value." Value is not entirely impotent then, as long as it is in an environment containing value perceivers. Perceivers are particularly attracted to and affected by "valuable" individuals - those who embody values or "stand for something". These individuals are like Von Neumann's self producing automata, who when placed in a suitable environment, restructure it so as to produce more of their own kind; they

"are fountains of value; they are suns; they shine forth value which warms us. Even if they do not make us sunlike they make us moons at least, so that we shine with reflected light and no longer are dark." (PE, p436) Value allure also expresses itself in "less imposing or extraordinary ways", through the desire to experience aesthetic unities in art to engage in complex and intricately structured games and so on.

Nozick's denial of causal power to value is important because the objectivity of value is often considered in terms of causality. This is because the objective world is often identified ultimately with the physical causal structure of the world. Objectivity in this sense is usually denied to value. For example, Gilbert Harman argues that the observational evidence crucial to science is cut off in ethics; rightness and wrongness have no effect on the perceptual apparatus, unlike the generality of physical items. Moral judgments, therefore, are best explained as Hume said with reference to psychological factors (including socialisation) rather any notion of value taken to be present out there in the objective world. (see Harman, 1977, Ch.1; Mackie, 1977, Ch.1) The opposite extreme of this can be represented by John Leslie's Neo Platonic "Extreme Axiarchism", which says that the world of facts exists, and exists in the way that it does, because it is valuable that it should. Value, on this view, has creative power analogous to causal power. He makes a deep, quasi causal link from value to fact analogous to the link from God to the world envisioned in traditional Cosmological arguments. (Leslie, 1979, passim) In this way, the physical causal structure of the world itself is caused by value.

Somewhere between these views we can place the "new wave moral realists". These believe that moral value has "causal power", although not in anything like Leslie's sense of course (eg Brink, 1989, pp187-97; pp245-6). It is not clear that the sorts of causal explanations they have in mind amount to any

more than those open to Nozick. Their moral facts are meant to supervene upon, and be constituted by, "higher order" natural facts: social, economic, political and psychological. Such moral facts can have effects prior to the recognition of their moral nature, for example Abraham Lincoln's abolitionism may have been caused by the injustice of the American slave system. We can distinguish here between "direct" and "indirect" routes to Lincoln's abolitionism. It might have been that knowing the facts of slavery (which constituted injustice) caused his abolitionism. Or it might have been that the facts of slavery (constituting injustice) had certain effects, for example, economic backwardness and paranoia in the South, moral revulsion in the North, which threatened the Union, and this made Lincoln want to abolish it. (Actually, it was probably a mixture of both.) It is hard to see the first route operating without an awareness of the injustice constituted by the facts of slavery - why else want to abolish it? But the indirect route might operate without a perception of injustice (although probably not without knowledge, if not the endorsement, of others' perception of injustice). Thus it is possible that Lincoln's abolitionism was caused by certain facts, prior to his recognition that they constitute injustice.

However, the relevant social, economic, political and psychological facts are all facts about agents and their interpersonal and institutional relationships. It follows from the view of moral facts as constituted by just these (natural) facts, that there is no value. It follows also that although they are constitutive of moral facts, it is under their description as natural facts of various kinds that they have causal efficacy. One can say that injustice was a major cause of the Indian Mutiny, meaning that one set of higher order facts was caused by another set of higher order facts which are constitutive of an even higher order of fact called injustice. But although this highest order level is not "metaphysically queer" for a naturalist, because it is nothing

over and above the naturalistic facts, it is epiphenomenal with respect to the causal business of the latter which, it is important to remember, includes facts about the perception of injustice.

For Nozick, in full platonic mode, there is value over and above the valuable facts, although this "abstract value" is causally inert. Still it is open to him to say that for example the evil of the Holocaust, which consisted in the wilful, systematic and large scale destruction of value had, and still has, effects. But this evil, or disvalue, has had effects, qua disvalue, only through the reactions of value perceivers.

However, his discussion of the "allure of evil" is curious. He argues that evil or disvalue does not consist in the mere absence of value; it has its own presence. It is an advantage for the organic unity account that it has a negative - disunity - which can figure as intrinsic disvalue, either as the negative extension of the one dimension D, or as a parallel dimension in its own right. (PE, eg p420) Now, Nozick points out that evil has its own allure, so the fact "that good can seep over and transform its environment does not distinguish it from evil." (PE, p437) But he suggests that because the allure of disvalue stems "from the frustrated envy of value", it is "parasitic upon the prior and greater allure of value".

Operating here seems to be the same notion of envy as that in Anarchy, State and Utopia: "The envious person, if he cannot (also) possess a thing (talent, and so on) that someone else has, prefers that the other person not have it either." (ASU, p239) There Nozick was attacking distributive equality or egalitarianism, and drawing upon a familiar anti egalitarian interpretation of the case for redistribution: it is a case of the "politics of envy". In the terms of Philosophical Explanations then this interpretation of egalitarianism treats

it as being, at least often, a case of being motivated by the allure of disvalue.

But it is implausible that the allure of disvalue always stems from a frustrated envy of value. Nozick's proposal seems to be this: if H's belief that X is valuable is false, then the explanation of this is that H also believes (or believed) correctly that O (the opposite or negation of X) is valuable, but has been frustrated in his pursuit of O, and is envious of those who have had more success; this leads him to value X more than O: instead of wanting to emulate exemplars of O, he wants to destroy them, or anti-V them in some manner. But this level of of mental turmoil seems unnecessary. H's belief that X is valuable might just be a simple belief, perhaps caused by the wrong sort of entertainment, or over-exposure to the wrong exemplars, presented in misleadingly glamorous form. Nozick admits that, given organic unity as D, some unities can turn out to be disvaluable, for example concentration camps are (intrinsically) disvaluable because their unifying telos is destructive of value. (PE, p419) People might be impressed by such unities, say by their efficient organisation, and simply not notice their destructive telos, or believe falsely that it is not destructive. The Nazi proponents of the final solution may have been frustrated in various ways - as artists for example. They and their supporters may have been motivated to some extent by an envious appraisal of what they took to be the global capitalist influence of "international Jewry". But they were also motivated by positive beliefs about the value of certain ends, the preservation and extension of the Reich, the necessary purity of the Aryan race, etc., and the force of these to justify certain means. These beliefs were false.

Maybe Nozick is concerned to explain why clever or otherwise well-informed people - those one would have expected to know better - are attracted to disvalue. In these cases,

the depressing story - commitment to true value, failure to achieve, say through akrasia, leading via frustration and envy to a perverse pursuit of disvalue - might sometimes ring true. The turmoil might be subliminal (compare Nietzsche on Ressentiment). But this will hardly be a universal explanation. For one thing, even clever people can just get it wrong (compare Nietzsche on the Will to Power). Anti redistributivists who want to condemn the social unity and increased opportunity which are the desired goal of some egalitarians as really disvaluable, will need to do more than cite the politics of envy. They also need to explain what other goods are prevented by egalitarian measures. Nozick attempts this in his case for the entitlement theory: redistributive measures violate libertarian rights. We shall see shortly that this concern to explain away the attraction of evil in terms of the greater allure of good is beside the point.

Nozick suggests that if value has greater allure than disvalue, then we can imagine the different candidate dimensions for D, those that satisfy the previous conditions, as competing. The competition will be between each dimension's "(embodied) highest scorer and greatest "good"". The winner of the competition will be the most valuable. (PE, pp437-8) This is strange. The idea is that the winner of a free competition between rival dimensions will be the basic dimension of intrinsic/objective value. Presumably, at least some of the losers will be envious. Nozick does not make any suggestions as to the nature of the losers; he thinks organic unity will win. Continuing the political analogy, there is reason to believe that organic unity will not be divisive and ungenerous upon victory: it will want to express solidarity rather than allow disunity with the losers, which will perhaps lessen their tendency to become attracted to disvalue. Nozick suggests two forms of competition: one for our favour and one for each other's favour. The first contest

reintroduces inductive considerations, the analogy with dispositional theories of value and leads to the formulation of a further condition on D, based on the allure of value.

The contest for our favour is decided by what does and has "most intensely and enduringly inspired and transformed". "Distorting factors" have to be allowed for, so "even apart from the issue of extrapolation to the best possible exemplars of a dimension, which perhaps no one has yet encountered, the answer cannot be read directly off the historical record." (Amongst the distorting factors we might include false beliefs about value perhaps caused by envy and frustration amongst other things.) Each competing theory must explain why its favoured dimension D_i is shown by history to be the most alluring and inspiring. Distorting factors can be introduced to explain occasions when people are not moved by high D_i . Moreover, competitor theories must say that value would be chosen, or be experienced as motivating under good conditions in the sense of good specified by D_i . Hence the analogy with dispositional theories, which make value what we would go for under certain ideal conditions - for example in Lewis' case conditions of the fullest possible imaginative acquaintance.

Nozick says some more about this curious competition. It is to be peaceful; destructive contenders who gain support through threats "are not winners in the relevant contest". This does not beg the question against certain dimensions for it remains possible that "examples of domination and power" will be most alluring when they peacefully present themselves. Even if the peaceful nature of the contest itself reduces the chances of combative dimensions then this is so much the worse for them. "That is a consequence of what value is."

Thus we are supposed to be inspired by and in that way lured into accepting a particular dimension, rather than be forced or frightened into accepting one. True, if D_v

glorifies violence then it will specify the valuable conditions under which properly violent exemplars are inspiring, as conditions of violence. Presumably, peaceful conditions will be disvaluable and distorting from the point of view of D_v . For example, if D_v is something like degree of combat utility or effectiveness, exemplars might have to rely on merely showing off their uniforms, or their teeth, under the tamed conditions of an arms sale convention, rather than those of the battlefield. Nozick is assuming that D_v will be less alluring under conditions specified as valuable by D_v than some non violent D_n will be under D_n conditions. Thus ruling out force and coercion from the conditions of competition is not likely to rule out any dimension with a serious chance of winning. But notice that this is more to do with what we are like - both in terms of our susceptibility to force and fear, and our disposition to choose one dimension over another when peacefully confronted with exemplars - than it is to do with what value is like. (Given that we have not yet decided what value is.)

The resulting condition on D is that value would motivate under valuable conditions. This sets up an internalist connection between value and motivation. Nozick develops this condition further by adding the thought behind the second condition above: V-ing value itself is valuable. (PE, p438) So "under the valuable conditions where values do motivate and inspire, this V-ing of values will also be experienced as valuable and desirable." Probably we can interpret this as saying that when the conditions are valuable (according to D) and the values (recognised by D) are V-ed, then this V-ing will be the object of a second order desire.

Notice that this allows for indifferent knowledge of value: under disvaluable conditions awareness of value is consistent with indifference or even hostility, for example under conditions of envy (however caused). On the

other hand, it is clear that worries about the allure of disvalue, which motivates Nozick's resuscitation of the Anarchy, State and Utopia role of envy, are beside the point. Officially, we are not yet supposed to have decided what value is - what satisfies the conditions on D. The allure condition says that value is what most inspires under valuable conditions (subject to the constraint of the earlier constitutive conditions). That is what value is; by hypothesis, there is no question of the competition being won by a dimension which is "really" disvaluable. So the worry cannot be that competition will be ruined by the presence of judges motivated by envy to pick disvalue.

Still, introducing internalist conditions on value can seem a risky business. This is for three reasons. Firstly, given the standpoint of an external "ideal observer" (for example, God), it remains possible that it is disvalue that we find most alluring. But this cannot be a serious worry, for even a purely external account such as would allow the ideal observer does not imply that "if externalism is dead then everything is permitted". (Harman, p93) And Nozick's account includes externalist conditions. Secondly, there is a risk that there would not be agreement on the winner of the competition for "our" favour, and this would undermine the inclusiveness I have been stressing. As with dispositioned theories, value is made ultimately relative to the psychology of valuers. Nozick claims that although all this leaves value to be relative to the kind of being it attracts, "there is some evidence that every person will be attracted most by the same thing, once they encounter it". (PE, p439) The evidence he cites here is that mystics agree about the nature of their experiences. Mystical experience of "ultimate oneness" is cited as part of the inductive case for organic unity. So the inductive case is important as an attempt both to buttress the claim that D is organic unity via this allure condition, and to suggest that this is what "we" all believe.

We shall see in the next two chapters that mystical experience is an important but problematic part of that case.

Thirdly, value is left relative to humans; non humans might decide the competition differently. It is not clear why this possibility should matter, especially within the terms of Nozick's account. Given that we choose organic unity and that this applies to "cognitive artifacts" such as scientific theories and general principles, then intelligent aliens should be at least interested in our choice.³³ So should the "superbeings" who occupy the top level of the three tier structure of moral significance which Nozick describes in the section of Anarchy, State and Utopia entitled "Underdetermination of Moral Theory". (ASU, pp45-7) There he considers the moral status of animals. Animals occupy the bottom level, us the middle level and alien superbeings are at the top. We are subject to the libertarian side constraint and can never rightly make use of or sacrifice one another for the sake of our interests (i.e. the interests of being on the human level). But we can sacrifice beings below our level for our own interests and perhaps for the sake of maximising general utility on that lower, animal level. Given this structure then there may be an additional level of higher beings who can use us "like animals" and for the interest of whom it would be permissible for us to use each other. Nozick presents these as reaching a moral consciousness from the point of view of which mature human beings are on the level of their early childhood, as chimpanzees are to us.

This structural situation is still possible if D is

33. This point is similar to one made by Michael Ruse. Any beings like us to the extent of being selected for because of the adaptive value of social organisation and intelligence of a level allowing science and technology, would be interested also in some analogue of the greatest happiness principle and categorical imperative. (Ruse, 1985, pp63-8)

organic unity and we and they agree on the outcome of the contest. They presumably have a much better grasp of the details, and themselves exhibit greater organic unity. Also they presumably will value as high concentrations of organic unity, relative to most other things in the universe. But they will not necessarily want to recognise us as having rights (even as only partial trumps), for example the right freely to babble inanely, or to choose to pursue the tedious and limited imaginative and emotional projects we laughably call our "conceptions of the good" (not that the superbeings necessarily have a sense of humour).

