

Robert Nozick: Property, Justice and the Minimal State. By Jonathan Wolff. Stanford University Press, 1991.

Jonathan Wolff sets himself an ambitious goal in *Robert Nozick*. His principal aim is to offer a guide to Nozick's *Anarchy, State, and Utopia*. Beyond this, he says that "part of [my] task will be to reconstruct Nozick's arguments and conclusions to make them as coherent as possible. . . . I shall try to clarify Nozick's reasoning and make good the gaps where necessary and possible, so that we might appreciate the force of the arguments, and subject them to rigorous examination" (p. 2).

Wolff succeeds admirably in presenting a simplified version of *Anarchy, State, and Utopia*.¹ His accomplishment deserves extra praise because he strongly opposes what he believes to be the political consequences of the work (p. viii), but nevertheless remains fair in his presentation. Wolff never stoops to caricature, and the quarrels I have with his discussion concern matters of interpretation, not outright errors.

Wolff's account suffers from one principal defect, which prevents me from wholeheartedly recommending it. The author conflates Nozick's position with that of other libertarians. Sometimes he criticizes Nozick for positions he does not hold, but other libertarians do; on other occasions he challenges libertarians generally for not answering difficulties just because Nozick does not address them. Wolff's mistake in large part stems from his acceptance of the arguments of G. A. Cohen, one of his teachers. Cohen, a Marxist political philosopher of great acuity, has devoted several articles to Nozick which suffer from the problem previously discussed.

The issue arises quite early: At page 4, Wolff refers to Nozick as holding that one has "rights of ownership over oneself." He amplifies this remark so that the "thesis of self-ownership" becomes the basic

¹The book is concerned only with the Nozick of *Anarchy, State, and Utopia* (New York: Basic Books, 1974). Wolff notes Nozick's criticism of libertarianism in *The Examined Life* (New York: Simon and Schuster, 1989), but he does not discuss Nozick's later views at length (p. 2).

principle of Nozick's system. In point of fact, Nozick never uses the term "self-ownership" in *Anarchy, State, and Utopia*. He does indeed hold that a person has rights over his or her body, in similar fashion to those such as Murray Rothbard who do use the term.

But much more than a difference in words is involved. In part because Wolff thinks that Nozick believes in self-ownership, he ascribes to him the position that all political rights consist of either rights over one's body or absolute rights to property. There is no room for civil liberties, that cannot be reduced to the two basic forms of rights. Murray Rothbard and several other libertarians do hold exactly this view, but Nozick does not. Rothbard contends, for example, that free speech dissolves as a problem if one reduces situations of conflict to their underlying basis in property rights. Nozick attempts no such reduction.

Wolff's introductory chapter is otherwise accurate. He rightly notes that Nozick, and libertarians generally, sharply distinguish between the morally right and the legally enforceable. If people do not have welfare rights, it does not follow that the poor should be cast aside. Wolff asks: "But if all aid were voluntary, how much would be forthcoming?" (p. 12). He proceeds to canvas some ideas on voluntary aid by Milton and Rose Friedman, and others; but he neglects Nozick's own comments on the issue. Nozick holds that if people democratically support welfare taxes, there is little reason to think they would refuse to give charity voluntarily. He questions whether welfare provision is a public good.

Wolff then turns to a fuller characterization of Nozick's position on rights. He points out that Nozick attaches great importance to the Kantian principle that one ought not to use others simply as means. Each person has a separate life, and people cannot be used as means to the welfare of others.

But why should people be treated as ends? Wolff notes that Nozick's response places great stress on the value of each individual pursuing a "self-shaping" life plan. He suggests that if one regards the meaning of one's life as more closely connected with others than does Nozick, a different view of rights might ensue (p. 29).

Here I think Wolff's slightly but significantly misapprehends Nozick's view. The prohibition against using others follows from the Kantian principle, not from Nozick's explanation of why people are morally valuable. Even if one were to adopt a view of life's meaning along the lines Wolff suggests, this would not directly challenge Nozick's view of rights. It would do so only if the new view required rejection of the Kantian principle, or a different interpretation of it from the one Nozick offers. But to claim this requires more argument than Wolff offers.

Wolff presents as an example of a different view of rights a theory advanced by Samuel Scheffler, in which people have welfare rights as well as the negative rights favored by libertarians. In this view, "one necessary condition of leading a life is to lead a life" (p. 32). In order to lead a life, do not people require rights to food, shelter, etc.?

The argument has gone too fast. Granted that people need certain goods to lead meaningful lives, does it follow that they need the right to these goods as well? Why is not sufficient if they obtain the goods through charity? Further, Nozick's proposal, once more, is not that people should have a set of rights determined by the notion of a meaningful life; it is that political measures ought not to require using some people as means to the ends of others. Even if one needs certain goods to lead a meaningful life, welfare rights may give some people the right to use others as means. (Scheffler's suggestion is unsatisfactory as stated here (p. 31), since on its terms, if anyone's using a particular good would prevent someone else from having a reasonable chance of living a decent and fulfilling life, no one would have a right to the good. What then is to be done with it? I suspect that this could be "fixed up.")

