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## WHY NOZICK IS NOT SO EASY TO REFUTE

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**T**HOUGH I disagree at the most fundamental level with Nozick's general position in *Anarchy, State, and Utopia*, the book is less vulnerable than Karen Johnson appears to think; in particular, it is immune to the main line of attack in her paper. Johnson charges that Nozick's theory is "antipolitical" and makes impossible the idea of a cooperative state "in which we can participate as citizens to shape the common conditions of our lives." I agree, and like Johnson think it important that we act collectively to control the type of society we live in; but none of this amounts to a true refutation of Nozick's theory, because Nozick does not base his views on a consequentialist ethic.

The starting point of *Anarchy, State and Utopia* — literally the first sentence of the book — sets out the moral stance that governs the rest of the book: "Individuals have rights and there are things no person or group may do to them (without violating their rights)." Later Nozick explains his moral position in more detail. It is first and foremost a theory of moral *constraints* rather than of moral *goals*. This means that Nozick is not primarily interested in *maximizing* anything, not cooperation, or control over our lives, or happiness, or even the nonviolation of rights. He holds that there are things one must not do to people, irrespective of the consequences (except possibly — though he doesn't really say — to avoid utter catastrophe).

So the charge that his theory is "antipolitical" would not trouble Nozick. He could accept it, claiming that if the only way to avoid an antipolitical theory is to violate people's rights, an antipolitical theory is what we must have. Since Johnson has not objected to Nozick's underlying moral theory, nor shown that Nozick's antipolitical stance is not truly entailed by the theory, she has done nothing to undermine Nozick's position.

At one point (p. 184) Johnson does try to suggest that Nozick is inconsistent; that he cannot be true to his own premises and must allow considerations of common good, in the form of the "Lockean proviso," to influence his theory of property. But this is a mistake, for a careful reading of the passage in which the proviso is introduced shows that it arises in a logical enough way from the idea that the original appropriation of previously unowned resources is legitimate only if others are not thereby made worse off. So individual rights, not common good, is all that Nozick needs here, and I can see no reason why, given the basis of individual rights, a consistent theory cannot be built upon it.

But why not simply reject Nozick's underlying moral theory? That, surely is the most straightforward way to object to his book. To set up a system of prohibitions on what we can do to people that cannot be overridden, no matter how minor the infringement or how great the benefit that could be obtained, is to take a most extreme moral position, at odds with the views of most of those who have reflected on basic moral issues. Of course, a nonconforming moralist may be right; but he needs to establish his own position with special care. This Nozick has not done; he himself admits that the book does not contain a precise theory of the moral basis of individual rights. Yet so crucial is this to his whole enterprise that publishing the book without it shows considerable effrontery, like building a splendid skyscraper, complete with revolving rooftop restaurant, without solving the engineering problems that determine whether the building will stand up.

Unfortunately a brief note is not the place in which to discuss the correctness of a moral theory; so I shall go no further than to point to this as the central weak-

ness of the book, and the one most in need of detailed critical attention. The remainder of this note is taken up with two less central matters in Johnson's paper which require comment.

On page 184, and in the footnote thereto, Johnson says something puzzling about the possibility of there being more than one correct principle of justice. I found her meaning here unclear. Is she suggesting that there may be several principles — including perhaps an egalitarian principle, and an entitlement principle — all of which ought to be given some weight, and none of which is alone sufficient to determine whether a distribution is just or unjust? If this is what she means, it is certainly a possibility, and if the sentence she quotes from my review implies the contrary, it is misleading. What there cannot be is more than one correct principle of justice, where a "principle of justice" determines *completely* what is just and what unjust. Most of the principles of justice that have been put forward by philosophers have been claimed to be of this type. It may be that we should reject these claims and embrace a more pluralistic view; but we cannot pretend that in so doing we are accepting and reconciling the different views, since it is a part of these views — including Nozick's — that any interference with their prescriptions will lead to injustice. It is in this sense that if two principles of justice conflict, one must be wrong.

Even granting the form of pluralism that I have admitted possible, however, I cannot accept the claim that sometimes the community will be entitled to make claims on the individual which he will be entitled to deny. There may be opposing *prima facie* principles of justice; but in the last analysis one of them must be weightier than the other, and hence entitled to prevail without resistance. To deny this is to accept a form of moral relativism, which would make the whole theory of justice an unprofitable subject for discussion.

Finally, I cannot resist making an objection to Johnson's approving quotation (in her footnote 6) of the passage from Sheldon Wolin's review of *Anarchy, State and Utopia* in which Wolin criticizes the book for containing a discussion of the moral status of animals, but not of other topics which Wolin considers to be more important. Here Wolin and (apparently) Johnson seem to me to be expressing the very conventional prejudices which Nozick was concerned to challenge. Why should it be assumed the problems involving humans are so much more important than those involving nonhumans? Is it because we are humans? But then "we," so far as the author and most of the readers of this book are concerned, are also white, so one could discount discussions of racism in the same way. Is there some more objective ground for thinking that problems about animals are less important? Even if there were, how could one possibly decide this before having investigated, in detail, the moral status of animals? That, however, is a task which very few philosophers or political theorists have undertaken, and Nozick should be commended precisely because he does give space to this neglected subject. Moreover, considering the conclusions that he reaches — including the judgment that the billions of animals slaughtered in order to be eaten each year in the U.S. have been killed unjustifiably — I find it extraordinary that anyone should feel able to deny that the topic is of importance without having *first* refuted the impressive arguments Nozick gives for his views! Yet this, of course, is what happens. The logic of the operation is exactly the reverse of what it should be. Instead of giving a detailed refutation of the arguments and then concluding on this basis that the problem is of little importance, the prior and unargued view that the problem is of little importance serves as an excuse for not bothering to examine the arguments.