The second contest which Nozick envisages between candidate dimensions is for each other's favour. He apparently intends this to ameliorate the humanocentrism of the first contest. "Instead of imagining the different exemplars of high scores on each competing dimension exerting their allure on us, we can imagine them exerting their allure on each other. Would a particular dimension win the contest among all the other high scorers? (Will Satan find God more alluring and inspiring than God finds Satan?) If these exemplars are each able to experience the others, and one wins out (under good conditions), this is evidence for the dimension exemplified by the winner being valuable." (PE, p440) This is not made into a condition on D. It could not further internalism, because there is no necessary connection between our motivation and any dimension's winning. A dimension could win this contest without our knowing, without any of the interested parties knowing, even the exemplars, at least if we make the following assumptions: there is to be a secret ballot; the contest is more than two cornered between God and Satan, so that Satan does not immediately know that he has lost when he finds God highly alluring. Assume also that God does not exercise full omniscience and omnipotence, so as to give the others a fair chance in accordance with his "goodness". Now assume that Satan lies about what he finds

alluring. This is not a case of one dimension flouting good conditions of competition so as to force a result in its favour. God wins the competition, but Satan refuses to admit his inspiration and so no one knows God wins. (But would not God find out later - once He switches His omniscience back on - and then tell everyone?) Even if this is impossible, it remains possible that we never know the outcome. Superbeings might have devices that allow them to tell, but why should they necessarily tell us? Put like this, the second contest does not so much rectify humanocentrism as undermine the security of our judgement.

Compare the contest between candidate dimensions with the filter process embodied by the framework for utopia. One of Nozick's "theoretical routes" to the framework assumed for the sake of argument that there is an "objectively best" way of life for all. His suggested method of discovering this was by a voluntary filter process: voluntary associations "compete" for membership under "valuable conditions" (apparently libertarian voluntarism), the idea being that any association left standing at the end of the filter process is more likely to be objectively best than one imposed according to a single predetermined design. Our objection was that libertarian voluntarism is already assumed to be the objectively best way of life; there is no reason to suppose that the filter will discover the truth, unless something like "voluntary association with most adaptive value under conditions of laissez faire capitalism" is identified a priori with objective bestness.

The position we have here is that assuming there is objective bestness in the sense of a single dimension of intrinsic value, then this is subject to a set of (conceptual) conditions. One of these is that any D must be such as to motivate under valuable conditions (as specified by D). This brings a link with motivation and helps to narrow things down

to one dimension. And it links the conceptual with the "inductive" sides of the account: finding out what actually inspires (accounting for distorting factors). The nature of the competition between exemplars of candidate dimensions for our favour, and each others' is to be peaceful, so that it is value (and not fear) that is doing the motivating. But it is not to be described as "voluntary" in the Lockean sense of freedom from negative rights violations. The "allure condition" on D is a conceptual condition which any D must satisfy, but the case for any D's satisfying it is to be inductive without appeal to a priori voluntarism.

Nozick admits that even his allure condition "does not get inside our relationship to value. It does not portray how value so inspires us, or the ways in which our value responses are contoured to the (internal nature and structure of the) values involved." (PE, p440) He does not formulate further conditions to capture these issues. But he claims that "The dimension 'degree of organic unity' seems promising with regard to such conditions, since it gives much contoured structure for the responsiveness for the responses to value to latch onto." (PE, p441) He apparently intends his general account of responsiveness to value, which as we have seen is couched largely in terms of an ethical theory about responsiveness to the value of persons, to provide further support for organic unity as D. The value of persons, their basic moral characteristic; of their lives and complex acts of responsiveness, whether particularist or principled, must be understood in terms of organic unity. The complexity and revisability of the experienced push and pull of ethics, as the major manifestation of the allure of value, is meant to take us far inside our relationship to value. In order to assess this fully we would need a comprehensive moral social-psychology and an account of the virtues to fill out the theory of responsiveness. Nozick prefers to stay at the level of abstract structure.

Still, although they narrow things down, the constitutive conditions do not uniquely determine organic unity, as he acknowledges. Apart from anything else, the inductive element of the allure condition leaves open the possibility of a rival dimension winning in the future. Unfortunately, Nozick does not consider alternatives. However, he steers his (first) explanatory account of intrinsic value sufficiently in the direction of organic unity to make it worthwhile to look at the inductive evidence.

Chapter Twelve: Organic Unity

12:1 Introduction

So degree of organic unity is the basic dimension of intrinsic value.³⁴ It is important to be clear what organic unity means here, although Nozick's presentation makes this difficult. He seems to invoke two familiar senses of organic unity. Firstly, there is the idea, associated with G.E. Moore, that the value of a whole need not be equal to that of the sum of the value of its parts. When a whole has a value greater than that of the sum of its parts, it is an organic unity, rather than a mere aggregate. (Moore, 1903, pp27-30) Secondly, Nozick's "organic unity" refers to wholes which exemplify unified diversity. "Holding fixed the degree of unifiedness of the material, the degree of organic unity varies directly with the degree of diversity of that material being unified.. Holding fixed the degree of diversity of the material, the degree of organic unity varies directly with the degree of unifiedness (induced) in that material. The more diverse the material, however, the harder it is to unify it to a given degree." (PE, p416) This is the sense of organic unity most familiar in aesthetics: "Theorists of the arts often extol the virtues of unifying diverse and apparently unrelated (or not so tightly related) material; the order of the work affects this unification." (PE, p415)

When a whole is organically unified as a unity in diversity, then it is an organic unity in the first, Moorean,

34. Nozick continues to believe value is organic unity, see EL, pp162-6; NR, p13.

sense. The idea seems to be that intrinsic value applies to unified diversity - we could say coherent or ordered complexity - and this explains when the intrinsic value of a whole is greater than that of the sum of its parts; greater, that is, than their aggregate value. If x is an intrinsically valuable whole (a unified diversity), then x's intrinsic value consists in the value of the sum of its diverse parts plus that of itself considered as a whole brought about by the unification of that diversity. The parts themselves need not be intrinsically valuable for value to occur at the level of the whole. Thus although many wholes may be extremely complex, made up of parts which are themselves unities of diversity, the parts of which again are unified wholes and so on, it is possible for valuable molecules to arise from the unification of valueless atoms. Thus the account allows for "value creation ex nihilo". (PE, pp422-4)

Perhaps then being a unity in diversity is a sufficient condition for being a Moorean unity. Is it also a necessary condition? Nozick's examples of possible alternative types of intrinsic value are domain specific and unstructured: non intentional pleasurable feelings and sensuous colour quality in paintings. Anything which involves the structuring of parts seems to count as a unity in diversity; hence its wide application, and the relatively negligible role of domain specific intrinsic values. Moorean unities have parts, therefore they must all unify diversity to some extent. Thus it might seem that x is a Moorean unity iff x is a unity in diversity. However the situation is more complex, for the unification of diversity is not quite sufficient for Moorean unity. Problem cases are those where diversity is not unified appropriately, as that diversity, and where the mode of unity itself is essentially destructive. We have already seen that the concentration camp is Nozick's example of the latter problem. Despite complex unity these have a destructive

telos; their whole reason for existing is disunity, and he thinks that this brings intrinsic disvalue, rather than a paradoxical combination of intrinsic value with enormous instrumental disvalue. Intrinsic disvalue here presumably is a matter of negative Moorean unity - wholes whose overall value is less than their aggregate value. Bad art and oppressive modes of social unity are examples of inappropriate unity, where the nature of the diversity involved is ignored or overlooked somehow. It is unclear whether these are to be taken as "really disunities" because inappropriately unified, or as negative Moorean unities. However, taking these issues on board, we can say that, for Nozick at least, appropriate and non-destructive unification of diversity is both a necessary and sufficient condition of Moorean organic unity.

We need plenty of examples, of course, and indeed Nozick's presentation of the notion of organic unity is wrapped up with his inductive case. In the interests of unity and as an aid to interpretation we should see this case in relation to the moral and political issues raised earlier. Mainly, these are to do with the internal senses in which justice is artificial. The controversial nature of Nozick's libertarianism made it inappropriate as a justification for a neutralist framework. Any appeal to absolute natural rights is inconsistent with his own account of ethics as responsiveness to value. The question now is the nature of that value. Rawls' appeal to a latent consensus around "Reasonableness" and the need for a liberal detachment of political philosophy from ethics is unconvincing. Nozick views political rights as "coagulated oughts", so he does not presuppose political liberalism. Yet it seems that in order to advance the cause of an Amsterdam of moralities there must be some sort of appeal to a shared concern or interest not divorced from ethics. The existence of substantive disagreement on one level has to be made consistent with some kind of deeper level (or more abstract)

agreement capable of grounding a commitment to a political framework, which is significantly neutral. The theme of inclusiveness which we have already started to identify in Nozick's explanation of the conditions on D can be interpreted in this light. Another related problem from earlier which will re-emerge in this chapter is that of the imperialist utopian who believes that his best possible world coincides with the best possible world for everyone; the reactionary John Wayne type immune to Nozick's case for the framework for utopia.

The basic dimension of intrinsic value is meant to be behind the vast majority of "our" judgements of intrinsic value. This immediately begs the question of how wide a section of humanity "we" represent. The sheer range of the inductive case for organic unity suggests wide cross-cultural appeal, including both secular and religious contexts. There are many sorts of intrinsic goods; organic unity is the "common strand". But pointing to this common strand rather than "proving" it to unwilling "opponents" does not presuppose that liberal consensus building is the object of philosophy; it is intended itself as an exercise in "explaining how things fit together". In this chapter I try to fit together parts of Nozick's inductive case into an interpretation which, despite providing elements of some prima facie help to the imperialist, points towards the goal of an Amsterdam of moralities. But in the next chapter I show that Nozick's account ultimately is an inadequate foundation for that happy state.

We should bear in mind that the inclusiveness theme applies on the level of metaphysics. One might have thought that Unity, connoting Coherence and Order, is a characteristic primarily of ideas or the realm of thought; an otherwise formless or chaotic (maybe even nonexistent) "noumenal" world exhibits ordered complexity only through the structuring of our

concepts and theories about it. Nozick applies organic unity to external complex phenomena themselves, our ideas or theories about them, and to the relation between (true) theories and the world. This is more than the view, which Nozick also holds, that "the diversity unified by a work needn't all be present in the work, as shown by Picasso line drawings". (PE, p416n) Whilst partly that, it is also a more metaphysical or ontological matter. We might say that there is a "presumption of realism" here which brings an opportunity for greater overall value. Nevertheless, even when all the interesting work is given to the mind, the ordered complexity - the coherence - of the remaining mental processes, or collections of ideas, is still an ultimate end.

12:2 Scientific Unities

Having gleaned the notion of organic unity from aesthetics, Nozick moves to its application in biology. "[Biologists] tell us that the organisms they study are organic unities, wholes whose parts are related and homoeostatically regulated in intricate and complicated ways, unified through time despite changes in the parts." (PE, pp416-7) In fact, the biological metaphor of an organic whole whose parts are unified in virtue of their functional interrelationship was applied to aesthetics by Plato, who introduced it in the Phaedrus as the mark of a good speech, good literature or of good writing in general: "every discourse ought to be a living creature, having a body of its own and a head and feet; there should be a middle, beginning and end, adapted to one another and to the whole." For Plato, organic unity is similar to beauty, but not identical with it; a work is an organic whole when organised by creative intelligence, not because it passively exemplifies a form or archetype: there is no "form of organic unity" present in every particular. (Orsini, 1972,

especially p14) Although not every organic unity is the result of creative intelligence, we shall see that it is important for Nozick that there is no "single form of organic unity" present in every particular case.

There is much evidence of the importance of guiding metaphors of poetic unities in the growth of science. For example, Philip Ritterbush shows convincingly that literary concepts helped in the development of biological science. Biological and literary analyses were significantly interdependent in the crucial growing time of the Enlightenment. Discovery of underlying structure was the aim of scientific analyses of biological growth, but even in the eighteenth century naturalists still lumped together plant and mineral growth. (Ritterbush, 1972, p33) Poets and critics had a better understanding of the nature of organic form before natural scientific standards developed; hence Edward Young's description of original literary compositions as "vegetable natures": "An original may be said to be of a vegetable nature; it grows, it is not made." (Edward Young, from "Conjectures on Original Composition", 1759, quoted in Ritterbush, p33) Just as creative thought was taken to be more than "the routine association of ideas", so "the outer aspect of vegetation - tendrils, sprouting seeds and curved surfaces" were contrasted with the relatively mechanical aggregation found in crystalline formation. (ibid.)

Organic unity has also been applied to nature as described by general physical laws. Nozick points to the unification of complex phenomena through scientific law, and explanation in general, as a domain with much intrinsic value. "A good theory is one that tightly unifies (in explanatory fashion) diverse and apparently disparate data or phenomena, via its tightly unifying relationships. Scientists sometimes use the terminology of aesthetics here, speaking of a

"beautiful" or "elegant" theory. Similarly we can understand why some speak of knowledge itself as valuable, for knowledge involves a person in a unified relationship, tracking, with a fact. The deeper the truth, the more it unifies, and the more valuable is knowledge of it. A unified field theory, one unified explanatory theory, would be most valuable." (PE, p417) We have already seen that this consideration motivates Nozick's search for a single dimension of intrinsic value; it would ground the most valuable explanation of value.

An influential statement of the view that scientific explanation consists in the unification of diverse, apparently unconnected, data or phenomena is to be found in Michael Friedman's "Explanation and Scientific Understanding". He argues that scientific understanding is "global rather than local", and is advanced when "our total picture of nature is simplified via a reduction in the number of independent phenomena that we have to accept as ultimate." (Friedman, 1974, p18) Thus diverse phenomena are unified through being reduced to a more basic level. For example, the phenomena of heated water turning to steam is explained by the behaviour of the molecules: "the behavior of water is reduced to the behavior of molecules". (Friedman, p6) The behaviour of other "less ultimate" phenomena also reduces to the behaviour of molecules and is thereby unified with that of heated water.

It is of course a matter of controversy in the philosophy of science whether there is something called scientific explanation or understanding which can be captured in just this way. But it is clear that unification is and has been an important goal, whatever its relation to pragmatic concerns such as predictive power or empirical adequacy. If, as Nozick thinks, knowledge (the unified "tracking" relation between beliefs and facts) is intrinsically valuable, then these issues largely concern the relation between science's intrinsic value

(qua unified) and its instrumental value as a means to knowledge. There is no need to attempt to settle these concerns here. But we can recognise in general terms the realist presumption which Nozick sets up. The kind of knowledge to which unified science is instrumental, should be of an external nature which is similarly unified (valuable). At least given Nozick's theory of intrinsic value then, ceteris paribus, this is the sort of scientific knowledge we want, and this presupposes scientific realism, the view that "scientific theories do more than tell us about observable regularities. They provide us with an inventory of what sorts of entities, mechanisms, processes, etc. (observable and non observable) exist, and tell us something about the relations between them." (Gasper, 1990, p292) A set of observation statements unified by theory is a good thing, perhaps as good as any human mental artefact, but how much better is something which points to an analogous good existing on a universal scale. Philip Gasper has suggested that realists should take explanatory unification as a guide to theoretical accuracy rather than as an end in itself. (Gasper, p294) But it could be taken as both, and a theory of value capable of unifying both concerns - explanatory unification and realist construed theoretical accuracy - is all the more powerful.

