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E pluribus plurum, or, how to fail to back into a state in spite of really trying

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II.I INTRODUCTION

“The framework for utopia,” Robert Nozick tells us at the beginning of the final section of Part III of *Anarchy, State, and Utopia* (*ASU*), “is equivalent to the minimal state” (p. 333). The rich and complex body of argumentation of Parts I and II had produced the conclusion that the minimal, and no more than a minimal, state was legitimate or morally justified. What Part III reveals is that the minimal state “is the one that best realizes the utopian aspirations of untold dreamers and visionaries” (p. 333). Although this happy convergence is surely no accident, neither, Nozick insists, is it contrived, for it is the conclusion reached by two independent lines of argument. If there is a framework for utopia – or, as I shall from now simply say, utopia – it is the minimal state.

The obvious question to ask, then, is whether Nozick is right that the minimal state gives us utopia – understanding utopia in the way that he would have us do. The thesis of this chapter is that Nozick does not succeed. What Part III offers is neither a plausible account of a utopian community nor the inspiring conception of a state that Nozick promises. The root of the problem lies in Nozick’s initial rejection of anarchy, for the idea of utopia he wants to defend is one that is achievable outside the state but not within it. What he tries to do in Part III is to put back into his political philosophy that which was taken away in Part I, when the legitimacy of the minimal state’s incorporation of ultra-minimal states was settled. It is within the framework of the minimal state “that one’s nonimperialistic vision of the good society is to be propounded and realized” (p. 332). Indeed Nozick tells us that “[a]llowing us to do that is what

the framework is *for*" (p. 332). The aim of this chapter is to show that the framework can do no such thing. In the end, the purpose of the state is to limit rather than enable people's pursuit of diverse ends. It is a way of making the many live as one. To the extent that those who do not wish to conform are compelled to do so, the state suppresses rather than enables the pursuit of diverse ideals. Of course, it may be that this is as much as is feasible in human society. But it may be too much to call this utopia.

This chapter is presented in five main sections. The first presents a critical account of Nozick's conception of utopia. The second then looks closely at Nozick's conception of the state (and his claim that both the legitimacy and justice arguments of Parts I and II and the utopia arguments of Part III lead to the minimal state). The third section argues that the minimal state cannot give us utopia. The fourth goes on to show that no state can give us utopia. The final section asks where this leaves Nozick's theory.

II.2 NOZICK'S CONCEPTION OF UTOPIA

Utopia is commonly understood to be an "imaginary place or situation of ideal perfection,"¹ although many dictionaries define it more narrowly as a place that has reached social and political perfection. For utopian theorists, from Thomas More to William Morris to B. F. Skinner, utopia has generally been presented as a place where people live as they should and in which they realize some important good. They imagine the best of all possible worlds. Nozick, however, begins his reflections on utopia by noting that the "best of all possible worlds for me will not be that for you" (p. 298). The world that I would most prefer to live in, he observes, will not be the one you would choose. "Utopia, though, must be, in some restricted sense, the best for all of us; the best world imaginable, for each of us" (p. 298). What Nozick suggests is crucial for any society to qualify as utopian is that it is a society whose members want to be there, or at least cannot imagine a place they would rather be. Utopia is not a place that's (objectively) *good* for human or rational beings to be, but a place that such beings would most *want* to be.

It is worth remarking how unusual this is in utopian thinking, which, as Nozick recognizes, generally gives a good deal of attention to the problem of how to bring the inhabitants of utopia to

conform to its ideal. Utopians do not normally begin by accepting the diversity of human desires.² For Nozick this is crucial. This is not because he thinks that desires are fixed or unconditioned by circumstances or that people are incapable of being brought to new and better ideas of what ends are worth pursuing. Even desires can be discovered. But desires cannot and should not be discounted; and any good society must be one in which the inhabitants remain members willingly. Given the diversity of desires, or of views of what ends are generally worth pursuing, people are likely to hit upon different ideas of the ideal society; and while this is unlikely to issue in a world of societies of single individuals it will mean a world in which people settle voluntarily into a variety of communities of (like-minded) people. If utopia is to exist it cannot be in the form of a single society to which everyone belongs – unless people become very different than they are now, or at least all come to believe that the same particular society is the one for them. Utopia is better understood not as a single community of similar people but as a collectivity of different communities each made up of people who are drawn together because mutual association gives them the best life they can imagine.

