

Chapter 1

Theory of Rights

Nozick begins *Anarchy, State, and Utopia* with the claim “Individuals have rights, and there are things no person or group may do to them (without violating their rights)” (p. ix). Incautious critics sometimes take this to mean that Nozick simply assumes rights and then proceeds from there, but he does have an argument for rights. For better or worse, this doesn’t appear until the third chapter of the book, but it is there. He understands rights as “moral side constraints upon what we may do” (p. 33). If there were no other beings, we would be free to do whatever we wanted to do, constrained only by the laws of physics. Morality comes into play when we are considering our interactions with others. Hence, the reality of other people creates limits on our actions. These limits are not the same as the limits imposed by physics. Whether there are other people or not, I am not free to defy the laws of gravity or inertia, or to be in two places at once. Those, too, are constraints on my action. Moral constraints are things I *could* do but that it would be *wrong* to do. Saying “I can’t be in two places at once” and “I can’t murder Bob” are grammatically similar, but have very different meanings: I physically *could* commit murder, but it would be bad if I did. So rights are a moral concept that establish the boundary conditions of *justified* action (as opposed to the boundary conditions of physically possible action). Smith’s rights are thus the boundary conditions on Jones’ actions.

Nozick understands this model of side-constraints as rooted in the “fact of our separate existences” (p. 33). As distinct individuals with our own lives, no one could naturally have a claim over the life of another. Individuals are not to be regarded as means to others’ ends; they are ends in themselves. A hammer, for example, is a tool that exists in order to help people do things, it doesn’t have its own independent reason for existing apart from this. It doesn’t exist for its own sake. But people do exist—they are ends in themselves, not the means

to another's ends. "Individuals are inviolable" because each is a person with his or her own life to live. So it is the fact that "there are different individuals with separate lives" that produces the side constraint that no one is entitled to use another as a tool. Using a person as a means to another's ends "does not sufficiently respect and take account of the fact that he is a separate person and that his is the only life he has" (p. 33). So a person's rights just are the flip side of the others' constraints: That Jones is morally constrained to respect the separate personhood of Smith, and thus can't act upon Smith nonconsensually, implies that Smith has the right not to be used in this way. Since Nozick sees rights as boundary conditions on the permissible treatment of others, he argues that to reject this conception of rights would entail either a rejection of all morality entirely—no one has any constraints at all on how they may treat others—or else a rejection of the idea of the reality of the uniqueness of each person.

One school of thought that might be inclined to reject this conception of rights is utilitarianism, a view on which what is morally significant is total aggregate utility (understood as pleasure or happiness). For utilitarians, there aren't constraints on the permissible treatment of others *per se*, it's just that the total goodness achieved must outweigh the bad. With such a theory, it would not make sense to talk about the inviolability of persons, since we can easily imagine situations in which sacrificing one would benefit several others. Nozick therefore explicitly addresses utilitarianism, arguing that it implies wildly counterintuitive results. Since utilitarianism calculates utility subjectively, we can imagine a "utility monster" who "gets enormously greater gains in utility from any sacrifice of others than these others lose" (p. 41). This would make it morally required to sacrifice everyone to the monster in order to maximize total utility. In addition to running afoul of our intuitions about the equal dignity of all persons, this makes the theory self-undermining; implausible at least, if not internally inconsistent.

It won't even do, Nozick adds, to think in terms of aggregating amounts of respect for persons, such that we respect the rights of some large group at a cost of failing to treat some other group of persons as inviolable. Rather, each individual person is to be regarded as an end and not a means, and no person should be used as a tool for others' purposes. He gives the example of violating the rights of an innocent person to prevent a mob rampage which would itself

yield many rights violations. He argues that this is to misunderstand the point of side constraints. It's not that we figure in the rights of others while evaluating end states in which the rights of some are traded off for the rights of others; rather the rights of others *determine* how you may treat them. Otherwise, they are not actual moral side constraints.

Ultimately, Nozick argues that we can ground the inviolability of persons in the human capacity for self-directedness. "A person's shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for a meaningful life" (p. 50). So it is our capacity for formulating life plans and acting on them that the moral side constraints protect. This is why recognizing the reality of other persons implies the impermissibility of using them as means to others' ends. Minimally, we would each see this as implying *our own* inviolability, and it takes only a little maturity to see why this must extend to others.

So, the claim advanced on the first page of *Anarchy, State, and Utopia's* preface is not without foundation after all: people have rights as a matter of their status as distinct individual human beings with the capacity for self-directedness, and that means that some things that one might do to another will be in violation of those rights, which, while physically possible, are morally impermissible. The connection between "rights" as a moral concept and "rights" as a political concept is found in Nozick's observation that groups of persons cannot be morally justified in doing something that the individuals that comprise the group are not justified in doing. That is, if Smith is not morally justified in violating Jones' rights, then a large group of which Smith is a member (or leader) will also be not morally justified in violating Jones' rights. Although it is true that an individual may sacrifice something for the sake of her own greater good (say, skipping a party to study for an important exam), "there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others uses him and benefits the others" (pp. 32-33). Individuals acting jointly can't be justified in doing something they couldn't morally do on their own. So the rights that people have as moral side constraints against the predation of other individuals will turn out to be the rights that delineate the proper scope of government as well.