Thus it is not surprising, from the standpoint of Nozick's theory, that the notion of organic unity has been applied to physical nature as described by physical laws; that even on this level a concern for valuable unities has not been alien to the actual practice of science. Indeed, this concern goes right back to the presocratic beginnings of natural philosophy. The first recorded use of the term "cosmos" to refer to the totality of things existing as an ordered, intelligible and regular universe is by Heraclitus. (Belsey, 1994, p158) The notion of cosmos has inspired science ever since. (Belsey, p159) A striking modern example of this celebration of

unified physical nature can be found in Richard Feynman's "The Character of Physical Law": "There is a rhythm and pattern between the phenomena of nature which is not apparent to the eye, but only to the eye of analysis; and it is these rhythms and patterns which we call Physical Laws." (Feynman, 1965, p13) He singles out as especially important two characteristics the law of gravitation has in common with other laws. Firstly, and "most impressively", it is simple and elegant in its statement but highly complex in its application. (Feynman, p33) The law says that "... two bodies exert a force upon each other which varies inversely as the square of the distance between them, and varies directly as the product of their masses ... if I add the remark that a body reacts to a force by accelerating, or by changing its velocity every second to an extent inversely as its mass, or that it changes its velocity more if the mass is lower, inversely as the mass, then I have said everything about the Law of Gravitation that needs to be said. Everything else is a mathematical consequence of those two things." (pp14-15) Despite this simplicity, the interacting behaviour of actual gravitating objects - apples, tides, moons, planets, stars and galaxies - is extremely complex. Secondly, Physical Laws have universal application. Gravity not only rules the solar system, its writ runs to the most distant galaxies. "Nature uses only the longest threads to weave her patterns, so each small piece of her fabric reveals the organization of the entire tapestry." (Feynman, p34)

12:3 Vagueness

Natural and social order interact in interesting ways. Before returning to that theme we should be aware that continuous with the generality of application, or inclusiveness, of the concept of organic unity is a degree of

vagueness. (I argue in my critical conclusion that this is sufficient to be its undoing.) The basic idea, that degree of intrinsic value varies directly with degree of unified diversity appears simple enough and easily stated in the abstract. But Nozick admits that it is necessarily imprecise in application. "I am imagining that the degree of diversity will be measured relative to a set of dimensions along which the materials differ or are similar, and the degree of unifiedness will be relative to a set of unifying relations. Can we draw a curve of degree of organic unity with the two axes being degree of diversity and degree of unifiedness ... ? It is difficult to see how to do this, and it is difficult to know how to take account of the thematic material in a measure of diversity, and of thematic relations in a measure of unifiedness. Therefore we will have to proceed here with an intuitive and rough notion of degree of organic unity, without a formal measure." (PE, p416)

He also denies that the view that "no part of an organic unity can be removed or changed without significantly altering the whole" is necessary. (PE, p416n) He does not rule it out though - some organic unities presumably do have this feature. This issue and the "intuitive and rough" nature of organic unity is illustrated by the literary disagreement between Catherine Lord and A.E. Hutchings. Lord argues that the assumption that the parts of any work differ in importance is a reasonable application of the Aristotelian distinction between essence and accident, and only to be expected given the analogy between supposed literary unities and biological organisms. Moreover padding is a good thing: "padding is desirable because a poem in which every line and word counts is like a conversation in which every remark must be intelligent, the familiar goal of the academic Philistine! In this connection padding prevents fatigue, if not a sense of oppression. But more important still, the grades of relevance entailed in

padding allow us to luxuriate in the particularly striking or sympathetic moments of a poem." (Lord, 1964, pp263-5)

Hutchings argues that although padding has an important role, especially in longer works, more or less padding free unities worth celebrating are possible in literature. Both appeal to the same poem - Robert Frost's "Stopping by Woods on a Snowy Evening" - to illustrate their claims. Lord picks it because as "a good example of a highly unified work", any demonstration of padding will strongly support her claims. Hutchings replies by refuting Lord's analysis of the poem, suggesting that it is an impressively unified poem in which every line is used to effect: "a New England poem, spare and tough". (Hutchings, 1965, p326) Hutchings' case is the more convincing, but the point is that Nozick's notion of organic unity is too vague to settle the matter - further assumptions are necessary, for example about what counts as "padding" and whether padding is desirable or to be avoided in such cases. He says that "measures of degree of organic unity are relative to a background selection and weighting of relationships (indicating their importance in unification), as well as of components to be unified. The nature of the realms and the background weighting fix which features are material for unification, and which relationships are unifying." (PE, pp425-6) His point is that "relationships that might unify in some realms will not serve in others". But the controversy between Hutchings and Lord shows that judgements of unity and diversity cannot always be read straight off the "nature of a realm". Neither can the "nature of each realm" (or type of entity) be given a fixed definition in terms of the things composing the diversity to be unified and the relationships that unify. (PE, p418) We have to proceed with an informal notion of realm also.

Nozick also mentions problems with making comparisons between realms. Firstly, there is the possibility of domain specific intrinsic values not intelligible as organic unities. He mentions sensuous colour quality in paintings and "non-intentional", unstructured feelings of pleasure or contentment. (PE, p418) These might enter into the value scores of wholes but only admit of comparison with other occurrences of that type. This is compounded by the fact that "degrees of diversity of collections of materials from different realms", and of "unifiedness produced by different relationships from different realms" often will be incomparable. Therefore, often things from different realms will be incomparable in value. (PE, p419) Is Nozick's entitlement theory of justice more intrinsically valuable than a herd of wildebeest? The comparison is absurd, but not because there are entirely different notions of intrinsic value applicable to each.

12:4 Of Mice and Redwoods

Despite these difficulties, he endorses a familiar value ranking, placing people higher than animals "which are higher than plants which are higher than rocks. There are distinctions in value within these categories, as well as some overlap; for example, I do not rank a mouse higher than an 800-year-old redwood. There are some sharply defined parts to my ranking, but much of it is vague. Sprinkled in somewhere also are paintings, planetary systems, and scientific theories." (PE, p415) Degree of organic unity is meant to underly this kind of ranking containing some sharp comparisons and much vagueness. This is an advantage for "if a dimension yielded a very sharp ranking of everything, there would be a question of whether that dimension underlay our ranking, which is not as sharp." (ibid.) But notice that there is nothing in the notion of organic unity as such to prevent "our ranking"

here from being modified into the kind of divine order represented by the mediaeval "Great Chain of Being", with the angels and God ranked above ordinary mortals.(see EL, p163) To begin to see why this is important we should probe Nozick's curious comparison between a mouse and a tree.

Obviously, he does not think that mice and trees are incomparable in value. So it seems reasonable to ask how many mice would it take to equal the intrinsic value of an 800-year-old redwood? The issue is intrinsic value, so we are not troubled by such questions as the role of the redwood in the local (or global) ecosystem compared to that of the mouse, or the scarcity of redwoods against the ubiquity of mice. Thus the question is not "wouldn't you sacrifice the life of one measly commonplace mouse to save the last of the mighty redwoods?" It is just the mouse versus the 800-year-old redwood, abstracted from these issues. This process of evaluation suggests Moore's "method of absolute isolation" - to find out what degree of value something has in itself, consider "what value we should attach to it, if it existed in absolute isolation, stripped of all its usual accompaniments". (Moore, p91) As long as this does not require ontological isolationism, and organic unity is taken to be the criterion of value rather than a factor to be taken into account when intuiting goodness, the comparison with Moore is not too misleading. Moore claims that the isolation method is necessary "when we wish to discover what degree of value a thing has in itself". (ibid.) Some might be hostile to the application of this method to particular objects such as mice and trees, thinking that these are inconceivable in abstraction from their characteristic surroundings, or that to uproot them so as to attempt to measure and compare their value, is already to have devalued them in some important sense. Such a view, because it essentially appeals to some larger unity, is not

excluded from Nozick's inductive case, and we shall start to see aspects of it shortly.

We are comparing the intrinsic value of a mouse and an 800-year-old redwood. Even if the mouse is measly and commonplace, and the tree is the last of the mighty redwoods, the adjectives "commonplace" and "last" are irrelevant. But "measly" and "mighty" are important. Presumably, the tree's age is relevant as a sign of the huge mass of material which has grown organically into a single unified biological entity. Mice, although more complex organisms, are just so much smaller and represent so much less ordered growth. A full scale hollow replica of a giant redwood filled with mice might be more valuable than the actual tree (assuming the mice are not harmed by this). But what if the replica is only one tenth filled? This would still take a lot of mice. The question is complicated by the issue of how much of an organic unity, rather than an aggregate, is a large collection of mice. They are all members of the same species or potential breeding population (let us say), but that in itself does not seem to confer much organic unity; compare "all the rocks in that heap are from the same limestone quarry". The issue really turns on whether mice have large scale social organisation, and this they do not seem to have. We talk of plagues and infestations of mice, but these terms reflect human concerns and refer to large aggregates, formed because the conditions are favourable to mice, rather than to mouse organisations. Mice are relatively individualistic.

Humans, on the other hand, are social beings, capable of complex social interaction and organisation. Discounting their other valuable features, and their size, humans have a value advantage over mice simply because of their more highly developed social nature. Humans on the numerical order equivalent to that amount of mice needed to fill a hollow

redwood are capable of more than mere aggregation. The mice would be an aggregate of individuals and breeding units taken from their nests. The humans could be a community. Imagine the hollow redwood filled with people, all taken from a single close knit community, a Puritan town say, strongly unified by shared religious and mutually recognised social rules. Even bracketing out all other considerations such as the aggregate value of the valuable characteristics of the individual people involved, the value of the social organism thus transplanted would outweigh that of a redwood full of mice. We can even say that, like the original tree, the community has a history of ordered growth and development. In contrast, a redwood full of human individuals randomly selected from around the world would be more like an aggregate, more like a redwood of mice. Once in, the random individuals might form a single community - they would all have the capacity for responsiveness - but until they do they are more like an aggregate than an organic unity. Call the community, which already exists as a social organism with a history of unified growth and development, a "True Redwood".

Humans have organic unity as physical objects and as biological organisms. However, the valuable characteristics of people - what makes them incomparably more valuable, even as individuals, than trees or mice - are developed in a social context. How are these brought under Nozick's organic unity account? People also possess intricate organic unity in virtue of their self-reflexive consciousness - "being an I". (PE, p417; p519) Their lives also might be organically unified, especially through teleological value seeking. The contoured responsiveness of ethical behaviour is a mode of unifying diversity (people) qua that diversity. Responsive actions themselves may be intrinsically valuable as a series of elements unified by guiding intention. Nozick claims that the capacities to create or originate value and for free will

fall under his theory of value because they bring a closely unifying connection between oneself, and the valuable creation or chosen action respectively. (PE, p520) Ceteris paribus, any intentional action would be a valuable unity; one vital difference between my raising my arm and my arm going up is that the movements constituting the first are unified by my intention to raise the arm into an intrinsically valuable whole. The ceteris paribus qualification is necessary because the nature of the intention is important, as are the larger course of action of which the arm raising is a part and how this relates to wider webs of value and responsiveness. I might raise my arm to open the window, scratch my head, or in self defence; I might raise it to give a nazi salute or to beat someone over the head as part of my plan to mug them.

These valuable characteristics and capacities are brought to fruition within a social context. But this presupposes that when they are successfully developed, the social environment within which this occurs is itself unified (to some extent) by a shared valuing of these valuable characteristics. At least children are extremely unlikely to develop capacities for ordering their lives through "teleological value seeking", for originating value and for responsive action, if these are scorned by surrounding adults. Roughly speaking, if these capacities are reproduced within a community, then it must be a "True Redwood", at least to the extent of being unified by the common disposition to value them. The crucial question is whether these valuable capacities should be reproduced in the context of a single pattern, or one settled way of life. The imperialist utopian takes the existence of a plurality of personal and social ideals as a sign of widespread corruption requiring enforcement of the truth. Must the political organisation of a True Redwood reflect such an attitude?

This question coincides with a worry left over from the account of ethics as responsiveness to value. We have seen the underdetermination built into that account, the particularism and lack of algorithm to yield judgment and principles of right action or a fixed domain or autonomy. The value of moral dialogue and the right to a moral opinion were the most fixed items. Still, given that the general nature of value was not specified, it might be thought that the oughts and ought nots of responsiveness congregate in such a way as to threaten individuality. Ethics as responsiveness undermines conventional liberalism based on universal natural rights, a fixed domain of autonomy, and exceptionless principles (for example, Kantianism in general and libertarianism in particular). But if responsiveness cannot generate universal, overriding obligations of determinate content, and must respect particularity, still value might require every value seeker to pursue a determinate route around the particular obstacles. (PE, p448) The other side of the coin of the particularist suspicion of moral universals is that it can seem to involve an anti liberal notion of equality, whereby to treat people equally is to place them relative to a single notion of the good.³⁵ Libertarian John Wayne is no more; reactionary John Wayne, as an imperialist utopian, may be zealous in his application of what (rule of thumb) principles are available, and persistent in his attempt to steer you in the right direction. Thus might the particularities of everyone's life be harmonised towards (or according to) a single ideal.