It is highly unlikely, Nozick points out, that actual communities will be made up of people who are satisfied with every aspect of it. Even the best community anyone can imagine being a part of will, realistically, involve some compromise, since no one can expect to be a part of a community in which everyone else subordinates their interests to her. Why would anyone else join such a community? So every community, even the most utopian, will involve some compromise. Nonetheless, some communities will be more attractive to any particular person than will others. What will happen is that people will move into the communities they find the best of all possible – which is to say, available – communities. Of course, this means that some communities that are unable to attract members will wither away and die, or transform themselves into communities others truly want to join.

Utopia in Nozick's conception is not a final state, or a stage at the end of history, or an isolated world for which time has stood still. It is, rather, a changing condition that varies from person to person and place to place, as well as from time to time. For utopia to be achieved, however, what needs to remain constant is the framework

that enables people to form communities, conduct experiments in living, move between societies, and discover what lives suit them.

Utopia is a framework for utopias, a place where people are at liberty to realize their own vision of the good life in the ideal community but where no one can *impose* his own utopian vision upon others. The utopian society is the society of utopianism ... utopia is meta-utopia: the environment in which utopian experiments may be tried out; the environment in which people are free to do their own thing; the environment which must, to a great extent, be realized first if more particular utopian visions are to be realized stably. (p. 312)

Although Nozick uses the term “utopia” in different ways, sometimes to refer to the “framework” that makes the pursuit of particular ideal communities or ways of life possible, and at other times to refer to the communities or ways of life themselves, the idea he is advancing is easy enough to grasp. There are many possible ways of living, and though it is unlikely that any one of them will be found fulfilling by each and everyone, the best we can hope for is a structure that makes it possible for us to find the society that best suits each of us, and that makes it possible to learn how to sustain and improve those that seem most successful. That structure, he thinks, is the state, albeit the minimal – and only the minimal – state.

II.3 NOZICK'S CONCEPTION OF THE STATE

In Part I of *ASU* Nozick sets out to refute the individualist anarchist contention that no state has legitimate authority by showing how the state can arise out of a (Lockean) state of nature without anyone's (Lockean) rights being violated. Whether or not Nozick's invisible-hand explanation (and justification) of the emergence of the state is successful has been hotly debated, and anarchists remain unconvinced. But if Nozick has justified the state (minimal or otherwise), what exactly is it that he has justified? After explaining that individuals' need in the state of nature to protect their rights would lead to the creation of protection agencies, which would ultimately be transformed into territorially bound, dominant protective associations, Nozick writes as follows:

[W]ithout claiming to possess any rights uniquely, a protective agency dominant in a territory will occupy a unique position. Though each person has

a right to act correctly to prohibit others from violating rights (including the right not to be punished unless shown to deserve it), only the dominant protective association will be able, without sanction, to enforce correctness as it sees it. Its power makes it the arbiter of correctness; *it* determines what, for purposes of punishment, counts as a breach of correctness. Our explanation does not assume or claim that might makes right. But might does make enforced prohibitions, even if no one thinks the mighty have a *special* entitlement to have realized in the world their own view of which prohibitions are correctly enforced. (pp. 118–119)

The state, he goes on to say, is an institution that has the right to enforce rights, prohibit dangerous private enforcement of justice, pass upon such private procedures, and is effectively the sole wielder within a geographic territory of that right (see p. 119). This understanding of the state is a modified Weberian view, for it asserts that the state has a monopoly not on the use of violence but on making judgments on the permissibility of violence. It may exercise violence, particularly when it exercises the right to punish those who have exercised violence impermissibly, but so may others – if the state says it is permissible.

