***February 16, 2016***

1. Last time, we saw that Nozick wants to explain why there should be a state, understood as a governing apparatus. More specifically, wants to provide a fundamental, process-defective, invisible hand explanation of how a state could come to be in a state of nature.
   1. Saw that protective agencies would arise. Nozick traces progress through:
      1. a private protection agency
      2. a dominant private protection agency
      3. the ultraminimal state – only those who pay get protection

* + 1. the minimal state? - looks redistributive
       1. We saw the alleged inconsistency in the position of the ultraminimalist.
       2. We saw the distinction between treating rights as side-constraints and treating them as part of the goal to be advanced (or maximized). Explain how this helps the ultraminimalist avoid the inconsistency.

BUT – how can it be rational not to maximize? How can it be rational not to treat the avoidance of rights-violations as a goal?

A CLUE: Explain the connection between side constraints and the Kantian dictum that people may not be used as means. (pp. 31ff) So how can it be rational to act as Kant requires 🡪

* + - * 1. Libertarian side-constraints – usually formulated so as to forbid aggression against the innocent.

*PUZZLE: The innocent shield at pp. 34-35 has spawned a lot of literature. Note that the puzzle arises even on constraint forbidding intentional harm to innocent*

* + - * 1. Why side-constraints? Puzzles

animals – that they pose a problem for both utilitarianism and Kantianism.

Experience machine – what matters to people beyond felt quality of experiences? How does that distinguish us from animals? (pp. 42-45)

* + - * 1. Why side-constraints? A possible answer – authoring a meaningful life
  1. Now that we have explored side-constaints, can use them to lay out the individual anarchists complaints against the state. (p. 51)
     1. The complaint against the monopoly claimed by the state – violates side-constraints
     2. The complaint against redistribution - ditto
  2. To answer the individualist anarchist:
     + 1. How does the ultrarminimal state arise out of a system of private protective organizations?
       2. How is the ultraminimal state transformed into a minimal state?

1. In intervening pages, Nozick argues that a minimal state is justified not because redistribution is justified, but because compensation is.
2. Today: Some people think more than a minimal state is justified to bring about distributive justice
   1. Nozick provides an account of property rights that builds on Locke
   2. Therefore we need to understand Locke on property. Recall this passage from the beginning of Locke’s *Second Treatise*:

Sect. 2. To this purpose, I think it may not be amiss, to set down what I take to be political power; that the power of a MAGISTRATE over a subject may be distinguished from that of a FATHER over his children, a MASTER over his servant, a HUSBAND over his wife, and a LORD over his slave. All which distinct powers happening sometimes together in the same man, if he be considered under these different relations, it may help us to distinguish these powers one from wealth, a father of a family, and a captain of a galley.

Sect. 3. POLITICAL POWER, then, I take to be a RIGHT of making laws with penalties of death, and consequently all less penalties, *for the regulating and preserving of property*, and of employing the force of the community, in the execution of such laws, and in the defence of the commonwealth from foreign injury; and all this only for the public good. (read italics added)

* + - 1. Thus Locke thinks one of the purposes of civil society is the protection of property
      2. The purposes of government are the reasons for which people would form a government in the state of nature
      3. So one of the reasons people would form a government in the state of nature is to protect their property
      4. So people in the state of nature must have property which they wish to protect

How do they get it?

*Crucial Arguments about Property*

I. §26 – There must be a means to appropriate all the fruits of the earth before they can do any one person any good “for the support of his life”. How does this happen? Argument of §27:

* 1. “Every man has property in his own person” (assumption)
  2. Self-ownership is exclusive: “This no body has any right to but himself”. (assumption)
  3. “The labor of his body and the work of his hands are his”. (supposed to follow from 1)
  4. “Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labor with”. (assumption)
  5. “Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath… joined to it something that is his own” (from 3 and 4)
  6. “Whatsoever then he removes out of the state that nature hath provided, and left it in, he …makes it his property.” (said to follow from 5)
  7. “this labor [is] the unquestionable property of the laborer” and of no one else (supposed to follow from 3 and 2)
  8. “It being by him removed from the common state nature hath placed it in, it hath by this labor something annexed to it that” is “the unquestionable property of the laborer” and of no one else. (from 5 and 7)
  9. “no [other] man can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others” (supposed to follow from 8)
  10. “It being by him removed from the common state nature hath placed it in, it hath by this labor something annexed to it, that excludes the common right of other men” “at least where there is enough, and as good, left in common for others.” (from 9)
  11. “It being by him removed from the common state nature hath placed it in, it hath by this labor something annexed to it, that” makes it his own and exclusively his own “at least where there is enough, and as good, left in common for others.” (from 6 and 10)

*Queries:*

1. *What is it to have property in one’s own person? Is this something that can be understood only by understanding what it is for us to be God’s property?*
2. *How does having property in one’s own person make one’s labor one’s own?*
3. *What is it, exactly, to “mix” one’s labor with something? Is the word “mix” a metaphor? If we grant the notion of “mixing”, we can grant “joining” and hence grant the move from 3 and 4 to 5. But what about the move from 5 to 6? Why should we accept that?*
4. *Where does the Lockean proviso come from?*

II. Defense of moves from 5 to 6 and from 8 to 9 found in §28:

* 1. “that labor put a distinction between them and common: that added something to them more than nature, the common mother of all, had done”. (assumption)
  2. “it is plain that if the first gathering [of acorns or apples] made them not his, nothing else could”. (supposed to follow from 1?)
  3. So if the acorns are apples are his, the first gathering made them so. (from 2)
  4. The apples or acorns are his. (assumption)
  5. Therefore it was the gathering that made them so: “and [in this way] they became his private right”. (from 5)

*Possible objection*: consent is needed to gain property rights in things that are common by right. Answer:

Remember “God, who hath given the world to men in common, hath also given [men] reason to make use of it to the best advantage of life and convenience.” (§26) and note that “If such a consent was necessary, man had starved notwithstanding the plenty God had given him.” (§28). See also §29.

III. §31 – The defense of the proviso:

* 1. “As much as any one can make use of to any advantage of life .. so much he may by by his labor fix his property in” (from §27)
  2. “Nothing was made by God for man to spoil or destroy”. (assumption – *supported by the claim that God gives all things “to enjoy”*.)
  3. “As much as any one can make use of to any advantage of life before it spoils, so much he may by by his labor fix his property in; whatever is beyond this, is more than his share” (from 1 and 2)
  4. Whatever is more than one can licitly engross remains by right in the commons. (assumption)
  5. “As much as any one can make use of to any advantage of life before it spoils, so much he may by by his labor fix his property in; whatever is beyond this, is more than his share and belongs to others.” (from 3 and 4)
  6. Therefore “the same law of nature, that does by this means give us property, does also bound that property too.” (from 5 – *assuming, perhaps, that 2 is part of the law of nature?*)
  7. So “it will perhaps be objected … that if gathering the acorns or other fruits of the earth &c, makes a right to them, then any one may ingross as much as he will. To which I answer, Not so.” (from 6)
  8. He who offends against the laws of nature may be punished. (cf. §11, where Locke argues that the right to execute the law of nature follows from the duty to preserve mankind.)
  9. “if they perished in his possession without their due use; if the fruits rotted or the venison putrified, before he could spend it, he offended against the common law of nature, and was liable to be punished.” (passage is in §37; might be thought to follow from 7 and 8)