If anything, this problem can seem more acute when value is specified as organic unity. The inclusiveness of Nozick's account is reflected also in the variety of types of "organic society" encompassed, at least potentially. Nozick does not

35. See Dworkin, 1978, pp127-8 for this anti liberal notion of equality.

handle this issue very well, or very comprehensively, but the logic of his account is inclusive here all the same. At various points he emphasises that unity should not be stressed to the detriment of diversity. A purely monochrome canvas would be as highly unified in terms of colour as any other painting, but not necessarily as valuable. (PE, p415) At key moments he also mentions hierarchical principles of unification as inappropriate to the diversities involved. For example, people may be intrinsically valuable in virtue of organically unified faculties, as in Plato's picture of the tripartite soul. (PE, pp421-2; pp507-9) Nozick treats this as part of the inductive evidence for organic unity as the basic dimension. (PE pp421-2) But he quarrels with Plato's own hierarchy of faculties in which the development of the lower is constrained by the lexical priority given the development of the higher, with the rational part supreme. This unity is oppressive and Nozick suggests "harmonious hierarchical development" as a more valuable alternative. The lower parts are not to be enslaved, but "transfigured, and transformed by the higher parts so as to become more like them; the higher infuses them". (PE, p508) Thus the lower comes to partake of the higher: "sexuality is transformed by love or intimacy, egoistic desire by the care for others and so on". Moreover, the direction of infusion is not all one way. "The higher characteristics themselves become less ethereal and less desiccated by their connection to the more elemental; they become infused with energy, bolder, more daring, more alive, vital, more erotic." Still, the relationship is hierarchical: "The relationship of higher to lower is that of steering wheel to gasoline pedal in the automobile" (PE, p509)

Plato, of course, meant his account of the tripartite soul as a mirror of the just state - a social whole unified by a strict hierarchy of classes, each with its specialised function. Nozick notes that a traditional interpretation of

"organic society" has been in terms of such a fixed, tightly organised hierarchical structure. Despite high unity, this "would not encompass the same vast diversity as a free and open society". (PE, p421) His preferred alternative picture of a "far flung system of voluntary cooperation" suggests the libertarian framework unified by a set of negative rights and a commitment to free market economics and minimal statism. (PE, p421; p726n) We have already rejected the universal force of libertarianism, and by the time of *The Examined Life*, Nozick does not want to identify "organic society" with *laissez faire* minimal statism.

Nozick's treatment of Plato's tripartite unities is too rapid. Although the rational faculty and the Guardians are supposed to rule their respective domains - the soul and society - and this requires the lower orders to mind their own business, Plato prefers this to occur harmoniously. The ideal is for each part of the soul, or the state, to know its place and stick to its function so that the whole functions harmoniously. The issue must be whether such a unity really can be "harmonious", whether it unifies the diversity involved in a way that respects the nature of that diversity. The answer must be that in principle it can be: if the value seeking *Is* involved really do "know their place" in such a scheme, they are appropriately unified by it into a harmonious whole. This applies whether we are talking about Plato's *Republic* itself or, for example, the mediaeval "divine order" described here by the historian Alison Weir: "In the fifteenth century Western Europe regarded itself as a united entity bonded by a universal Catholic Church and the philosophy of a divinely ordered universe. Late mediaeval man held a deep-rooted belief that society was also ordered by God for the good of humanity, and this concept of order expressed itself in a pyramidal hierarchy that had God enthroned at the summit, kings immediately beneath Him, then - in descending order - the

nobility and princes of the Church, the knights and gentry, the legal and professional classes, merchants and yeomen, and at the bottom the great mass of peasants. Each man was born to his degree, and a happy man was one who did not question his place in life ... Authority derived from God and was sacrosanct. Peace and order could only be achieved when all classes were in harmony with each other. Disorder - such as heresy, rebellion, or trying to get above one's station in life - was regarded as the work of the Devil and therefore as mortal sin. It was held that one of the chief duties of a king was to ensure that each of his liege men lived in the degree to which he was born." (Weir, 1995, pp3-4) We shall return to this picture.³⁶

12:5 Quests for Unity

Nozick's inductive case also generates another line of thought which might inspire the inhabitants of a Redwood to adopt the attitudes of the imperialist utopian. The latter wants to impose a unity on the unfortunate disunity which he sees in a diversity of personal and social ideals. The line of thought centres on the desire to see the natural world, or the cosmos, as a unified order. That human society takes its natural place by exhibiting order in similar terms is an old idea. The ordered cosmos itself was originally conceived in moralistic as well as "naturalistic" terms; as the aesthetic

36. In quoting Weir's schematic description here I am not suggesting a naive belief in the perfect homogeneity of medieval political order or of beliefs. I am presenting it as a schematic aspiration; simplified generalisation about medieval ideals which will suffice for our purposes. For political instability in the late middle ages see Weir *ibid* and *passim*: her work is on the Wars of the Roses. For conflicts in the medieval philosophy of the Great Chain of Being, see Lovejoy, 1961, ch.3.

qualities of harmonious order were identified with a kind of moral beauty, for example quasi-conservation principles conceived in terms of "natural justice". (Belsey, p160) My point is that an awareness of apparent natural disharmony itself can serve to stimulate the desire to find a restoring balance, an appeal to a higher court of justice administering to an overarching unity.

Now, Nozick wants disvalue to be more than the mere absence of value, not just lack of unity, but "disunity, disharmony, strife and so on". (PE, p420) One can see how this applies to human activities and their consequences; anti-responsive actions, otherwise valuable complex unities with destructive purposes (such as concentration camps), an inconsistent belief set and so on.³⁷ But what about natural processes of destruction, decay and entropy? Volcanic ash and lava have their own intrinsic value in the same way as rocks: "it is not that rocks have no degree of organic unity - there are, as the physicist tells us, intermolecular binding forces and intramolecular ones". (PE, p417) But their value is less than "whole ecological systems", exhibiting "intricate relationships, equilibria, and complicated patternings". (ibid) How then are we to judge a situation where volcanic activity destroys a rainforest? Ordered complexity is destroyed, but although this has instrumental disvalue relative to our concerns, it seems odd to say it is intrinsically disvaluable; the sort of thing which just should not happen.

37. Nozick's main discussion of intrinsic disvalue comes in that part of his formulation of conditions on the dimension of intrinsic value to do with "V-ing value". Thus D or its negative analogue, has to account for the disvalue of anti-V-ing value and of V-ing disvalue. (PE, pp430-3)

Such events do happen, but they are not analogous to active anti responsiveness, or to otherwise valuable complex unities perverted by evil purpose. Volcanoes do not erupt on purpose. True, they are "only following orders", in the sense of conforming to natural laws, but there is no sense in which "they should have known better". So although natural destruction can be unfortunate in various instrumental ways, it seems more reasonable to confine intrinsic disvalue to preventable disunity and disharmony brought about by intentional activity; it should be confined to the errors of value seeking Is, rather than made a feature of disunity and disharmony in general. The problem now is that it is not clear why intrinsic value should not also be restricted purposive action and its consequences. A rationale is needed for treating natural unities as intrinsically valuable whilst denying intrinsic badness to natural disunities.

The temptation now is to step back and search for larger harmonious pictures which incorporate natural destructive events as parts. Many destructive events take place within biological organisms; respiration and digestion for example involve breaking things down into less complex unities for the sake of the whole. Thus there is the temptation to interpret science as discovering unities which subsume the destructive aspects of nature. Perhaps the geological, meteorological and ecological systems of the earth, the mechanism of the solar system and, at the limit, the universal tapestry of natural law, provide the unities which resolve the destruction into larger value. But this cannot be fully satisfactory because at each stage the question is begged of just how coherent are these systems, how much chaos, decay and destruction they involve. Of course every organism will die, every ecosystem will be destroyed, but eventually they will not be replaced or recycled, for at the limit, the universe itself is reducing in complexity.

The second law of thermodynamics gives entropy its precise statement: "the entropy of an isolated system always increases, and that when two systems are joined together, the entropy of the combined system is greater than the sum of the entropies of the individual systems." (Hawking, 1988, p102) From the standpoint of the organic unity account one cannot even take comfort in this law as demonstrating the unity of all physical phenomena qua subject to entropy. Like the law of gravity, it is simple in statement and complex in application, but unlike Newton's law, the second law of thermodynamics does not always hold, only nearly always. Stephen Hawking gives the example of a box divided in half by a partition, and with one half filled with gas. When the partition is removed, the gas molecules will spread out to occupy both halves of the box displaying more entropy, less order, than when confined to one half. But it remains possible, although extremely unlikely, that later the molecules will be found in one or the other half of the box. (Hawking, pp102-3)38

Thus disorder is increasing, but not necessarily in a universally uniform way. The ordered complexity discovered by science, will not compensate for the disorder discovered by science, despite universal laws, any more than it will make good the disvalue of purposive destruction. Rapidly descending grouse parts obey the laws of gravity after the glorious twelfth just as much as do whole grouse before that time, but this does not show that the unification brought through being otherwise distinct gravitating phenomena somehow subsumes the disvalue involved in the destruction of grouse-type ordered complexity. Similarly, if all the gas molecules do not end up in one half of the box, the systematic disorder

38. In his famous popular discussion, Hawking goes on to rule out a harmonious symmetry between expanding and contracting phases of the universe, with entropy decreasing in the latter to balance the increase in the former. (p150)

has increased even though they still obey the laws of motion. The individual strands remain intact, but Feynman's tapestry is unravelling. We have come to notice this by searching for a rationale for treating natural unities as intrinsically good whilst denying intrinsic badness to natural disunity or destruction. But we get to the same place all the more directly by agreeing to the possibility of natural intrinsic disvalue.

We can distinguish ethical disvalue - anti responsiveness and its consequences - from other - "natural" - disvalue. Thus when someone is killed by lightning, we do not say this "should not have happened", meaning that some ethical mistake has been made (unless perhaps we think foolish risks were taken in an electrical storm). Still, we might say that the destruction of value involved in any death is intrinsically bad even when it is not a moral matter as in murder or manslaughter. Death as such should not happen, we might say, meaning that it would not happen in a universe that was organised better. This thought might be extended to all natural destructiveness. But this is not to come to terms with natural disvalue. The actual coexistence of natural value and disvalue stands in need of a unifying explanation; a story of the world in which things fit together harmoniously so that the bad things are part of something better is still intrinsically desirable. What is required is something like a theodicy in which an account is given of how the existence of evil is consistent with God's perfection. Science does not provide a satisfactory account of this sort; if anything it predicts the universal triumph of disorder, or at best a uniform lack of complexity. There are two further elements in Nozick's inductive case which would fit the bill: mystical experience and monistic metaphysics.

Nozick claims that his organic unity account explains the value attached to mystical experience. "The mystic persists

in using opposed or contradictory terms to describe both his experience and the object of his experience. Opposites are experienced as internally related, even as identical, and so we have the closest possible union of the greatest possible diversity, an experience of surpassing value. (Will this include the antinomial union of good and evil?)" (PE, p422) As William Wainwright points out in his useful study, mystical experience is to be distinguished from "ordinary religious feelings and sentiments, from numinous experiences, and from visions, voices and such occult phenomena as telepathy, clairvoyance and precognition". Unlike these latter, mystical experiences are always characterised by awareness of Unity; they are either of the space-time world as somehow made whole, or of a unified Reality which completely transcends the world. Although they are not of specific objects within the phenomenal world, mystical experiences are noetic or perception-like; the mystic takes herself to be "seeing" Reality. (Wainwright, 1981, p1) Distinctions are possible within the general phenomenon of mystical experience. For example, "introvertive" forms involve a withdrawal of attention from the external world, "extrovertive" forms have the external world as an object, unified (in itself and with oneself) and sometimes transcended. (Wainwright, p36; and Chapter 1 passim)

Nozick's claim cannot be endorsed without qualification. For example, it is not clear that mystical experience must be genuinely paradoxical - i.e. described in terms of literal contradictions. Such descriptions apparently are more commonly used in speculative accounts of the object of mystical experience, such as that of Plotinus. (Wainwright, pp9-11) Often mystics report a "blissful innocence of the distinction between good and evil" which, depending on the interpretive context might be taken to be for example a "return to Eden" or "the natural bliss of Limbo". (Wainwright, eg p12) But innocence of the distinction between good and evil is not necessarily the same as a positive identification of value; it

needs an interpretive context to make it so. Although perhaps common to such contexts is the thought that because it is a state in which everything is as it should be - i.e. everything is One - there is no longer (or not yet) the need for making any distinction between anything within it, including between good and evil. If any state is valuable, this is it; indeed, Nozick goes on to speculate whether it is not merely valuable, but actually is value. (PE, p569)

Similarly for the Absolute Reality depicted in monistic metaphysics. "Blissful innocence" in the presence of Unity is highly suggestive of Wollheim's explanation of the appeal of such theories (where this appeal is distinct from logical force). Wollheim's thoughts on this matter are derived from his study of Bradley's metaphysics. Bradley's identification of Reality with a unified, ordered and seamless whole - "The Absolute" - is not meant as an unqualified rejection of the notions and distinctions of common sense and science. These are "valid" relative to the needs they address, but they "stand condemned" relative to the "satisfaction" brought by contemplation of the Absolute. (Wollheim, 1959, p277) Thus the aim of Bradley's metaphysics is a "satisfying vision" of the world, rather than an understanding of this or that process within it. (Wollheim, p282) "Satisfaction" here is a sign of truth and goodness: reality satisfies the intellect where satisfaction is not the content of a feeling but the manner of its being felt; i.e. its being felt intensely. What truly satisfies is the Absolute, and Bradley's logical route to this in Appearance and Reality describes a process of repudiation. "What I repudiate is the separation of feeling from the felt, or of the desired from the desire, or of what is thought from thinking, or the division - I might add - of anything from anything else." (quoted in Wollheim, p282)

Wollheim's (tentative) explanation of the perennial appeal of "severe monism" draws on the "irresistible analogy between

metaphysical attachment to the idea of undivided Reality and the desire to establish 'whole objects', which is of crucial importance in infantile development." (p283) Only by identifying with the desire to make amends, "to preserve or revive the loved and injured object", may the child permanently reduce the "depressive anxiety attending the awareness of his own destructive impulses." (pp283-4) Similarly, the monist is acutely conscious of the ways "Reality has been disjoined, scarred, mutilated by the impact of Thought" and turns to metaphysics to "heal the scars, and find the solution in which the divorced elements are reconciled and reunited in a harmonious and integrated whole". (p284)

The kind of "mutilation by thought" taken to require this metaphysical healing is well illustrated by Stephen Hawking's argument to show that the thermodynamic and psychological "arrows of time" must run in the same direction. The activity of memorising itself involves an expenditure of energy which always brings an increase in general entropy greater than the increased order brought about in the memory itself. (Hawking, p147) Thus does Thought, in contemplating its own primitive distinctions between past, present and future, succeed in piling disorder upon disorder. One remedy is the radical extension of thought itself to the point of demonstrating the ultimate Unreality of Time in the static order of the Absolute. Another is a blissful noetic experience transcending temporal distinctions.