It is also important to note that for Nozick the state has no *special* rights. It has the right to enforce rights, and to prohibit the dangerous enforcement of justice, but it has no right to claim that all its actions are right. Neither the state nor its agents are immune from prosecution and punishment for the violation of others rights. The Nozickian state does not enjoy sovereign immunity.

Most importantly, no actual dominant protective agency or state has any entitlement to be the dominant agency or state. It might be perfectly legitimate for a king to rule over us, but this does not mean that any existing king is entitled to be king. The legitimacy of the state is necessary; but the legitimacy of any particular state is contingent.

There are a number of features of the Nozickian minimal state that ought to be noted. First, the minimal state is essentially a modified Dominant Protection Agency, so the great majority of people within it would be *clients* of the state. Thus, for the great majority of people within the territory the Nozickian minimal state does not differ from anarchy (since under anarchy people would still join protective agencies). Second, Nozick's argument is not only that a minimal state could emerge from a state of nature without violating

rights but that people would find it to their advantage to establish a minimal state. The state is not the only institution that could arise without violating rights, and indeed some bad institutions could emerge without doing so. Nozick has sought to show not only that the state could arise without violating rights but also that this is to people's advantage. Third, the minimal state makes judgments about the permissibility of violence only when its own clients are involved. It has no right to dictate the procedures that other agencies may use against those who are not clients of the Dominant Protective Agency, unless those procedures adversely affect its own clients.

The account of the state Nozick offers is very much a normative one. His question is whether or not the state can be justified; and his answer is that it can be provided it is an entity of a certain kind: one whose underlying rationale is the upholding of a system for protecting individual rights. This account abstracts from actual historical states in two obvious respects. First, many, if not most, states have not acted as agencies dedicated to the upholding of a system of protecting individual rights – Lockean or otherwise. Second, even if we ignore the normative dimension, it is not clear that Nozick's concept of the state accounts for the various forms of political authority we find in the world. This is not merely because no modern states (and, arguably, no earlier ones either) can be described as minimal states. It is because the kinds of states we find in the world are so diverse it would be difficult for most theories to account for them all.

To begin with, if we think of the state as a kind of corporation, as many theorists have suggested,³ there are many political corporations in the world, ranging from provinces, to nation states, to supra-national organizations such as the European Union, all with governments, the power to tax, and the capacity to control (to varying degrees) what goes on within their territories. The extent of control varies not only because some corporations are parts of some larger federal structure but also because some are condominiums (like Andorra) with limited control over their own affairs, while others are governments without statehood (like the Palestinian authority), while yet others are states without their own governments (like Somalia, Afghanistan, and Iraq at various stages of their recent histories).

The relationship between the state and its inhabitants or members also varies, with some exerting control over members beyond its territory and most exercising power over inhabitants within its borders. The extent of the state's authority varies quite considerably in part because of the traditions of a particular society, but also because membership of supra-national associations or of international regimes such as UN conventions conditions the powers of particular states.

The idea that the state arose out of a process of competition among contending protection agencies is not historically plausible, but it is unlikely Nozick ever thought so. Yet the idea that conceptually the state is a kind of protection agency with a client-service-provider relationship with its members is no more believable. The state as it exists now has a life, and interests, of its own. If one is to answer the question why anyone should obey the state or recognize the legitimacy of its authority, one must also supply an account of the state that makes sense of its character. Nozick's account cannot do this.

Of course it has to be asked whether a single answer to this question is even possible given the variety of entities that present themselves and are legally recognized as states. They come in all shapes and sizes, from the geographically largest (Russia, taking up more than 1.5 million square kilometers) to the smallest (Iceland, taking up barely 100,000 square kilometers); from the most populous (China, with 1.3 billion people, or 19.6 percent of the world's population) to the least populous (Nauru, with 10,000, or Vatican City, with 800, neither with as much as a ten-thousandth of a percent of the people of the world). They range in their forms of government from liberal democracy to authoritarian theocracy to communist monarchy (which is how one might characterize North Korea) to totalitarian dictatorship.