There is one further problem in Wolff's discussion of Nozick on rights. In his discussion of self-defense and punishment, Wolff does not mention that Nozick's use of the term "punishment" is different from its ordinary language sense of the imposition of a penalty. Nozick means by punishment a penalty that exceeds compensation. His question: why may we punish? is not equivalent to: why may we use force to retaliate for violations of rights?

Probably the most difficult section of *Anarchy, State, and Utopia* is Part I, in which the minimal state is derived. On the whole, Wolff does an excellent job in presenting clearly the steps in Nozick's complex argument. I found particularly valuable his challenge to the view that a monopoly protection agency will arise from the state of nature. Nozick's argument rests on the assumption that a larger agency will tend to defeat a smaller one in cases of conflict. A snowballing effect will ensue in which more and more people will transfer to the large agency. Wolff contends that in some cases, a smaller agency may defeat a larger one (p. 56).

Wolff also presents some interesting challenges to Nozick's principle of compensation. In his sketch of the role risk plays in the derivation of the minimal state, he fails to place sufficient stress on the type of fear Nozick thinks risky behavior that threatens bodily harm generates. Those who employ risky decision procedures may induce this anxiety. Compensation for the fear in case of wrongful use of a procedure is not feasible, since the anxiety arises not from any

given instance of the use of the procedures, but from perceptions of a general policy. It is for this reason that Nozick holds that the use of such procedures may be prohibited. "Prohibition" means that punishment, as earlier defined, may be imposed.

Wolff raises the pertinent question of why the dominant agency must compensate those who are disadvantaged by the prohibition of risky decision procedures, if one has no right to impose this risk. He overlooks the stress Nozick places on differences of opinion as to what constitutes an unacceptably risky procedure. A procedure need not be prohibited because its user, or a consensus of moral opinion, consider it too risky. Rather, the dominant agency acts on its own view of the matter. An example might be the prohibition of the use of majority verdicts in jury trials for criminal offenses. The user of the prohibited procedure who is compensated has not done something morally blameworthy.

Further, Wolff fails to note that the dominant agency has no rights that other agencies lack. Non-dominant agencies, or independents for that matter, may prohibit the dominant agency from using risky decision procedures on their members or themselves, respectively. The problem with their doing so is that the dominant agency will not accept their views about risky procedures and will win in case the dispute leads to forcible conflict.

Wolff considers at length Nozick's entitlement theory of justice. Naturally, he gravitates toward the Wilt Chamberlain case; and here his reliance on Cohen leads him in a misapprehension. The example depends for its force on the moral intuition that people have the right to make voluntary transfers of goods to which they are entitled. Wolff questions whether Nozick can use this claim, since he has not shown that the liberty of transfer follows from property rights. Nozick, he alleges, believes that "your liberty is only restricted if someone stops you from doing what you have a right to do" (p. 94). This contention rests on the view already mentioned that Nozick's political theory recognizes only self-ownership and property rights as legitimate moral claims. Cohen takes Nozick to be saying this, and Wolff wrongly follows in his footsteps. To reiterate, this position is not to be found in *Anarchy, State, and Utopia*. Likewise mistaken is the view that Nozick thinks "you are only forced to do something if someone . . . violates your rights" (p. 94). This misinterpretation, also taken over from Cohen, extrapolates from an analysis of coercion in a particular case—wage bargains in which there is no threat or use of overt violence—to a general theory of coercion.

Wolff rightly does not commit himself to accepting Cohen's supposition that the Lockean proviso is the sum and substance of

Nozick's principle of property acquisition (pp. 113–14). Nozick does not specify a principle of acquisition at all, as Wolff also correctly notes. He might usefully have discussed work by Rothbard, Ellen Paul, and others, who have addressed this problem from a libertarian standpoint. Also, what Wolff aptly terms the “zipping back argument” (p. 108) does not show that Locke's proviso prevents property acquisition under all circumstances. This argument claims that if one appropriator fails to satisfy the proviso, no one can do so. It does so only if there is a “last” person who cannot appropriate while leaving as much and as good for others. Nevertheless, the argument does indeed show that a problem exists given what most Lockeanes have in mind as the outcome of property acquisition.

Wolff is not convinced by Nozick's claim that taxation is on a par with forced labor. Wolff objects that there is a continuum between forced labor, on the one hand, and unrestricted liberty, on the other. Starting with slavery, we can gradually portray various states of affairs, each allowing greater liberty than its predecessor. Why is the infringement of liberty represented by taxation especially important? Depending on its severity, taxation may leave people relatively free.

Recourse to the prohibition of treating people as exclusively as means will I think enable us to see a difficulty in this argument. The various social states do not lie on the continuum that Wolff supposes. Rather, there is a gap between cases in which people are recognized as ends-in-themselves and those in which they are not. Within the latter class, some instances of coercion are more severe than others. But all suffer from the disqualifying defect of using some people for the benefit of others. In this way, taxation is akin to forced labor in an important respect.

Wolff discusses many other issues, but I think enough has been said to indicate the book's flavor. Wolff has amply achieved his goal of writing a useful introduction to Nozick. If he had in mind a more ambitious aim, i.e., a full-fledged assessment of the virtues and vices of Nozick's theory and of libertarianism as a whole, the verdict must be less favorable.

David Gordon
The Ludwig von Mises Institute