Nozick also explains the motivation for austere metaphysical monism by the appeal of organic unity. His example is the Hegelian system which "sets itself to overcome the dualisms of man and nature, subject and object, freedom and community, finite subjectivity and infinity, and so forth." (PE, p421) But he argues that because Hegelianism is "the story of the maximum organic unity, the maximum possible value; this raises the worry ... that it is too good to be true." As

we have already seen, one cannot easily escape the inclusive clutches of Nozick's account by eschewing metaphysics of this sort ("nonsense to be dismissed"): "Is the logical positivist expression of this value motivation the unified science movement? Did Neurath, Carnap, and others believe in a unified science because such a science would be better?" (ibid)

The most striking (satisfying?) elements of Nozick's inductive case involve an appeal to some total unity, some higher "justice" which transcends lower order disorderliness. So, given that value is organic unity, a True Redwood might best be organised according to some version of what Isaiah Berlin has called the "ancient doctrine": "The unfavourable contrast sometimes drawn between 'negative' liberty and other, more obviously positive, social and political ends sought by men - such as unity, harmony, peace, rational self-direction, justice, self government, order, cooperation in the pursuit of common purposes - has its roots, in some cases, in an ancient doctrine according to which all truly good things are linked to one another in a single, perfect whole; or at the very least cannot be incompatible with one another. This entails the corollary that the realisation of the pattern formed by them is the one true end of all rational activity, both public and private." (Berlin, 1969, p x)

Officially, Nozick rejects all manifestations of this in the economic sphere and in the wider sphere encompassing all of morality and politics. Hence his arguments for example against patterned theories of distribution and imperialist utopianism. A fundamental mistake in Anarchy, State and Utopia was that this rejection is expressed in terms of a defence of libertarian voluntarism; the sought-after escape from constricting patterns was attempted via a single set of universal, natural rights: it is misleading to equate the ancient doctrine too closely with "positive liberty". In Philosophical Explanations, Nozick remarks that the "tragic

theme" of the ineradicable plurality of values has been subordinated in the history of philosophy to the goal of value harmony. (PE, p446) But despite his intention in Anarchy, State and Utopia, libertarianism reflects the spirit to the ancient doctrine. If the aim is supposed to be to avoid the suppression of real plurality involved in the demand for a final solution, or tidy harmony, then the way to do this is not to assert, in the teeth of controversy, a set of universal natural rights.

Now, organic unity is not a substantive political doctrine in itself, but it is easy to see it as an account of value which supports imperialism via expressivism. Organicist expressivism is precisely the "distressingly recurrent and hackneyed" pattern of thought referred to by Larmore. (Larmore, 1987, p93; see the introduction to this work.) That it has been bound up with the monist urge to overcome distinctions, is shown by Charles Taylor's account of the late eighteenth century Romantic movement, culminating in Hegel. (see Taylor, 1975, ch1) In this light, the "unification of diversity" seems inimical to the liberal picture of an Amsterdam of moralities.

To see that this is not the whole story, consider again harmonious hierarchical unities. We saw that Nozick was too quick in rejecting these as forms of social unity. The issue must be whether they respect the nature of the parts involved - value seeking Is. The point is that in principle, if the value seekers know their place, so that in this sense political and personal ideals coincide, then even the medieval divine order described earlier would be a valuable unity. This is not to say that it would be acceptable only if "voluntarily" chosen from a prior state of natural negative liberty abstractly conceived. Just that if those born into the various positions in that kind of society accept their status

as divinely ordained, if they accept that theory as value seeking Is, then that organic society will be valuable as such.

But the problem with this of course is that it is extremely unlikely. Along with twentieth-century totalitarian regimes, mediaeval politics are often thought of as a paradigm of anti-liberalism. Indeed, the original modern impetus for liberal theorising came from the destruction unleashed by the decay of the mediaeval order. The real collapse came with the Reformation and Wars of Religion, but general disrespect for the Pope and Church, growing nationalism and the beginning of materialistic capitalism were a feature of the late fourteenth and fifteenth centuries. Moreover, "Sumptuary laws passed during the period regulating dress and behaviour were intended to preserve order in society; that they were necessary is evidence that already some traditional ideals were being challenged." (Weir, p4) Pattern maintenance measures were strict, especially in the vicinity of the royal centre, which must hold else all things fall apart. For example, the English king Edward IV's "Black Book of the Household" was only one of a number of books setting out intricate courtly rituals to be followed slavishly as a demonstration of ordered society. "The number of steps one took to a great one's guests was determined by one's rank. According precedence was a refined art, and social inferiors were expected to refuse precedence a stated number of times, according to rank, before gracefully giving in. Pages and sons of the nobility were forbidden to drink wine while still chewing food, lean over the table, pick their noses, teeth or nails during meals, place dirty utensils on the cloth or eat with their knives." (Weir, p296)

That such interference is unacceptable for the libertarian, for whom even the slightest hint of redistributive taxation is an unwarranted negation of natural liberties, is not the point. Rather it is a sign of precisely the fact that people did not "know their place" within that order, and hence

that it was not a valuable unity in the relevant sense. That they did not know their place is unsurprising given Nozick's account. For example, compare briefly Bradley's moral theory. For Bradley, morality is a matter of "realising one's good self", and he gives a dialectical account of this. Thus good self realisation is identified with internalising a particular role within the social organism, with adopting "my station and its duties"; "abstract individuals" being Unreal.(Bradley, 1876, pp160-189) The next, and less well known, stage in the dialectic consists in criticism of this position; the concept of morality transcends social conventions, and development of the good self involves "individualistic" elements, including a capacity to judge society. (Bradley, eg, pp219-220) Similarly, although we have insisted that the development of those personal capacities Nozick identifies as most valuable must be developed in a social context, chief amongst these is the open question capacity of the value seeking I. But, unlike Bradley, Nozick doesn't pursue a dialectical route towards maximally coherent Unity.³⁹

12:6 Strong Pluralism

Still, the imperialist may yet hope that people will eventually come to know their place within the one True Redwood and a Unity be forged, immune to the entropic consequences of disagreement and plurality. Nozick's most important move to discourage this state of blissful innocence - more effective than his assertion that a libertarian free and open society is

39. Unable to find enough coherence in the concept of morality itself, Bradley ends up saying "morality issues in religion"(p314); by which he seems to mean mysticism: "Here our morality is consummated in oneness with God, and everywhere we find that 'immortal Love', which builds itself for ever on contradiction, but in which the contradiction is eternally resolved."(p342)

most valuable - comes when he points out that from the account of value as degree of organic unity, "it does not follow that the realm of values itself exhibits high organic unity, that diverse and apparently conflicting values can be united in some higher unity or larger harmony. (PE, p446)

Tension, conflict - disunity - amongst values consists in the impossibility of realising them simultaneously. This might be a question of contingent limitations; if it is too expensive to have both bread and circuses, then a choice has to be made. Some putative goods are essentially incompatible, for example, it is likely that absolute equality of material distribution is necessarily inconsistent with maximum personal liberty. Or one might simply not know how to realise certain goods simultaneously. (PE, p446) Unless I am extremely single minded, "my values" will include my relative weighting of a number of values contingently and intrinsically incompatible. These will include the familiar social goods of political philosophy, where they are not valued only instrumentally. Also they will include more personal values; family over work, one religion over another and so on. This is me exercising my value seeking capacity. In terms of the framework for utopia, I choose an association with like-minded people. But then, the imperialist replies, why should I want to give other alternative value choices a chance? The incompatibility, tension, or just sheer difference between your values (or the weight you give them) and mine, just shows me that you are corrupt.

In Philosophical Explanations, Nozick's view is that an inevitable, strong, plurality and incompatibility is built into the realm of objective/intrinsic value. Where monism goes for unity without diversity, "strong pluralism" goes for diversity without strong unity. He claims that the persistent denial of strong pluralism in the philosophical tradition is the work of the theory of intrinsic value as degree of organic

unity combined with an understandable desire for the value realm to be as valuable as possible. (PE, p447) This persistent denial of strong pluralism corresponds to Berlin's "ancient doctrine".

Strong pluralism has an important consequences: there is no one unique, objectively valuable True Redwood. Ineradicable plurality amongst values means that responsiveness to value does not require V-ing a single pattern of value instantiation. As far as the nature of value is concerned, value seeking Is have the freedom to decide which values shall be realised, and to what extent. There is no obviously correct value ranking, and there is no correct answer to which possible combinations are the most valuable. This indeterminacy is "within some range", as Nozick says. (PE, p447) The picture is not a relativist one in which every option is as good as every other. As in the framework for utopia and the "basketful of philosophies", alternatives - whether associations, philosophies, ways of life or ideals - are to be respected as valuable, but one ranks them in order of subjective preference. Moreover, there is a difference between ranking ways of life, or ideals, as such, and ranking individual examples of these. For example, the life story of a good fireman might be objectively better than that of a bad philosopher, even though the "goods" or virtues characteristic of each kind of life are not objectively ranked. The same is true on the level of community or shared ways of living. Finally, it cannot be that literally no comparative judgements on the level of lifestyle and community have objective validity; a lifetime within an experience machine induced fantasy world might have enough coherence to rate a positive value score, but not as high as the intrinsically irreconcilable good of engaging with the world to formulate creatively a personal lifestyle, including responsiveness to others. Lifetimes and organisations devoted to destructive

anti responsiveness presumably are ranked so low that they are not tolerated.

But the "lack of ordered harmony" amongst values, which constitutes their "strong plurality", must be more than incompatibility in the sense of impossible co-realizability. From the fact that x and y cannot be realized simultaneously it doesn't follow that one is not more valuable than the other; therefore it doesn't follow that there is no strong reason, based on value itself to realise x rather than y, or to give x lexical priority, or some other preferential treatment. This is the move the imperialist relied on to resist the framework for utopia.

Joseph Raz draws some relevant distinction between three sense of "strong moral pluralism". The first deals with the ranking of virtues relative to individuals. It denies the view that "for each person all incompatible virtues can be strictly ordered according to moral worth so that he ought to pursue one which for him has the highest worth, and his failure to do so disfigures him with a moral blemish, regardless of his success in pursuing other, incompatible, moral virtues." (Raz, 1986, pp396-7) The second deals with impersonal criteria for ranking incompatible virtues. "Even if the first ... [sense] obtains it is still possible to claim that, though there is no moral blemish on me if I am a soldier and made of bronze, excellence in dialectics, which is incompatible with courage and is open only to those made of gold, is a superior excellence by some moral standards which are not relative to the character or conditions of life of individuals. The second thesis denies that such impersonal strict ordering of incompatible virtues is possible." (p397) The third sense of strong pluralism involves the source of the first two sense, claiming that "the incompatible virtues exemplify diverse fundamental concerns. They do not derive from a common source, or from common ultimate principles." (ibid)

Nozick holds the first two, but not the third of these senses of strong pluralism. The value of incompatible virtues as that of other goods, is derived from one source - organic unity. All intrinsic values (apart from negligibly important domain specific unstructured ones) are organic unities, but these are not organised into a hierarchy which would negate the first two of Raz's sense of strong moral pluralism. Now, Raz appeals to two kinds of explanation for strong pluralism in all three of his senses. One is the "dependence of value on social forms", the other is the "incommensurability of values" which "supports the first two sense of strong pluralism and renders the third one very plausible". (Raz, p398) The first of these is of no use to Nozick; neither he nor the imperialist utopian believes that value "depends on social forms" other than in the trivial sense that moral value must be realised by moral agents, and moral agents must be socialised. Now what does Raz mean by the "incommensurability of values"?

Jonathan Dancy has distinguished three relevant concepts of incommensurability. (Dancy, 1993, pp121-2) The strongest of these says that if x and y are of incommensurate value, then neither is more valuable than the other, but they are not of equal value either. This is what Raz means by incommensurability. (Raz, p322) The weakest notion of incommensurability says that x and y are of incommensurate value when there is no fact of the matter, whether one is more valuable than the other. (Dancy attributes this to Guttenplan; Dancy, p121) Intermediate is a notion that says that x and y are incommensurate in value when a reduction in one cannot be compensated for in kind by an increase in the other. (Dancy attributes this to Wiggins, ibid)

This latter sense is of little use. The fact that a decrease in x is not compensated for in kind does not mean that a y increase is no compensation at all. Pursuing dialectical skill at the expense of courage might be justified in terms of

the greater value of the former, even though developing that does not compensate in kind for the underdevelopment of the latter. It is unclear when such adjustments count as compensation in kind according to Nozick, given the difference between types of organic unity. Perhaps compensations in kind occur within realms, such as "the realm of moral virtues" (which, I suppose, is part of the realm of ethical responsiveness). If so, then the strong plurality of such values cannot be explained by this sense of incommensurability.

The fact that organic unity applies in such diverse contexts makes blanket application of compensation in kind problematic. We have seen that comparisons particularly between values from different realms are supposed to be impossible, at least often. Perhaps this incomparability is captured by strong incommensurability. Nozick's entitlement theory and a herd of wildebeest might not be of equal value, even though neither is more valuable than the other. Still, they might both be valuable, both examples of organic unity. In this case, strong incommensurability does not imply the third sense of strong pluralism: the denial of one common source to disparate values.

But it is unlikely that strong incommensurability is behind the strong pluralism we are interested in (roughly corresponding to the first two of Raz's senses). The metaphor of a dimension of degree of intrinsic value suggests that values not ranked higher or lower will be equal; i.e. occupy the same place along D. There is in fact some tension between the notions "realm" and "dimension". It is possible for a "realm of value" to contain only strongly incommensurate values, strictly incomparable and existing in splendid isolation. But a dimension of value(s) cannot be like this. Nozick thinks that some things are ranked objectively, as we have seen, so the value realm includes dimensional organisation. The question is whether the lack of objective

ranking involved in strong pluralism reflects only strong incommensurability - those values within the realm that are not ranked along a dimension (or the same dimension). It seems to me implausible that it should, simply because we do rank them subjectively; we choose between them, or take one line rather than another, without any strong sense of radical incomparability. Value seeking is structure their lives one way or another, but the different possibilities are not all that different. Radical incommensurability lies behind what traces of strong incommensurability there are in Nozick's account, but not the strong pluralism important to value seekers. It seems, therefore, that weak incommensurability will suffice: although values x and y are such as to be placed along a single dimension, there is no fact of the matter whether one is more valuable than the other; objectively speaking, they can be taken to occupy more or less the same position along D. This lets an increase in one compensate for a decrease in the other, without the trade off being "objectively required". Without more information this is all rather speculative as an interpretation of Nozick, but the bottom line simply is that it does not follow from the fact that value is degree of organic unity that weak incommensurability is false. This is important, even though it has not been proved to be true.