What Nozick offers in his account of the state is an idea that bears only a remote resemblance to any of the entities in the world today that we call states. It bears little resemblance to the entities that emerged with the development of systems of political authority, from principalities and kingdoms to self-governing towns, to city-states to republics to empires. All of this makes it difficult to see how he is going to be able to mount an argument to show that some kind of structure of power like a state can legitimately have

authority over any one, or to show that some variant of this entity can bring us closer to utopia.

II.4 CAN A MINIMAL STATE BRING US TO UTOPIA?

What is it that a state might provide that can help us get (closer) to utopia? It seems unlikely that any of the particular features of actual states are what Nozick has in mind. But what Nozick seems to think states can offer in principle is something called “the framework.” In the end, we do not live in states but in particular communities. “We *live* in particular communities” (p. 332), he says. “It is here that one’s nonimperialistic vision of the ideal or good society is to be propounded and realized” (p. 332). So why do we need the framework? Because “[a]llowing us to do that is what the framework is *for*” (p. 332). According to Nozick, “[c]onjoined with many persons’ particular visions, the framework enables us to get the best of all possible worlds” (p. 332). The problem is, it is not clear why we need a framework to get to utopia.

Nozick offers a number of arguments why, but none of them is convincing. The first argument is that the framework serves as a “filter device.” While other utopian theorists have focused on the design question, trying to imagine or design the best society, Nozick suggests that what we need is a filter device that eliminates many designs from a large set of alternatives (see p. 314). When the alternatives are different kinds of societies, the framework supplies the appropriate filter device, allowing many different communities to flourish if they can. Within the framework, “some communities will be abandoned, others will struggle along, others will split, others will flourish, gain members, and be duplicated elsewhere” (p. 316). Design devices might generate specific communities to be lived in and tried out; but the filter device reveals to us which ones succeed, which ones need to be modified, and which ones need to be abandoned. Communities that are unattractive will be rejected by their inhabitants, other communities will adopt the best practices from communities people favor, and ideas for new communities often will improve as well (see p. 317).

What is obscure in this account, however, is how the framework – the minimal state – acts as a filter or generates knowledge of the best way to live. It seems plausible enough that people experimenting

with different forms of life will abandon them if they are unsatisfying, that successes will be imitated by people and communities willing to change or adapt, and that people will come to know and appreciate the greater worth of some ways of living by observing the successes and failures of others. Yet, couldn't this outcome be achieved just as well without any kind of state – without any kind of framework? In the condition of anarchy people might form different kinds of communities, some of which would prove more successful than others. It would seem fairly likely that the successful ones would attract more adherents while the unsuccessful ones would be abandoned.

If the argument is that the filter device is something like a competitive market economy it seems plausible enough to think that different societies will, in effect, contend with one another for the custom of potential members. The most attractive among them will capture most of the population, although niche markets might well develop for those with particular tastes if the communities supplying the minority ways of life do in fact offer a product that commands the interest and loyalty of a sufficiently large group. But for this to happen there is no need for a framework for a filtering process to operate. A market could operate perfectly well without a structure that includes some communities and excludes others. If this structure operates to restrict the size of the market it might even limit the capacity of people to learn from the experiments of others or to try out new products by moving from one community to another. Yet if it imposes no restrictions of the mobility of people, goods, and ideas, it is not clear in what way it is serving as a filter device.

If the argument is that the filter device is something like a scientific community it again seems plausible enough to think that the possibility of alternative hypotheses being proposed, examined and tested can only enhance our understanding of what works and what does not. Yet once again it is not clear how the framework of the minimal state does anything to enhance or even facilitate scientific discovery. Is the state to act as an authority that decides what counts as a valid scientific experiment? If so, it is embracing a view of science we might criticize drawing on John Stuart Mill and Paul Feyerabend, to argue that science knows no authority. Any effort to close off or limit scientific inquiry or experimentation should not

be welcomed but regarded with suspicion. Yet if the filter device of the minimal state does no such thing, how does it contribute to scientific progress?