Nozick stresses the room left for individual creativity by strong pluralism. Value seekers cannot just straightforwardly maximise their score along D, as they could if D were pleasure, by choosing the experience machine. To some extent, they have no choice but to "formulate their own package of value realisation". The package itself can be a patterned unification of diversity. As when choosing an association within the framework, a person might want to emulate previous exemplars, pursue a tradition, modify these, or display original complex unities. (PE, p447) However, strong pluralism doesn't imply an absolute right to choose a favourite

association consistent with the same right of others. Autonomous choice is not given incomparably more value than anything else. On the other hand, strong pluralism doesn't imply a conservative political philosophy, despite the context of unity in diversity. This might seem surprising for, as Michael Clark puts it, "The tendency of conservative thought ... has been to conclude that authentic diversity depends precisely on unity. The two are mutually dependent. Any principle of unity must encompass the actual variety of experience, else it is no true unity. Without the unifying principle, on the other hand, diversity collapses into mere randomness." (Clark, 1983, p7) However, one could just as easily take a superficial reading of Anarchy, State and Utopia, to show that it is a continuation of Burkean political philosophy because it tilts strongly against assimilating individuals into one homogeneous mass in the name of radical egalitarianism or utility. Consistently applied, the libertarianism of that book is profoundly anti-conservative. Similarly, "organic unity" in Philosophical Explanations does not favour conservatism, if this means a political philosophy which says that in order to encompass a valuable diversity, political communities must be unified by a single - traditional- scheme of value.

Thus we have an account of objective value which grounds the assertion in Nozick's case for the framework that "for each person, so far as objective criteria of goodness can tell ... there is a wide range of very different kinds of life that tie as best ..." (ASU, p310) And we can take seriously, now that we have an explanation of why imperialist utopianism is unjustified, his list of exemplary individuals, including for example "Wittgenstein, Elizabeth Taylor, Allen Ginsberg, Yogi Berra, Picasso, Moses, Socrates, Henry Ford, Gandhi, Frank Sinatra, Columbus, Freud, Ayn Rand, Thomas Edison, Thomas Jefferson, you and your parents. Is there really one kind of life which is best for each of these people." (ibid) To this

we can add Moore and Rorty; Moore's emphatic view that "personal affections and aesthetic enjoyments include all the greats, and by far the greatest, goods we can imagine", and Rorty's espousal of the aesthetic life represented by the "curious intellectual ironist" and "strong poet". (Moore, ch.6; Rorty, eg. 1989, p29,41, pp73-8)

These ideals seem merely dogmatic if they are taken as universal prescriptions or the last word in leading an ethical life. (compare Shusterman, 1992, pp251-7) They look much better as (possible) parts of a plurality. True, Nozick stresses the value of satisfying personal relationships (the heart of responsiveness), and of course the organic unity account takes its lead from aesthetics. But the postmodern eclecticism of Rorty's curious intellectual ironist trades a certain amount of the unity implied by the deepest attachments for extra diversity in experience and interests. The stern Kantian reserves deepest commitment for the principles of "rational autonomy", still his life is a diversity unified at least by these principles. Rorty's "strong poet" ploughs her own unique furrow, but it is to be a coherent, if distinctive one. However, organic unity is not confined to the sophisticated choices of cosmopolitan and postmodern philosophers of the world. Also valuable may be lives which from that perspective are lives of obscure rusticity, because

Far from the madding crowd's ignoble strife,
Their sober wishes never learned to stray;
Along the cool sequester'd vale of life
They kept the noiseless tenor of their way.

Nozick's account is not automatically hostile to this manifestation of romanticism. Of course one ranks these possibilities (and perhaps their combination) and others. But as long as they don't present themselves in imperialist mode,

the ranking will reflect properly subjective personal judgment, not unjustified objective priorities.

Strong pluralism gives this much leeway. But notice that these individuals are not all famous libertarians and many would not see their way of life as the one they happen to prefer to contract into from a prior (natural) state of libertarianism. Each (or some) might be committed to their way as valuable, rather than something they merely have a right to do providing they can persuade others to cooperate, but on Nozick's account they owe each other some responsiveness as value pursuers. Given the general auspices of Nozick's theory, they pursue their own and respect others - this is compatible. One cannot appeal to objective value to support traditional monism, but can appeal to it to support a pluralist, tolerant political framework. There are therefore non pragmatic grounds to try to confine the conflict and tension between incompatible concepts of the good to the abstract realm of value; keep it between the values themselves, rather than between the value seeking I's. This is a continuation of the Rawlsian project by other, metaphysical, means.

We can bring this out more clearly if we stress yet again the inclusivity of Nozick's approach. The "inductive task" is an important component: Nozick takes his explanatory case for organic unity as the basic dimension of intrinsic value to be supported by the view that it is (degree of) organic unity which underlies our judgments of intrinsic value across the board. Thus we have an inclusive picture of diverse areas of evaluation, diverse activities and traditions all guided by the same basic notion of intrinsic value. Two interesting features of this situation should be emphasised. Firstly, it is meant to be based on empirical fact rather than a priori imperatives. Secondly, it is itself intrinsically valuable according to D. This gives a general reason for political

neutrality, given that we are talking about different conceptions of the good - different ways of realising or seeking value - based on a shared commitment to D. In principle, this shared commitment to D brings an equally shared reason to favour neutrality: D is valuable, yet neutral (it would be too good to be true for it to be both valuable and disvaluable). In fact of course neither the shared commitment nor the shared reason may be recognised; Nozick presents his inductive case (as well as his explanatory one) as a discovery, which it is, if it is true.

What features the state would have as the guardian of organic "neutral pluralism" - something significantly like an Amsterdam of moralities - is not clear; particularism and anti-universalism applies on this level also, for rights are no more than the coagulated oughts of responsiveness. Norms of discussion and agreement will be necessary features, as will rights connected with minimal responsiveness - no murder or suppression of opinion. But to give this kind of justificatory case for a neutrality framework is not to give a political handbook or blueprint for every state. It is more like pinpointing a very general form of responsiveness or V-ing value; if it is too much to expect every element within the diversity to welcome or to celebrate the fact of diversity, they should at least tolerate it (a constraint on responsiveness is your own value). A democratic (zig-zag) state, unified by humane concern, is one way of answering the Rawlsian concern to establish a stable shared conception of justice under modern pluralistic conditions. But humane concern need not involve a consensus of views which would allow full scale justice as fairness including the difference principle. Moreover, different conditions will require different answers. For example, a zig-zag between entitlement and distributive economic concerns would not unify a diversity including some groups which do not believe in exclusive individual property rights at all, as was the case with many

Native Americans.(Brogan, 1985, p65) Certainly, the intrinsically valuable (organically unified) society cannot be identified a priori with laissez faire economic equilibrium, as the still semi-libertarian Nozick does in Philosophical Explanations.

Chapter Thirteen: Criticisms and Conclusions

"[The principle of plenitude embodies the assumption that] no genuine potentiality of being can remain un-fulfilled, that the extent and abundance of the creation must be as great as the possibility of existence and commensurate with the productive capacity of a 'perfect' and inexhaustible Source, and that the world is better the more things it contains." (Lovejoy, 1961, p52)

13:1 The Second Explanatory Task

Unfortunately, it is impossible to accept Nozick's account as a satisfactory foundation for an Amsterdam of Moralities. No doubt there are many more criticisms to be made than I have space for here, but we can begin to unravel the position by looking at the second explanatory task: "why D is value". From the outset, it is unclear why Nozick sets himself this task. He begins his discussion of value by announcing an intention to explain how there can be "true value judgments and objective values", of course without trying to prove that nihilism, subjectivism and relativism about value must be false. Thus he wants to "explain how there can be objective values and ethical truths, to formulate a conception or picture within which there is room for these." (PE, pp399-400) But this runs together two distinct issues.

Firstly, there is the question of value objectivity in the ontological sense of the "realm of abstract value" being part of the "furniture of the world". Call this "platonism about value". Secondly, there is the separate issue of value judgments being objective in the sense of having a truth value not determined by crudely subjectivist or relativist criteria, such as contingent desire or social convention. Call this

"objectivism about value". Clearly, platonism implies objectivism, but Nozick's own account shows that objectivism does not require platonism. True, his first explanatory route - the explication of the concept of intrinsic value through a set of conditions on what is intrinsically valuable - is buttressed by certain "subjectivist" elements; the allure condition itself and the inductive case. But this does not mean that without the help of a platonic realm, value is reduced to what we merely happen to desire, for there are still the other, external, conceptual conditions.⁴⁰

I am not pointing this out so as to deploy a "queerness" argument and claim that half of Nozick's account must be false because it is at odds with naturalism. Nor am I appealing to any automatic inference from "platonism" to "absurd metaphysical nonsense". I am just pointing out Nozick does not make explicit why he thinks the platonic element is necessary, given that he has secured the objectivist element. He does say that it is possible for the universe to contain many things which satisfy the conditions on D (i.e. many organic unities) and yet contain no value. (PE, p562) But this might mean only that it is possible for there to be objectively true value judgments in the absence of a platonic value realm. The puzzle is why that should be a problem.

Another way of bringing this out is by comparing Nozick with Rawls in "Kantian constructivist" mode. Rawls eschews the discovery of independent moral facts in constructing a conception of justice acceptable to all Reasonable people. (Rawls, eg, 1980, p519) Nozick offers a suitably constructed

40. Perhaps the last of these conditions, which says "it is valuable that there be value" should be viewed with suspicion as a platonic beachhead within Nozick's account; thus it is the platonist, rather than the philosopher as such who thinks "it is valuable that there be value".

conception of value rather than justice - that is reasonable for us and manifest in the majority of our value judgments. Unlike Rawls, Nozick's account does not involve social constructivism in the sense of a hypothetical social procedure like the original position.⁴¹ Rather it is an account of the value to which ethics is responsive, and which looks capable of grounding an overlapping consensus on liberal politics. Now Rawls says that it is best to endorse moral principles, not as true, but as "reasonable for us". (Rawls, *ibid.*) Nozick stresses the difficulty of arriving at moral principles of determinate content that can be accepted as true; general principles are best thought of as rules of thumb to aid responsiveness and so perhaps better described as reasonable rather than true. But moral judgments may be both true and reasonable for us, even in the absence of any discovery of ontologically independent moral facts; so in this sense Nozick's inclusive objectivism does not require platonism about value, so why bother about it?⁴²

It might just be that he thinks platonism makes things more interesting. Apart from this, it is possible to distinguish three broad types of motivation which might be behind his platonism. These are the desires to maximise value, choice and inclusiveness. I shall consider each of these in that order.

41. In his *Anarchy, State and Utopia* discussion of Rawls, Nozick criticises the thin concept of the person shorn of knowledge of social position, natural talents and so on in the original position. (ASU, p214) As we have seen, even at his most hypothetical, Nozick does not appeal to that degree of "abstract individualism". This includes the competition between rival candidates for "our" favour with which Nozick illustrates the allure condition on D; the idea being that this has in fact been satisfied by "degree of organic unity".

42. Nozick might reject this constructivist gloss, but the question of why Platonism still stands.

In terms of maximising value, the situation can be understood as a continuation, in terms of the metaphysics of value, of the "presumption of realism" which featured in the realm of scientific theories. Scientific theories might be intrinsically valuable, and useful, but so much the better if the world itself contains analogous unities. Similarly, if values were themselves ontologically woven into the fabric of the world, the latter would be more valuable. If Plato's Forms (ultimately unified within the form of the good) are the source of harmony and order, then it is better that they exist in the sense that otherwise there would be Chaos. Moreover, it is better in the sense that they deepen reality, which then no longer simply answers to our ideas of value, but contains its own. The situation is similar for Nozick's realm of abstract value structures.⁴³

His platonism involves an extra layer of reality to which we are being responsive when we are V-ing valuable objects. These latter are partial realizations of abstract values, thus when we are responsive to valuable objects we are indirectly responding to those pure values of which they are reflections. Responsiveness to valuable objects is itself valuable; so is the indirect responsiveness to value. Moreover, the realization relation between abstract value and valuable object is valuable also. Indeed, each time a value is realized the realm of value resounds with an infinite number of higher order value realizations. This must be so if a value attaches to each occurrence of value: every time there is a score along D, there is another score (at the same place?) marking the value of the occurrence of the first score, and another marking this

43. Nozick's account of this is too vague and sketchy to support much detailed comparison with Plato, or with anyone else. In *The Examined Life*, he describes many realms and dimensions of reality in a metaphysical vision that is difficult to penetrate. There is not space here to attempt an interpretation. (see EL, passim)

second one, and so on to infinity. If maximising value is an important consideration then this regress is not vicious. We shall return to this matter shortly.

The second kind of motivation for Nozick's platonism is maximization of choice. Just as he is keen to pack as much intrinsic value into the world as possible, so he is keen on free choice. The voluntarism that ran through Anarchy, State and Utopia was at least checked to the extent of reducing to Lockean liberty; in Philosophical Explanations it seem to know no bounds. Nozick's answer to the question "why is D value" is that we choose the existence of value, but not its nature. This theory - realizationism - is part of a wider concern to maximise choice, consistently with the maximum of value. This wider concern is also particularly explicit in a rather obscure chapter of Philosophical Explanations on Freewill. There Nozick rejects Kant's view "that the law that does not bind is the law we give ourselves". It makes the law arise from an essence that itself is not chosen, and so does not allow the fullest autonomy. "Imagine someone who decides to act on the principle of discovering what the categorical imperative or moral law requires, and then doing the opposite. "But what motive for this could he possibly have?" If we must attribute one, perhaps he acts purely from reverence for autonomy. The prospects are not bright for deriving morality from autonomy." (PE, p355) He goes on to claim that the desired fullest autonomy would require an essence limited to that of "being a self chooser". But he gives no useful explanation of this; he admits that it is not clear whether it is coherent, although it is at least clear that we are not self choosers. (PE, p358) We should put aside this manifestation of choice maximization and move to the claim that we can choose the existence of value.

We choose value, but because any D has to satisfy certain constitutive conditions, we do not choose the nature of value.

He first suggests realizationism as a solution to Plato's Euthyphro Dilemma. (PE, pp552-4) God is Good, yet if the good is dependent on God's will, then He could have decided to arrange the value of things differently; he could decide that wanton murder, for instance, is a good thing. On the other hand, if God is constrained by an external standard, and so prevented by the Good from making value rearrangements, then His power and majesty is reduced. Realizationism offers a kind of compromise solution. God chooses value, but not its nature; He could not decide that wanton murder is good, but He is not therefore subject to an entirely external standard. A kind of divine command that there be value underlies the goodness of everything; God chooses to get the whole value enterprise going, but not its direction. Moreover, we can extend Nozick's thought here and say that if God is timeless, then so is His choice - He either chooses or not - He cannot choose value and then withdraw the command. Alternatively the permanence of value might be achieved in the following way. God is good if anything is good; once He has chosen value, then He is good; the nature of God's goodness, as opposed to its existence, is not up to Him; it is part of God's goodness that once He has chosen value He does not change His mind; God's nature is such that if He is valuable at all, He is infinitely valuable, or at least as valuable as it is possible to be; value is organic unity, so a revisable command would be less unifying than a permanent commitment. Similarly, a choice that confined value to a particular region of the universe, or to a limited range of beings, would be inconsistent with value as organic unity.

If God exists, then He chooses value. If God does not exist, then the choice is up to us: we choose value, but not its nature. An obvious disanalogy is that noone says "Let there be Value!" (PE, p558) Nozick's suggestion here is that the choice that there is value is "subsumed" under the choice to V-value: "In valuing things, we choose to view the world as

valuable, we choose that there be value. In thus valuing things, we also can value the existing of value, and our V-ing value. Our choosing that there be value is itself retrospectively and retroactively held to be valuable, according to the results of the choice; the value not only is chosen but is instanced in its very choosing. However, to speak of value being there retrospectively may misconstrue the situation. For the choice that there be value might apply to itself not (only) in retrospect but at the time reflexively. Reflexivity of reference, reference "from the inside" ... involves referring in virtue of a property bestowed in the act of referring, referring to something as having that (bestowed) property as so bestowed. The object is referred to, we might say, as an object of (that) reflexive referring. Similarly, the choice that there be value is reflexive when it chooses that there be value in virtue of a property bestowed by that very act of choice; it chooses that there be value in virtue of that very choosing that there be value. ... The choice that there be value and the choice to pursue value each are subsumed under the choice to V value; and this choice can be made as an instance of the policy of pursuing and V-ing value, a policy that is reflexively and self subsumingly brought into effect in that very choice." (PE, p560)

Obviously a comprehensive discussion of this would require a close look at the notions of "self subsumption", "reflexivity" and "choice" involved. But we do not need to discuss it particularly comprehensively in order to see how implausible it is. Nozick suggests two main reasons for accepting it. It "provides an internalist strand in the theory of value", thereby removing worries about possibly boring external pre-existing moral facts. (PE, pp565-6) But why should this be important, given that according to the first explanatory route, any D must satisfy the internalist allure condition? The other main reason for accepting realizationism is that it grants us autonomy. (PE, p556; pp565-6) That is

autonomy in the same sense as that granted to God in the realizationist solution to the Euthyphro dilemma. But this is a very odd sort of autonomy, which disappears at the moment of being exercised. It is not the same as the realm of autonomy protected by rights, such as perhaps the right to choose a life style, a "value package", or an "association". Delineating, or exercising, (that is "V-ing") autonomy in these latter senses is to conform to the nature of value. Given that value sanctions autonomy in this way, it is not clear why the other, fleeting sort should matter.

Nozick claims that realizationist autonomy is valuable in accordance to the nature of the value brought into being by its exercise, because it "establishes a tighter linkage between the person and value, and so a more valuable linkage, than some non-autonomous relationship." (PE, p565) There is also the question of non-coercive philosophy. Nozick explains how it is possible that D is value by saying that we can choose that it is, not by trying to prove it to us: "... the desire to offer a philosophical proof of an ethical theory, a knockdown argument that forces someone to believe the conclusion whether he wants to believe it or not, is in tension with the desire for autonomy in ethics." (PE, p565) Explanation is a better way to proceed than the sort of dialectical manoeuvre represented by the thought that "Although those who deny value sometimes see as itself valuable their tough mindedness in refusing to succumb to (what they view as) the illusion of value, this comfort is not legitimately available to them." (PE, p559)

But even if we agree that realizationist autonomy matters, or would be a good thing, still the claim that the "choice" to v-value has the ontological consequence of bringing value into existence is even less plausible than the claim that it implies a belief in some kind of platonism. This is for two reasons. Firstly, we are not God: the ontological structure of the

world is not subject to our will. Secondly, we are individuals. Nozick admits that realizationism makes it unclear whether the value brought into my world through my value activity is also brought into your world, whether or not you choose to V-value. (PE, p564) But it is more than just unclear. If my choice to V-value brings value into "my world" only, then this would be a very limited ontological achievement, barely distinguishable in principle from choosing to live in an illusion. On the other hand, if it introduces value into our shared world no matter what you choose, then your realizationist autonomy is negated (compare the position of hard libertarians coming to age in a situation where exclusive property rights have been agreed by the previous generation in Gibbard's argument).

The less said about realizationism and the choice maximising motivation for platonism the better for Nozick. In his own terms he fails to show how (platonic) value is possible. The third kind of motivation behind Nozick's platonism might be extra inclusivity. Nozick might believe, with Mackie, that ontological objectivity about value has a "firm basis in ordinary thought, and even in the meanings of moral terms". (Mackie, 1978, p31) This view leads Mackie to advance an error theory: all value claims are false when they make covert reference to some non naturalistic metaphysical picture. (Mackie, pp48-49) Nozick, on the other hand, tries to make value claims interpreted in this way welcome in his account.

Clearly, an inclusive strategy cannot work in these terms. The first two kinds of motivation - maximising value and maximising choice - are unified in the sense that they are represented as two sides of the same coin: choosing value is the most valuable kind of choice, and the existence of the value conferred on that choice is what is chosen. But this maximization of value and choice is inconsistent with maximum

inclusivity. It is unlikely, to say the least, that the general run of value judgments have built in platonism, rather than objectivism without any necessary ontological commitments. When there are such commitments in the background they are most likely part of some theological account, and most certainly they are not believed to be the sorts of things whose existence it is up to us to choose. Still, there is residual inclusivity as platonism is not excluded by the rest of the account and the value maximization motive still stands. As with the analogous alternatives in the philosophy of science, if many find pressing philosophical reasons to resist this "presumption of (platonic) realism" about Value, a unified theory of value might yet remain intrinsically valuable as a mental artefact.

13:2 The Good and the Ghedh

But the biggest problem with this inclusivity is that it trades too much on the vagueness of "organic unity". Nozick says that as the "common strand to value across different realms", organic unity accords with the original root of the English word "good", namely "ghedh", meaning "to unite, join, fit, to bring together". (PE, p418) But all this bringing harmony to apparent tension, uniting, overcoming tension, uniting, overcoming contradiction and so on - all this ghedhness - doesn't refer to the preservation of diversity. What counts as unity and as diversity is supposed to depend on what is being unified, but Nozick's examples mainly stress unification; they establish "strong linkages", "tightly unifying relations" and so on.

Isomorphism is a favourite "tight mode of unification". The relation between an abstract structure (value) and an organically structured (valuable) object is a unifying isomorphic relation, and establishes extra organic unity as

such. Isomorphism can hold within realms, as when there are multiple realizations of the same value, and between objects from different realms; the realization of abstract value by concrete object is one such, another is the "isomorphism of contoured grooves and sounds" between a music record and the music recorded. (PE, p425) But there need be little recognisable diversity involved in such cases. Two objects exactly alike but numerically different would be tightly unified by the relation of extreme similarity, and so constitute an intrinsically valuable whole. Many things extremely alike might constitute a kind of diversity unified through being multiple instantiations of the same value. Although such a collection of multiple instantiations might through their similarity be more than a mere ad hoc aggregate, still it might be implausible to view them as an intrinsically valuable unity in diversity. Why should a collection of exact reproductions of a Rembrandt self-portrait be a whole whose value is greater than the sum of its parts? If the world were cluttered up with such copies, exact in every way, the intrinsic value (not just the market value) of the original might even be diminished. The same applies to the multiple instantiation of Rembrandt himself; the uniqueness of individuals is important to Nozick, and the presence of a multitude of Rembrandts would prevent the existence of a unique Rembrandt.

Presumably, Nozick would say that this is to ignore the fact that in the realms involved - individual people and works of art - the correct notions of unifying relation and diversity are such as to rule out these collections as intrinsically valuable. Although we might share this judgement, it is not derived from the notion of organic unity as such, apart from our interpretation of it as applying to these realms. It is the vagueness of organic unity which allows the interpretation to run in the direction of allowing considerations of uniqueness to override the value of isomorphic unities in

certain cases; where we say that the importance of uniqueness is inherent to the realm. The crucial question is how far our agreement goes about this. For example, although individuals and works of art shouldn't be all that similar, it might be that they shouldn't be all that dissimilar either. This line of thought threatens strong pluralism: for although Nozick's theory of organic unity doesn't imply monism, it doesn't imply strong pluralism either. The vagueness here allows judgments combining a view of strong isomorphism between individuals (they should all be like this...) with a corresponding denial of strong pluralism, leading to organic expressivism. Nozick doesn't say that Hegelianism overemphasises Unity, remember, he says "it is too good to be true". Organic unity needs to be less vague in order to prevent the pull of maximum expressivism, but then it will be less inclusive.

The appeal of tightly unifying relations which, like isomorphism deal in similarity, might override the appeal of uniqueness to the extent that the value seeking I is no longer taken to be the moral basis and much of the particularism of ethical responsiveness would be dismantled. Nozick's grounds for valuing human diversity would be removed altogether. In *The Nature of Rationality* he briefly mentions the usefulness of general moral principles for establishing a coherent personal identity (people can become identified with their principles) and claims that this falls under the organic unity account. (NR, pp12-13) If it is unity that is the true ideal then an aim would be for everyone to have the same principles (the same identity in this sense).

The suspicion that it is unity simpliciter that is being celebrated is fuelled by further probing of the value maximization involved in Nozick's platonism. One implication of the Platonic Form of the Good, considered as perfectly good and self sufficient, is that it makes the separate, empirical world superfluous at best. This thought has informed much

subsequent theology and metaphysical speculation. (Lovejoy, p43) A countervailing idea reflects the ancient principle of plenitude (Lovejoy's formulation of which is quoted at the head of this chapter). For example, given that the world is the better the more it contains than one containing only God would be less good than one with God supplemented by nature. (Lovejoy, pp52-3) That this line of thought can become paradoxical is shown by Nozick's own account. There is a gap between fact and value, precisely because the facts are not valuable enough to be identical with value(s) (PE, pp567-9), which suggests there is more value around precisely because of the gap between the world and Value. The infinite chains of value realizations brought into being every time there is a valuable occurrence illustrates this; if there were no valuable things, only Value, there would be no such chains. We said earlier that this "regress" is virtuous, given the value maximising motive. But although it is in some sense good that the world can be improved, it is surely paradoxical that there should be less value in a world containing only Value than in one containing Value plus things that are not Value.

Within the terms of Nozick's account the paradox might be dissolved by emphasising the length of the dimension of intrinsic value, D. At the top end is the ultimately valuable possibility of the world being identical with value; at the bottom would be something like the intermolecular unities of grains of sand on Coney Island.⁴⁴ Even the values in between would be much less valuable than the fact/value unity at the top. Most important is that the positions along the dimension

44. The notion of a Great Chain of Being, marking different degrees of value, has been associated with the principle of plenitude, hence Augustine's "if all things were equal, all things would not be". (Lovejoy, p67)

mark qualitative not merely quantitative differences in value, otherwise the infinities of "lower" value realizations would be equal in weight to those occurring higher up the scale. The difference between the value of sand and the value of say, human beings, must be qualitative.

As with Mill's distinction between higher and lower kinds of pleasure, the qualitative differences must not break the unity of the dimension. The problem is that it is unity, rather than unity in diversity, at the top of the qualitative hierarchy. Nozick says that fact/value identity would establish the "tightest possible unity", and nothing we know is "that valuable". (PE, p568) Furthermore, just as the criterion for membership of Mill's class of higher pleasures is the favour of competent judges who have experienced a range of pleasures, so the opinion of those with experience of a range of values is important for Nozick. This seems to be the significance of his citing mystical experience in the account of the allure condition as "evidence that every person will be attracted most by the same thing, once they encounter it". (PE, p439) Mystics report that one is better than many; diversity of distinct elements is transcended rather than preserved in any recognisable form. The more unity the better; the mystic does not report any strong pluralism or tension of that kind. So, if the "realm of value" is not highly unified, it is not the object of mystical experience. The "competent judges" do not favour strong plurality.

Nor could a realm of value exhibiting strong plurality be identical with God, because God's mind would not be a disordered strong plurality of divine preferences. Then again maybe strong pluralism could reflect the fact that God does not mind, within some range, which value possibilities get realised, as long as some do. People would not believe that God is a liberal if this means He is woolly-minded; the realm of value exhibiting strong plurality would have to be distinct

from Him, existing one step below Him, so to speak, expressing His indifference rather than confusion. The problem now is to convince people that God does not care, for example, about the minutiae of everyone's sexual preferences.

Most serious for Nozick's overall account is that the qualitative bias in favour of unity, masked by the vagueness of "organic unity", remains even when the platonic element is dropped. True the fact value paradox we have just seen does not arise because there is no question of the world being identical with or distinct from value. If the world were perfectly organically unified it would not be "identical with value", for there is no value in that sense with which to be identical.⁴⁵ Still, the notion of a dimension of intrinsic value reflecting degree of organic unity must reflect the qualitative differences privileging unity, so that the infinite realizations at the top end outweigh those at the bottom. It might be thought that without the value maximising motive and the accompanying platonism, the condition that it is valuable that there is value should be dropped. Even so, there is still the special competence given to mystical accounts of unity and the other examples of qualitative bias in favour of unity.

13:3 The Lexical Priority of Ethics

Even if Nozick's theory of organic unity could be improved so as to be non vague, inclusive and secure with diversity,

45. It might still be "valuable that there is value", but this just means that each time something answers to the concept there is an infinite number of further applications contingent on the first. But these extra "realizations" have no ontological counterparts.

there would still be the following problem. We saw in chapter ten that built into Nozick's account of responsiveness is a case against reducing ethics to "morality the peculiar institution" in the sense of a system of universal and overriding obligations. Such a view of morality is at odds with the ethical complexities surrounding the rich particularity of unique value seeking I's. But there is an opposite problem, which Nozick recognises but does not solve satisfactorily: it is not clear why the requirements of ethical responsiveness, whatever force (obligatory or non-obligatory) they have, should take priority over other forms of responsiveness to value. Trees and works of art are valuable, but lifetimes spent V-ing them to the detriment of ethical responsiveness - that is the V-ing of other people - can be reprehensible; why is this, when non-ethical, or even immoral activities can exhibit their own forms of intense responsiveness to value? Nozick presents this as the problem of explaining the lexical priority of morality.