In his account of how the filter device does its work Nozick argues as follows:

The operation of the framework for utopia we present here thus realizes the advantages of a filtering process incorporating mutually improving interaction between the filter and the surviving products of the generating process, so that the quality of generated and nonrejected products improves. Furthermore, given people's historical memories and records, it has the feature that an already rejected alternative (or its slight modification) can be *retried*, perhaps because new or changed conditions make it now seem more promising or appropriate. (p. 317)

What he fails to explain, however, is what it is that the filter device, the minimal state, does to enable the 'nonrejected products' to improve. It also remains quite unclear how it is that the filter device here uniquely makes it possible for rejected alternatives to be retried. Why is it not possible for all of this to happen under anarchy – in a stateless society in which people live in different communities, learn from one another, imitate what they like, discard what they do not like, and abandon what they cannot improve? There are many examples of societies which have done just that. The Gauls in the century before Caesar's invasion, for example, had complex and sophisticated systems of trade that sustained a rich material and cultural life in a diverse array of communities. They had no state. Neither did the cities that made up the Hanseatic League have a state, even as they grew rich.

On the other hand, it seems quite plausible to think that the existence of a framework would prove an obstacle to experimentation and learning. For one thing, it would be very difficult for societies which did not produce a significant surplus to survive, even if their way of life was extremely congenial to their members, for such a surplus would be needed to pay even the minimal taxes any state would have to levy. Indeed, historically, the state has been the agency that has done significant damage to the diversity of human experiments in living because of its need to standardize the communities under its control in order to calculate the wealth of the people and to collect the taxes it sought to raise. If we have any examples

of minimal states, perhaps the clearest ones are colonial regimes or empires that have tried to interfere only lightly in the societies under their control in order to disrupt their productive activities as little as possible and maximize the returns from taxation.⁴ Yet even here, though to varying degrees, the result has not been a flourishing of experimentation but a growing conformity since administration inevitably requires a common metric by which to regulate diversity (see Scott: 1999).

Nonetheless, perhaps there are some things that a properly constituted minimal state might provide that help bring utopia a little nearer, even if it is true that, historically, states have not been very good at doing this. (After all, Nozick is, to be fair, offering a theory of the kind of state we should aspire to, and not defending the records of the states of the past.) One possibility is that the state brings us closer to utopia by bringing peace and the rule of law. The reason this matters from the perspective of the search for utopia is that for the process to work it must be possible for individuals to move between communities. If there is no mobility between communities, learning will be limited, unsuccessful models cannot be so readily abandoned, and the pressure on the less attractive communities to reform will diminish, to the detriment not only of their own members but of people more generally. A minimal state might play a useful role in facilitating or guaranteeing the freedom of people to exit the societies they no longer care to live in.

The state's playing such a role might well have some beneficial consequences. Certainly, a measure of mobility is important not only for individual wellbeing but also for the purpose of maintaining a sound social order. The obvious question, however, is how much mobility is desirable. The propensity to move from one community is not a natural fact but something conditioned by the complex set of circumstances an individual might face. The likelihood of anyone leaving anywhere is going to be profoundly shaped by the opportunity cost of exit. But if the state is to determine how easy exit is to be, how easy should it make it? Making exit very easy, say by subsidizing emigration, would make it easier for people to try new communities and ways of life, but may also make many people less likely to stick at ways which seems unrewarding at first. Many communities simply might not get going, or retain enough members to be viable. Some experiments would simply become

harder to conduct. Even if the state simply guarantees to protect those who wish to leave their communities from being prevented or from reprisals from disgruntled community members there will be some important consequences for the way the community operates. It will increase the bargaining power of dissenters, who would be able to use the threat of leaving more effectively. This would not be a bad thing in itself, but would nonetheless transform the relations among people within the community. For one thing, with the state now a player in the game some people will now devote resources to cultivating the state. They now have to be in a position not only to leave but also to persuade the state that they have a case for protection. There is no doubt that in some communities the influence of the state would be a positive one as a consequence of all this, as it becomes harder for some societies to repress or restrict their members. But in other cases the consequence may be more destructive. The question is: what would be the overall impact of the state? It is hard to see why it must be a positive one overall. At best, we might conclude that the results will vary. That, however, is not enough to make the case for the usefulness of the framework as a filter device for getting us closer to utopia, either severally or collectively.