Nozick's answer to Glaucon is that immorality has a cost to be measured primarily in terms of value, rather than irrationality or experienced unhappiness. He goes on to give two specifications of the value sanction: firstly, ethical responsiveness exercises the capacity to be a value seeking self and, following Aristotle, a life is more valuable insofar as it exercises that centrally valuable capacity; secondly, responsiveness to the value of others brings a more organically unified relation with them. The first sanction does not assume the full scale Aristotelian view that the special property of something represents its function and special mode of flourishing. A special property need not be especially valuable. For example, man's unique property might be capacity for pleasure in wanton destruction. Better is the modified Aristotelian position that what should flourish are your valuable characteristics in the form of harmonious hierarchical developments. (PE, pp525-6; p519) The important

point is not that this is a special function, but that the capacity is valuable: being a value seeking I is valuable according to the theory of value, not because of facts about specialness.

To see this point consider John O'Neil's recent Aristotelian criticism of a scientific "lust of the eyes". O'Neil argues that the true value of science consists in contemplation of "the wonderful and the beautiful", because this extends our own well being by realising our characteristically human capacities. Thus the real worth of science is not as an instrument to the satisfaction of curiosity, or the discovery of truths about exploitable nature, but as a route to the development of our special essence. (O'Neil, 1993, pp39-43) By contrast, Nozick's view seems to be that responsiveness to the value intrinsic to the natural world involves the development of capacities valuable in themselves, irrespective of being human capacities. Moreover, the responsiveness is intrinsically valuable qua fitting, regardless of being a means to, or opportunity for, capacity development, or of being an external sign that specifically human capacities are in operation.

Now, a concern for the value of the natural world can conflict with moral, interpersonal claims, as Nozick admits. (PE, p472) Moreover, there are striking historical examples of the lack of identity between artistic and moral sensitivity: "Witness the case of Hans Frank, entertaining friends by playing Chopin piano works while in charge of the Nazi's "final solution" to Jewish existence and the case of Martin Heidegger writing on Holderlin in proximity to the activity, and reports of the extermination camps." (PE, p532)

More interesting than these examples is that certain forms of escape from reality altogether may be intrinsically valuable, and so compete with ethical responsiveness. Nozick

suggests that ethical responsiveness falls into the wider category of "responsive connection to reality" which includes knowledge and responsiveness to value in general, and which falls under the general theory of intrinsic value as degree of organic unity. (PE, pp524-28) In this connection, Nozick asks why we should bother linking up with reality when organically unified connection to imaginative possibilities might be more comforting or interesting as well as intrinsically valuable.

One problem with introducing imaginative possibilities amongst the actualities so as to increase unified diversity is that they make an overall unification more difficult. (PE, p526) "Moreover, speaking for myself, a being of limited imagination, I cannot imagine a reality more diverse, surprising and intricately unified than actuality turns out to be. So if I am to link up with the greatest organic unity and link tightly with it, reality will play a major role, at least as a basis." (ibid) Furthermore, the greater intrinsic value of linking up with reality is not only contingent upon limited imagination. Even "super-Tolkiens", able to create detailed imaginative worlds, would not be able to act in the worlds they imagine, and so would miss out on an important mode of "organic linkage". (ibid)

As Nozick briefly mentions in passing (PE, p525), there are echoes of the experience machine thought experiment here. It is more intrinsically valuable to be "in touch with reality" than it is to remain plugged into the machine experiencing a perpetual running of unreal imaginative possibilities. It is not that we can never use the machine at all. Just as one's own value counterbalances the otherwise pressing ethical requirement to be responsive to every nuance of surrounding BMCs, so it can give overriding reason to ignore surrounding actuality. Apart from recreational usage, the machine might under certain circumstances function as a refuge, or have anti-depressant properties. But it is not clear why machine

induced experiences in principle cannot be of an illusion just as complex and intricately unified as actuality, so that an appreciative contemplation of it would be a valuable (fitting) mode of responsiveness. If the machine allowed willed intervention in the course of experienced events, the subject might achieve an active organic linkage of God-like proportions (relative to the imaginary world).

Nozick does not spell this out explicitly, but super-Tolkiens or perpetual machine inhabitants would miss out on the organic linkage brought by acting on the world in the sense of responsiveness to surrounding value seeking I's (perhaps they are in the machine in an isolated region). Thus the problem of the lexical priority of morality also applies to the super-Tolkien or machine inhabitant. Nozick's example is sacrificing people for the sake of artistic value, but we might also say sacrificing responsiveness to real people for the sake of imaginary people within imagined scenarios. Anarchy, State and Utopia is full of such scenarios, either stated or presupposed: the pioneering frontier situation, hard libertarians agreeing to exclusive property rights, individuals voluntarily setting up a minimal state within a Lockean state of nature. If these scenarios were filled out with enough detail, "plugging into them" might be intrinsically valuable rather than merely consolatory. Thus, whether the questionable non-ethical responsiveness is aimed at the natural world, art world, or a complex fantasy world, a sanction in terms of exercising a capacity for value seeking does not explain the lexical priority of morality, and hence is no sanction against the immoral consequences of that responsiveness.

Nozick seems to concede this (PE, p532), and so apparently intends the second specification to carry all the weight of sanction: the linkage brought by the value of ethical responsiveness is greater than others. But there are two

levels of difficulty involved which makes this doubtful. Firstly, there is no argument to show say an evil, or just thoughtlessly immoral, aesthete that the linkage to the value of other people established through responsiveness must bring such greater intrinsic value than that brought through responsiveness to fine art, that it can ground the lexical priority of morality. Non-liberal art collectors will be puzzled by the notion that some level of responsiveness is fitting in virtue of a BMC, which in some cases amounts only to a capacity. Moreover, if the ethical and artistic realms are distinct enough to prevent meaningful comparisons in value between objects in each, then from the standpoint of particular value seekers either sort can be incomparably (more) valuable relative to the other, unless some independent way of deciding lexical priority is established. To be sure, if organic unity underlies the values in both realms, and this agreed, then in principle aficionados of either realm can find the other interesting and valuable. Thus the situation would be like that of intelligent aliens who might be persuaded to extend their responsiveness to appreciate other kinds of organic unity (i.e. us). But this is not to establish lexical priority. This inadequacy shows that responsiveness to (a basic dimension of) intrinsic value, is not enough to generate what is usually meant by morality; not necessarily a peculiar institution, but at least a mode of responsiveness with priority over escapism and art appreciation.

Secondly, as Nozick admits, talk of the intrinsic value of the linkage to the other brought by responsiveness apparently places that value between the moral person and those responded to, or else attaches it to "some larger totality consisting of the moral person, the others, and their mutual interactions". This does not seem to be a value sanction applicable to the immoral person himself. (PE, p532) It also seems to undermine the anti-Kantian view that ethical action is performed for the sake of the other person, rather than for the sake of

abstractions. He attempts to get around this by arguing that the sanction is to apply to the person's "life or existence", it being impossible to discount "the character of someone's relationships to others to get a purified story of only his existence". The value sanction must apply to something which includes the person and his moral/immoral behaviour to others and in general his responsiveness to value. (PE, p533) But now the problem is in drawing the boundaries of that whole given that "not every detail about the universe he lives in is properly a part of the person's biography." (ibid) Nozick argues that it is unimportant where the boundaries of a life are drawn, even though the important value of a person's life concerns that of the whole encompassed by that life's boundaries.

He explains this in the section of Philosophical Explanations on "the meaning of life". The relevant notion of meaning is that of "the transcending of limits in a context of value": a life is meaningful to the extent it connects with something else external to it, which itself is either meaningful or intrinsically valuable, even the boundaries of the life are drawn to exclude many of its responsive relationships. The intrinsic value of that life would be greater if the boundary was taken to include all the responsive relationships, but less meaningful because there would be less external connections with value. At the limit, if a person responded fittingly to every detail in the universe, and the boundaries of his life were drawn to include every responsive relationship, then his life would be infinitely valuable (assuming an infinite universe) yet meaningless. At the other limit, if the boundaries of that person's life were somehow drawn to exclude his responsive relationships, then the intrinsic value would shrink to a relatively negligible level, and the degree of meaningfulness become infinite. Nozick posits a further dimension - that of worth - of which those of meaning and intrinsic value are expressions, rather like in a

"dual aspect theory" which takes the mental and the physical to be irreducible to each other, but both reducible to an underlying something. (eg, Nagel, 1986, pp28-32; 40-9) Since being meaningful and being intrinsically valuable are both ways of being worthwhile, drawing the boundaries to exclude relationships will not be a way of dodging the sanction against immorality; other things being equal, an immoral life will be less worthwhile in the sense of less meaningful. (PE, pp610-13)

There are various problems with this even if the principle of plenitude is taken to justify positing what would otherwise seem ad hoc objective dimensions of objective meaning and worth. (This tendency to multiply "dimensions of reality" is one of the main features of *The Examined Life*) Most importantly it does not rule out the possibility of an unethical pursuit of non moral responsiveness being highly "worthwhile" and so does not establish the lexical priority of moral value. Nozick effectively admits this. (PE, p612)

The pragmatism Nozick adopts in relation to drawing the boundaries of a life (PE, p534) brings further indeterminacy, which tends to undermine the lexical priority of ethics as responsiveness to persons. All persons are owed a certain level of responsiveness qua possessors of the BMC, but beyond that their lives may be taken to be more or less intrinsically valuable, and therefore more or less requiring responsiveness, depending how much of their surrounding context of organic unity/diversity is taken in. But like the domain of autonomy, what constitutes the proper domain of a person's life can be the subject of controversy; for example, does it include her property? (compare Knowles, 1979, pp263-5) If so then does responsiveness to "her life", take lexical priority over ethical responsiveness to the life of someone with much less property? The issue would perhaps turn on how tastefully arranged her estate was; an aesthetic application of the notion of organic unity.

13:4 Cyber-Justice or Pragmatic Pluralism?

Father, O Father! what do we here
In this land of unbelief and fear?
The Land of Dreams is better far,
Above the light of the Morning Star.

William Blake, The Land of Dreams

Nozick quotes from Blake's The Land of Dreams whilst discussing the relative value of linking with "imaginative possibilities" and with actuality. (PE, p526) But he does not explain why "living ones life oneself in touch with reality" should take precedence over "escapist" modes of responsiveness, any more than he explains the lexical priority of ethics over alternative (including escapist) modes of responsiveness. This is not a small failing. In the introduction to this work, we outlined several criteria of appropriateness for any moral and political philosophy which is to serve as the foundation of an Amsterdam of moralities. One of these was the need to address the Humean "circumstances of justice". Because it fails within its own terms to explain the lexical priority of staying in touch with reality, Nozick's account of responsiveness to intrinsic value (as degree of organic unity) is an inappropriate foundation on this ground alone.

Other criteria were internal coherence, a low degree of expressivism and an ability to survive imperialist argumentative opposition. These are closely connected to each other of course. Apart from under conditions of hypothetical unanimous agreement, the libertarian background was inconsistent with other key elements of the account: the existence of even a minimal state, the original acquisition of property, and the possibility of rectification. A libertarian Amsterdam of Moralities is possible only as a programme in the experience machine. But since the experience machine can create a consistent libertarian programme by altering the operative world conception, perhaps the problems

here are fundamentally to do with ignoring the circumstances of justice rather than ultimate coherence. The rectification principle needs extra counterfactual conditions in order to function: an ideal history of transfers, and an "actual" history not so unjust as to involve (more) catastrophic moral horror in the rectification of it. The point of the experience machine here is that it can make the programme consistent by altering the circumstances of justice; it solves the internal and external problems.

Degree of expressivism and ability to deflect imperialist criticism are closely related also. The way in which Nozick's later account so easily privileges Unity plays into the hands of the imperialist opposition, precisely by pointing to the end of greatest expressivism. A unifying theme of this work has been the problem of how to justify non pragmatic neutralism without presupposing a substantive ideal, and thereby sacrificing neutrality with respect to rival ideals. For example, Kantianism is not neutral with respect to the non-Kantian, even though it sanctions significant neutrality between empirically conditioned routes to happiness. The kingdom of ends is a blueprint, even if only a structural blueprint, which allows for some variety of conceptions of the good within the structure. It represents the making over of society in the terms of one perfectionist ideal: autonomy. Nozick's earlier libertarianism exemplifies this problem. Thus it rests on a question begging connection between human dignity, or the individual's quest to determine the meaning of her own life, and her possession of absolute side constraints. In other words, it presupposes the absolute universal priority of dignified self shaping meaningfulness understood in just that way. Even as an experience machine programme it would not represent a space of least expressivism, or ideal Amsterdam, precisely because it exemplifies this problem for liberal neutralism (although the experience machine will

bracket out non libertarians as part of its solution to the internal problem).

Problems with the (non libertarian) framework for utopia, particularly lack of convincing argument and the hypothetical nature of the utopian pioneering situation, led to a brief look at Rawls' current Political Liberalism as a possible improvement. We understood this to rest on a spurious appeal to consensus, most fundamentally on the need for a liberal political philosophy. Such a consensus would need to build up from the nature of ethics so as to encompass those like Nozick, who believe political philosophy to be bound by moral philosophy.

Still blinking from the experience machine programmes of Anarchy, State and Utopia we met the complexity of Nozick's later theories of ethics and value. We interpreted them initially as promising grounds for an inclusive consensus around significant political neutrality. Moreover, this was not on the basis of value freedom, but a celebration of diversity. Unfortunately, it has turned out to be as much a celebration of Unity. Organic unity can only generate the inclusive claim to be "our" basic dimension of intrinsic value as long as the paradigms of unity are not mentioned. For example, unity can connote static harmony, which will exclude ideals of activity, vigorous competition and so on, which should not be excluded from the ideal Amsterdam. More importantly, the combined faults, of over privileging unity, and of failing to privilege reality over escapism, means that Nozick's account sanctions a return to the experience machine as a response to the fact of plurality: dreams, of the One True Redwood unified in accordance with a favoured ideal, or of voluntary universal cooperation in an idealised state of nature, will still be allowed to dominate political philosophy. But justice is supposed to be "artificial" without being cybernetic.

It seems that non expressive liberalism will be confined to pragmatic consensus building. This is not to suggest (or to try to prove) that political philosophy should be confined to that role. But whether or not expressive political philosophies understand themselves as liberal, they are more appropriately viewed as adverts for the superiority of of a way of life, or of a particular moralised concept of freedom, rather than as the final solution on the level of political philosophy. Although the neutrality of the perspective it embodies need not be that of bland disenchantment, this might seem to be a rather banal, procedural, point. But it is important, and easy to forget when the air is full of slogans of liberty.

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