II.5 CAN ANY STATE BRING US TO UTOPIA?

Robert Nozick has tried to put the case for the value of the minimal state. He suggests that it is not only legitimate but also valuable because it brings us as close as we can get to achieving the best of all possible worlds. It may be that Nozick is right at least to the extent that the minimal state is the most likely kind of state to get us to utopia. In the minimal state, the framework is libertarian but the communities within it need not be. Yet even here, the case is not proven. If the question of what is the best kind of community is best settled by empirical testing, by experiments in living, the same might be true for the question of what is the best kind of state. Is there any reason to think, in advance of such experiments, that the minimal state is the best candidate compared with other more extensive states? (I leave aside the problem of how one would make the judgment when comparing states even if experiments could be conducted.)

The case for the minimal state looks even weaker, however, when we compare it with the alternative of not having a state – at least

from the point of view of finding utopia. A world without states might in fact be one in which the greatest variety of experiments might be conducted. If we want people to participate in this process we might do better not to create states but to take them down (although, in the end, this may simply not be possible). States may turn out to be obstacles to the discovery process because states, like all institutions, once created, acquire lives and interests of their own. The state will never be merely a framework, though some states will be more minimal than others. The state will itself offer to people a way of life. The difference is that it will have the power to defend itself with force – to tax and restructure society in its own interests. With the growth of the state, the way of life that will become significantly more feasible and attractive will be the life of a cosmopolitan. Again, this may not be a bad thing in itself. But it is difficult to see the case for encouraging this from the perspective of the theory of utopia Nozick has tried to offer.

II.6 WHERE DOES THIS LEAVE NOZICK?

In spite of his best efforts to get us to a utopia that is a society of utopias, what Nozick takes us closer toward is the way of life that is life in the state. The source of this result, I think, is the initial aspiration of the theory. Nozick asks very explicitly in *ASU* whether the minimal state could ever be an inspiring ideal. Would people man the barricades in its defense? He then sets out to show that the minimal state is an ideal that can inspire – one that we might be prepared to fight for. But what he ends up arguing for, necessarily, is the state. He wants to show how the many can live as one. An appropriate motto for his state might be something like *E pluribus unum*. And of course it is hard to imagine any state taking for itself a motto like *E pluribus plurum*. Out of the many, well, *many*.

What Nozick has tried to do is show how we can leave anarchy, with its diverse people in different communities, and their diverse ways of life, and enter a structure which will not only preserve the diversity we find there but also enhance the benefits we might gain from having a world of diverse people. This, he says, would be utopia. In the end, I think Nozick fails to get us to utopia in spite of his best efforts. The problem, however, may lie not in the abilities of this most brilliant and imaginative of philosophers but in the

aspiration itself. In Part I of *ASU* he tried to show why leaving the state of anarchy was morally legitimate; in Part III he tried to show why leaving it would be good. In neither enterprise has he been convincing.

NOTES

1. *Chambers Combined Dictionary Thesaurus* (1997).
2. For a libertarian utopia that does, see Heinlein: 1977.
3. See, for example, Van Creveld: 1999.
4. Nozick's minimal state does not levy taxes, since most people in its territory are clients who voluntarily pay for its services. The charges are not pure market prices, however, since the fees have to be adjusted to cover the below-cost or free services provided to those disadvantaged by the Dominant Protection Agency through its prohibition of risky decision procedures to its clients. (I thank David Gordon for making this clear to me.)